BEEFREE SDK LICENSE AGREEMENT - ONLINE

This Beefree SDK License Agreement – Online (the "**Agreement**") is entered between BEE Content Design, Inc. ("**BCD**"), a Delaware corporation acting for and on behalf of itself and each of its Affiliates, and the client identified on the Registration Form as defined below ("**Client**").

BCD and Client are also referred to individually as the "**Party**", and collectively, the "**Parties**".

WHEREAS

I.   BCD is a company specialized in the digital marketing and digital communications sector;

II. BCD has developed a software called Beefree SDK (including modifications, enhancements, improvements, updates, additions, derivative works, object code compiled therefrom, documentation and related material), a JavaScript web plugin, easily embeddable in other software applications, and used for the purpose of allowing Users (as defined below) to create and design email messages, pop-ups, documents and landing pages using a drag-&-drop user interface (the "**Software**");

III. Client is the owner, developer or licensee of certain web-based proprietary and commercially available software applications. Client wishes to use the Software and make it available to its customers as part of, or in connection with, its software applications and BCD has agreed to such use on the terms and conditions of this Agreement; and

IV. Client has carefully examined the Software and found it appropriate for its needs and purposes.

NOW THEREFORE,
THE PARTIES AGREE AS FOLLOWS

1. **Recitals, definitions, and external links**
    The recitals, the definitions and the external links to the Agreement constitute an integral and substantive part hereof.

2. **Definitions**
    The following terms in this Agreement shall have the meaning attributed to them under this clause 2 when capitalized:

Access Credentials	means any user name and password created by Client at the time of registering an account at https://developers.beefree.io/signup and used, together with 2FA, to access the online system that allows Client to create and configure a Client Application.

Action	has the meaning set forth in Section 11.2.
Additional Hosted Images	means the total number of data traffic generated by the delivery of Hosted Images during the Term for each Client Application minus the Pre-Paid Hosted Images included in the Subscription Plan selected for that Client Application.
Additional Hosted Images Fees	means the total number of data traffic generated by the delivery of Hosted Images during the Term for each Client Application minus the Pre-Paid Hosted Images, times the per-hosted images fee specified for the Subscription Plan selected for the Client Application.
Additional User(s)	means the total number of unique users of the Software logged during the Term for each Client Application minus the Pre-Paid Users included in the Subscription Plan selected for that Client Application.
Additional CSAPI Calls	means total CSAPI Calls executed during the Term for each Client Application minus the Pre-Paid CSAPI Calls included in the Subscription Plan selected for that Client Application.
Additional CSAPI Call Fees	means total CSAPI Calls executed during the Term, minus Pre-Paid CSAPI Calls, times the per-call fee specified for the Subscription Plan selected for the Client Application.
Additional Usage based Fees	means the total number of service usage or data traffic generated by the usage of Usage-based Features during the Term for each Client Application minus the Pre-Paid Usage-based Features, times the per-usage feature fee specified for the Subscription Plan selected for the Client Application.
Additional User Fees	means a periodic fee calculated based on the number of Additional Users times the per-user fee specified for the Subscription Plan selected for the Client Application.

2

AddOn(s)	has the meaning set forth in Section 26.
AddOn(s) Provider(s)	has the meaning set forth in Section 26.
Affiliates	means any person, corporation, or other legal entity that, directly or indirectly, controls, is controlled by, or is under common control with BCD. For this purpose, "control" shall mean (i) possession, direct or indirect, of the power to direct or cause direction of the management and policies of a party, whether through voting securities, by contract or other means; and/or (ii) ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding equity or voting shares of a party.
Agreement	means this Beefree SDK License Agreement.
AIR Feature	has the meaning set forth in Section 28.1
APIs (Application Programming Interfaces)	means sets of protocols, tools, and definitions that allow different software applications to communicate and interact with each other, enabling access to functionality or data of another application or service in a standardized manner.
Application Keys	means a set of unique identifiers (Client ID and Client Secret Key) provided to Client for each instance of Client Application and used to authorize each use of the Software for that instance of Client Application.
Artificial Intelligence	means any artificial intelligence, machine learning, or similar technologies capability or functionality, including without limitation any capability or functionality labeled or otherwise identified as AI-powered. Client's and Authorized User's Data utilized in Artificial Intelligence include "Input" - any prompt, data, text, or other input Client or any Authorized User provides or makes available to be processed by Artificial Intelligence, and "Output" - any output generated and returned to Client or an Authorized User, as applicable, by Artificial Intelligence, based on Input.

3

Available, Availability	means that the Editor is operable. The Editor will be considered Available notwithstanding malfunctions of the Software that do not affect operability of the Editor.
Availability Guaranty	has the meaning set forth in Section 9.1
Automated Information Retrieval (AIR)	mean the process, functionality, or capability of the Software to automatically collect, retrieve, or access data or information from external or internal sources without the need for manual intervention.
BCD	has the meaning set forth in the headings to this Agreement.
BCD Disabling Device	means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by BCD or its designee to disable Client's or any User's access to or use of the Software automatically with the passage of time or under the positive control of BCD or its designee.
BCD Indemnitee	has the meaning set forth in Section 11.1.
BCD Materials	means the Software, Specifications, Documentation and BCD Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by BCD or any Subcontractor in connection with the Software, including any third party materials licensed to BCD, or otherwise comprise or relate to the Software or BCD Systems. For the avoidance of doubt, BCD Materials include Resultant Data and any information, data or other content derived from BCD's monitoring of Client's access to or use of the Software, but do not include Client Data.

4

BCD Systems	means the information technology infrastructure used by or on behalf of BCD in providing the Software, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by BCD or through the use of third-party services.
BCD Trademarks	means the BCD verbal and design trademark, the Beefree SDK verbal and design trademark and derivatives thereof.
Business Days	means any calendar day (other than a Saturday or a Sunday) except for those listed as legal holidays on the US Office of Personnel Management Web site at https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/federal-holidays/
Client	has the meaning set forth in the headings to this Agreement.
Client Application	means an instance of the Software created by Client at https://developers.beefree.io. Client may create multiple Client Applications to use multiple instances of the Software embedded in various Client Software Packages.
Client Data	means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly by Client or a User by or through the Software.
Client Software Package(s)	means Client's software application(s), in which Client wants to embed the Software.
Client Trademarks	means Client's trademarks, trade names, service marks, trade dress, logos and derivative works.
Connectors	means software components or modules designed to facilitate integration between different systems, applications, or services, providing standardized interfaces and protocols to enable seamless

5

	communication and data exchange between disparate software systems, allowing them to work together efficiently and effectively.
Confidential Information	has the meaning set forth in Section 21.
Content Services API (CSAPI) previously known as Message Service API (MSAPI)	means an Application Programming Interface (API) that allows Client to submit a document generated with the Software and request that certain operations be executed on it, such as producing an updated HTML version of it. The API accepts the requests and provides the responses documented on the Software's online technical documentation that is available at https://docs.beefree.io.
Content Services API Call (CSAPI Call)	means each successful request submitted by Client Application to CSAPI.
Control Console	means the personal area where the Client can manage the integration and settings of the Software into the Client applications.
Documentation	means documentation provided by BCD to Client in electronic format.
Editor	Means that User-facing portion of the Software that has the function of editing content (i.e., enabling User to view and modify content created with the Software) along with the back-end portion of the Software that has the function of providing the content back to Client Software Package
Effective Date	means the date this Agreement comes into effect, as notified by BCD to Client with an email sent to the email address provided by Client in the Registration Form and that Client declares to periodically check for accuracy.
Fees	means Subscription Fees for the following Term plus, if applicable, Additional User Fees, Additional Hosted Images Fees, and Additional CSAPI Call Fees for the current Term.

6

Free Plan	has the meaning set forth in Section 3.6.
Harmful Code	means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Client or any User from accessing or using the Software or BCD Systems as intended by this Agreement. Harmful Code does not include any BCD Disabling Device.
Hosted Images	means images that are included in the content created with the Software and that are hosted and delivered by the Software at the time the content is viewed.
Indemnitee	has the meaning set forth in Section 11.3.
Indemnitor	has the meaning set forth in Section 11.3.
Initial Term	has the meaning set forth in Section 7.1.
Intellectual Property	means all current and future copyright, U.S. patents, utility models industrial designs, trademarks, domain names, database right and other intellectual property rights, whether or not capable of registration, whether or not registered, and applications of any of the foregoing and all intellectual property rights whether now known or created in the future.
Local Images	means images that are included in the content created with the Software and that are not hosted by the Software, but rather are hosted by the Client Software Package(s)
Losses	means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments,

settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

Party(ies)	has the meaning in the headings to this Agreement.
Pre-Paid Hosted Images	means the amount of data traffic generated by the delivery of Hosted Images during the Term of Client Subscription that are included in Client's Subscription Plan as listed on the Beefree SDK pricing page located at https://developers.beefree.io/pricing-plans/ or otherwise provided to Client.
Pre-Paid CSAPI Calls	means the number of CSAPI Calls executed during the Term of Client Subscription that are included in Client's Subscription Plan as listed on the Beefree SDK pricing page located at https://developers.beefree.io/pricing-plans/ or otherwise provided to Client.
Pre-Paid Usage-based Features	means the amount of data traffic generated by the usage of Usage-based Features during the Term of Client Subscription that are included in Client's Subscription Plan as listed on the Beefree SDK pricing page located at https://developers.beefree.io/pricing-plans/ or otherwise provided to Client.
Pre-Paid User(s)	means a fixed number of users, uniquely identified by the UID parameter as defined in the Software documentation, who have access to use the Software without incurring "Additional User Fees". Software documentation with regard to the UID parameter is available at https://docs.beefree.io/how-the-uid-parameter-works/
Registration Form	means the registration form available at https://developers.beefree.io/accounts/signup/

8

Renewal	has the meaning set forth in Section 7.2.
Resultant Data	has the meaning set forth in Section 22.
Scheduled Downtime	has the meaning set forth in Section 9.4.
Service Credit	has the meaning set forth in Section 9.5.
Software	has the meaning set forth in recitals (II).
Specifications	has the meaning set forth in Section 3.1.
Subcontractors	has the meaning set forth in Section 3.5.
Subscription Fee	means a periodic fee that Client undertakes to pay at the beginning of the Term for use of the Software under the provisions of the selected Subscription Plan.
Subscription Plan	means a subscription to the Software that provides a certain number of features as listed at https://developers.beefree.io/pricing-plans and a certain number of Pre-paid Users and Pre-Paid CSAPI Calls, as listed on the same page. A Subscription Plan must be selected for each Client Application created by Client.
Support Services	has the meaning set forth in Section 9.6.
Term	has the meaning set forth in Section 7.2.
Third Party Services Providers	has the meaning set forth in Section 3.2 (ii).
Unavailable, Unavailability	means that the Editor is not Available, is inoperable, or is operable but severely limited, as measured in continuous 1-minute increments.
Uptime	means the time in a month of service when the Editor is Available
Usage-based Features	means any features, functionalities, or enhancements integrated into the Software by BCD during the Term that are made available to the Client. These features can be included in the Subscription Plan with different limitations. Using

9

	these features, or exceeding the limitations is subject to additional fees or charges.
User(s)	means Pre-paid Users together with Additional Users.
Website	means https://developers.beefree.io/ , including any third-level domains and sub-domains.
2FA	is defined in Section 5.2

3. License

3.1. <u>License</u>. Subject to Client's acceptance of and compliance with this Agreement, and substantially in accordance with the specifications available at https://docs.beefree.io/ and as set forth herein ("**Specifications**"), BCD hereby grants Client a limited, worldwide, non-exclusive, non-assignable, and non-transferrable (except as specifically set out in this Agreement) right and license to:

(i) embed the Software within Client Software Packages or otherwise link or interoperate the Software with the Client Software Packages for the purpose of allowing Users and individuals authorized by such Users to access, use and operate the Software in connection with access and use of the Client Applications;

(ii) demonstrate the Software to potential Users.

For clarity, the foregoing license rights granted by BCD to Client under this Agreement specifically include the license and right:

a) to embed, bundle, link or otherwise incorporate the Software into Client's Software Packages;

b) to sublicense, grant usage rights and distribute the Software to Client's customers in connection with the distribution of the Client Applications;

c) to use and distribute the Software documentation and related materials as reasonably necessary to support the use of the Software;

d) to the extent reasonably required to effect the embedding, bundling, linking and/or incorporation of the Software described in this Agreement, to reverse engineer, decompile, recompile the Software;

e) to make the Software available for access and use by Client's customers under Client's or its Affiliates' branding;

f) to access, execute, display, perform, operate, and otherwise use the integration or interface developed by BCD to create interoperability between the Software and the Client Software Packages (including any application programming interface developed and maintained by BCD to enable such interoperability) and to authorize Client's customers to access, execute, display, perform, operate and otherwise use the Software utilizing such integration or interface within the Client Applications.

3.2. <u>Sublicense.</u> The foregoing limited license provides Client the right to sub-license and make available access and use rights to the Software to:

(i) Client's customers under a license, sublicense or services agreement with Client under Client's own branding, providing such Client's customers and their respective authorized users the right to access, execute, display, perform and otherwise use the Software for their respective internal business purposes; and

(ii) Third Party Services Providers (as defined below in this Section) solely for the purpose of permitting such Third Party Services Providers the right to access, execute, display, perform and otherwise use the Software as part of the services provided by such Third Party Services Providers to Client and to reproduce the Software for archival, back-up, and disaster recovery purposes for the benefit of Client. As used in this Agreement the term "**Third Party Services Providers**" shall mean those third-party information technology vendors (including third party hosting providers) of Client who are subject to contractual obligations of confidentiality and protection of proprietary rights.

Except for the limited usage rights Client may grant to Users and Third Party Service Providers and except for the assignment or transfer by Client to any of its Affiliates, the license rights granted in this Agreement are not transferable and not assignable to third parties.

3.3.   Restrictions. The License rights to the Software granted in this Agreement are for Client's and its customers' internal business purposes and Client shall not license, distribute or otherwise grant rights in the Software to its Users except as embedded, linked, bundled with, or otherwise incorporated into the Client Applications. Client shall not market, sublicense or resell the Software as a stand-alone product or services offering. Client shall not knowingly or intentionally grant to any User greater license rights to the Software than the rights granted to Client under this Agreement and shall cause each customer to enter into a written license agreement prior to such customer being given access to the Software, which contains license restrictions with respect to the Software at least as restrictive as those provided in this Agreement and the restrictions applicable to the Client Software Packages. Client will not make any representation or warranty on behalf of BCD concerning the use, availability or features of the Software or the Editor.

3.4.   No Consumer Legal Framework. Client is aware and expressly accepts that the Software is an instrument reserved to professional users, and therefore this Agreement is not subject to the legal framework applicable to agreements with consumers.

3.5.   Subcontractors. BCD may from time to time in its discretion engage third parties to perform some services (each, a "**Subcontractor**").

3.6.   Creative Commons Images. BCD may make available to the Client a repository of creative common images (the "**Images**") using some third parties' stock images through integrations with different platforms to BCD Service, as available from time to time. NEITHER BCD NOR ANY OF BCD AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE OWNERSHIP OR CONTENT OF, RIGHTS TO USE, OR RESTRICTIONS RELATED TO THE IMAGES, THEIR SECURITY, LEGALITY, PERFORMANCE, ACCURACY, OR RELIABILITY. BCD DISCLAIMS ANY LIABILITY IN CONNECTION WITH ANY CLAIMS THAT CLIENT OR ANY OTHER PARTY MAY HAVE RELATING TO ANY IMAGES OR CLIENT'S USE OF IMAGES. The Client is solely responsible for the use of the Images and

any losses or liabilities related to or arising from any such use. When the Client uses Images in connection with the License, the Client agrees to comply with the terms and conditions of the third parties that make the Images available, which can be viewed on the third parties' website. The Client further acknowledges and agrees that certain usage data related to the Images may be shared with these third parties. Client shall indemnify, defend and hold harmless BCD and BCD Indemnitee, from and against any Losses incurred or suffered by such BCD indemnitees in connection with any Action by a third party that arise out of or relate to the use of the Images.

3.7. API & Connectors: BCD may provide access to certain APIs and Connectors for Client use, as detailed in the Specifications. These APIs and Connectors enable the Client to establish tailored integrations between BCD Services and third-party applications or Client's application, facilitating a variety of purposes, including but not limited to, the import or export of HTML content from emails and pages to various destination platforms and applications, import or export of design from other applications, or the connection of custom AI models. These features will be available in the AddOn section of the Software. The use of these features is subject to Section 25 (AddOns) of this Agreement. The Client acknowledges that the use of certain APIs and Connectors may require the granting of specific permissions or authorizations to enable the connection between BCD Services and third-party applications. These permissions may include, but are not limited to, access to content libraries, user accounts, or editing capabilities within the connected platforms. Failure to grant or maintain the necessary permissions may result in partial or total malfunction of the API or Connector features, for which BCD shall not be held responsible.

3.8. Free Plan. The Client may have access to the basic functionality of the Service Software if it elects to subscribe to the no-charge limited plan (the "**Free Plan**"). The Free Plan shall be regulated by the provisions of this Agreement, except as otherwise provided herein.

3.9. Testing and preview features. At its sole discretion, BCD may allow the Client to access certain functionalities of higher Subscription Plans to test whether these functionalities are of interest to the Client. Client acknowledges and agrees that access to such functionalities may be limited, suspended, or disabled by BCD at any time, at its sole discretion, without prior notice. BCD does not provide any warranty, express or implied, as to the availability, continuity, or stability of such functionalities. Accordingly, the Client undertakes to use such functionalities solely for the purpose of testing or evaluation in connection with Client Applications. The use of such functionalities in production environments is strictly prohibited, and BCD shall not be liable for any loss, damage, or disruption resulting from the limitation or discontinuation of such access.

4. Use Policy

4.1. Client shall not, and shall not permit any other person to, access or use the Software or BCD Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Client shall not, except as this Agreement expressly permits:

a) Directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to access the source code of the Software or BCD Materials, or underlying structure, ideas, or algorithms of the Software or any software, documentation, or data related to the Software; modify, translate, or create derivative works based on the Software, except and only to the extent that such activity is expressly permitted by this Agreement; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Software; rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software to any person, including on or in connection with the use of Software for timesharing or service bureau purposes, software as a service, cloud or other technology or service; or otherwise for the benefit of a third party unless specifically authorized by BCD;

b) Remove or alter the BCD's trademarks, or any trademark, copyright or other proprietary notices, legends, symbols or labels in the Software;

c) Display or integrate any advertisements on the Software;

d) Use the Software in connection with sending unsolicited email messages, also known as spamming;

e) Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights of others;

f) Distribute or disseminate any information or materials that are inappropriate, profane, defamatory, obscene, indecent, unlawful or injurious, or contain, transmit or activate any Harmful Code;

g) Use the Software to upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright, trademark or privacy laws unless Client owns or controls the rights thereto or has received all necessary consent to do the same;

h) Use any material or information, including images or photographs, which are made available through the Software in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any third party;

i) Input, upload, transmit or otherwise provide to or through the Software or BCD Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

j) Damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Software, BCD Systems or BCD's provision of services to any third party, in whole or in part;

k) Falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of the Software or other material contained in a file that is uploaded;

l) Violate any applicable laws or regulations; or

m) Otherwise access or use the Software or BCD Materials beyond the scope of the authorization granted under Section 3.

4.2. Client shall inform its Users about such non-authorized uses. In the event that BCD becomes aware of the use of the Software in breach of the above provisions by Client or its

Users, BCD reserves the right to immediately and definitively block access to and use of the Software and/or to terminate this Agreement for breach in accordance with Section 7.3 of this Agreement.

5. Security

5.1. <u>BCD Systems and Security Obligations</u>. BCD will employ security measures in accordance with applicable industry practice. At a minimum, BCD will maintain and enforce safety and physical security procedures with respect to its access to and maintenance of Client Data which include appropriate technical and organizational safeguards designed to protect against accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of Client Data. BCD takes commercially reasonable measures to secure and defend its locations and equipment against "hackers" and others who may seek, without authorization, to modify or access the BCD systems. BCD will, on an annual basis, perform testing of its systems as reasonably appropriate to detect potential areas where security could be breached. BCD stores all Client Data in a physically secure environment reasonably appropriate to protect it from unauthorized access, modification, theft, misuse, and destruction. In addition to the general standards set forth above, BCD maintains a reasonably appropriate level of physical security controls over its facilities, including commercially reasonable alarm systems, fire suppression, and access controls (including off-hour controls). Further, BCD maintains an appropriate level of data security controls, including logical access controls (including user sign-on identification and authentication), data access controls, accountability tracking, antivirus software, and provisions for system backup. BCD maintains ISO 27001 and other quality management certification and security programs with respect to the Software.

5.2. <u>2FA</u>. BCD supports logins using two-factor authentication ("**2FA**"), which is known to reduce the risk of unauthorized use of, or access to, the Software. BCD requires the use of 2FA to provide increased security on the Internet. The Client agrees to conform to the use of the 2FA software that is provided by BCD, and to keep its software up to date to support 2FA. The Client agrees to instruct its employees on the importance of complying with 2FA security requirements.

5.3. <u>Client Username and Password</u>. Client shall employ all physical, administrative, and technical controls, screening and security procedures and other safeguards necessary to maintain the confidentiality of its account and password, with respect to both Access Credentials and Application Keys, and Client agrees to notify BCD promptly of any known unauthorized access or of any reasonably suspected breach of its account's security. Client shall be liable for losses incurred by BCD and/or another party due to a third-party using Client's account or password.

5.4. <u>Consent to Use Access Credentials</u>. Client hereby, for the duration of the Agreement, grants all such rights and permissions in or relating to Access Credentials, including, but not limited to, Client's Amazon bucket credentials: (a) to BCD, and the BCD personnel as are necessary or useful to perform the Software; (b) to BCD to perform any activity related to Software maintenance, including, but not limited to, Software updates, improvements,

correction of Software outages, any Software issues or problems; and (c) to BCD as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder, including billing purposes.

6. Client Obligations

6.1. <u>Client Applications and Cooperation</u>. Client shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Specifications all Client Applications; (b) provide BCD personnel with such access to Client Applications as is necessary for BCD for troubleshooting and to provide the Software in accordance with the availability requirement and Specifications; and (c) provide all cooperation and assistance as BCD may reasonably request to enable BCD to exercise its rights and perform its obligations under and in connection with this Agreement.

6.2. <u>Effect of Client Failure or Delay</u>. BCD is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement.

6.3. <u>Corrective Action and Notice</u>. If Client becomes aware of any actual or threatened activity prohibited by Section 4, Client shall, and shall cause its Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software and BCD Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify BCD of any such actual or threatened activity.

7. Effective Date, Term and Termination

7.1. <u>Initial Term</u>. This Agreement will be effective commencing on the Effective Date and will remain in effect for the duration selected by Client in the Registration Form (the "**Initial Term**") unless and until terminated according to the provisions of this Section 7.

7.2. <u>Renewal</u>. This Agreement will automatically renew ("**Renewal**") for additional successive terms having a duration equal to the Initial Term (such successive terms, together with the Initial Term, constitute the "**Term**"), unless earlier terminated pursuant to this Agreement's provisions. Client may give notice of non-renewal by using the "Cancel my subscription" tool (exact wording may change over time), which non-renewal will be effective at the expiration of the current Term. In consideration of the availability of the Software, Client will be required to pay the Fees for the entire current Term, even if it does not use the Software. BCD may give notice of non-renewal at least ninety (90) days before the renewal date for annual Subscription Plan and ten (10) days for monthly Subscription Plan, which termination will be effective at the expiration of the then current Term.

7.3. <u>Termination</u>. In addition to any other express termination right set forth elsewhere in this Agreement,
   a) BCD may terminate this Agreement, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than seven (7) days after BCD's delivery of written notice thereof; or (ii) breaches any of its obligations

under the confidentiality provisions set forth in Section 21 (Confidential Information), intellectual property ownership provisions set forth in Section 16 (Ownership of the Software), or license and restriction terms set forth in Section 3 (License);

b) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach;

c) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; and

d) either BCD or Client may terminate a Free Plan at any time effective upon written notice to the other Party.

7.4. <u>Effect of Expiration or Termination</u>. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

a) all rights, licenses, consents and authorizations granted by either Party to the other hereunder will immediately terminate;

b) BCD shall immediately cease all use of any Client Data or Client's Confidential Information and (i) at Client's written request within thirty (30) days after the effective date of expiration or termination, destroy all documents and tangible materials containing, reflecting, incorporating or based on Client Data or Client's Confidential Information; and (ii) at Client's written request within thirty (30) days after the effective date of expiration or termination, permanently erase all Client Data and Client's Confidential Information from all systems BCD directly or indirectly controls, provided that, for clarity, BCD's obligations under this Section 7.4(b) do not apply to any Resultant Data; and (iii) after 30 days from the effective date of expiration or termination, unless legally prohibited, may delete all Client's Data in BCD's systems or otherwise in BCD's possession or under BCD's control.

c) Client shall immediately cease all use of the Software or BCD Materials and (i) at BCD's written request destroy all documents and tangible materials containing, reflecting, incorporating or based on BCD's Confidential Information; and (ii) permanently erase BCD's Confidential Information from all systems Client directly or indirectly controls;

d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the receiving party may retain the disclosing party's Confidential Information solely to the extent and for so long as required by applicable law; (ii) BCD may also retain Client Data in its backups, archives and disaster recovery systems until such Client Data is deleted in the ordinary course; and

(iii) all information and materials described in this Section 7.4(d) will remain subject to all confidentiality, security and other applicable requirements of this Agreement;

e) BCD may disable all Client and Users access to the Software and BCD Materials;

f) if BCD terminates this Agreement pursuant to Section 7.3(a), Section 7.3(b) or Section 7.3(c), all fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay such fees, together with all previously accrued but not yet paid fees, on receipt of BCD's invoice therefor.

8. Fee and Payments

8.1. <u>Fees</u>. Client shall pay the Fees in accordance with this Section 8.

8.2. <u>Subscription Fees</u>. Client shall pay the Subscription Fees for the Initial Term and for any Renewal in the timeframe and in accordance with the methods indicated in the initial order and any subsequent orders. The payment shall be made in U.S. dollars, by credit card or other payment method acceptable to BCD. BCD is hereby authorized to implement a recurring credit card payment of the Subscription Fees by processing an automatic pre-authorized charge of the amount of the Subscription Fees for the use of the Software for the Term, subject to Client's termination in accordance with Section 7.

8.3. <u>Additional User Fees, Additional Hosted Images Fees, CSAPI Call Fees, Additional Usage-based Fees and AIF Provider Costs</u>. At the end of each Term, Subscription Fees will be adjusted to reflect any increase in the number of Users, Hosted Images, CSAPI Calls, Usage-based Features, and AIF Provider costs. Client declares that:

(i) it is aware that for any Additional User and for Hosted Images delivered in excess of Pre-Paid Hosted Image Traffic and for any Additional CSAPI Call, and for any Usage-based Feature in excess of Pre-Paid Usage-based Features, Client shall pay the Additional User Fee and/or Additional Hosted Images Fees and/or Additional CSAPI Call Fee listed at https://developers.beefree.io/pricing-plans and/or the Additional Usage-based Fees; Client may at any time access the current number of Users, Hosted Image data traffic, CSAPI Calls, and Usage-based Features via the Developer Panel.

(ii) it is aware that the exact number of Additional Users, Hosted Image data traffic, Usage-based Features and/or Additional CSAPI Call may be provided only at the end of the current Term. Therefore, Client authorizes BCD to automatically charge Client for Additional User Fees, Additional Hosted Images Fees, <u>Additional Usage-based Fees</u> and Additional CSAPI Call Fees and debit Client's credit card (or other payment method) for the applicable Term in the following Term.

8.4. <u>Failure to Pay</u>. If upon automatic Renewal of this Agreement the pre-authorized charge were unsuccessful for any reason (merely by way of example and without any limitation: expired credit card or inexistence of the necessary funds), BCD shall inform Client via electronic mail sent to the email address provided by Client in the Registration Form. Client shall have fourteen (14) calendar days from receipt of such notice to cure the breach. If the breach is not cured within such fourteen (14) calendar day period, BCD shall have the right to suspend performance of the Software block access and use of the Software, without further notice without incurring any obligation or liability to Client or any other person, and

to terminate this Agreement pursuant to Section 7.3(b) without prejudice to BCD's further rights. The Parties agree that in the event of delay in the payment of the fees, BCD may charge interest at a rate of 1.5% per month, or the highest rate allowed by applicable law, whichever is lower. Client shall reimburse BCD for all reasonable costs incurred by BCD in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

8.5. Outstanding Fees. If Client incurs Additional User Fees, Additional Hosted Images Fees, Additional CSAPI Call Fees and/or Additional Usage based fees higher than one thousand Dollars (US$1,000.00) at any time during the Term, BCD reserves the right to process a new payment for the total of the outstanding fees.

8.6. Taxes. All fees and other amounts payable by Client under this Agreement are exclusive of taxes and assessments. Client is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on BCD's income.

8.7. No Deductions or Setoffs. All amounts payable to BCD under this Agreement shall be paid by Client to BCD in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason.

8.8. Fee Increases. BCD may increase the Fees by providing written notice to Client at least thirty (30) days' before the commencement date of any Term. The new rates will be applied from the date of renewal of the Agreement. BCD may also introduce Fees for, and limit the availability of the Free Plan by providing written notice to Client at least thirty (30) days before the commencement date of any Billing Period. In the event that Client does not intend to accept such changes, Client must cancel the subscription in accordance with Section 7.2 of this Agreement. In the event of cancellation submitted beyond the aforesaid deadline, the new rates shall be considered accepted by Client and will be legally applied.

9. Availability Guaranty, Service Levels and Support

9.1. Service Level; Availability Guaranty. For free Subscription Plans, BCD will fulfill service level agreements and provide Availability on a commercially reasonable efforts basis. For paid Subscription Plans, BCD guarantees that the Editor will be Available 99.5% of the time each calendar month, 24 hours a day, 7 days a week (the "Availability Guaranty").

9.2. Exclusions. This Editor Availability Guaranty does not cover Unavailability resulting from (i) Scheduled Downtime; (ii) factors outside of BCD's reasonable control, including, without limitation (a) any Force Majeure Event, (b) issues derived from services that are not directly delivered by BCD and whose availability is outside of BCD's control, including without limitation the availability of an Internet connection at Client's location, (c) software or hardware problems that are affecting Client's computers, (d) results of any actions or inactions of User or any third party (other than BCD's Subcontractors); and (e) any User's applications, equipment, software or other technology and/or third party equipment, software or other technology not under BCD's direct control; (iii) alpha, beta or not otherwise generally available versions of the Software, or (iv) loss of access to the Software that is of

little or no significance in the Client's day-to-day operation of the Editor (collectively, the "**Exclusions**").

9.3. <u>Monitoring of Availability</u>. Availability of the Editor is measured by employing both in-house and independent monitoring systems. Independent monitoring systems are selected by BCD among the highest rated systems available in the marketplace, may change over time, and currently include, but are not limited to, Pingdom AB. Measurements of Software and Editor's general availability are available at http://status.beefree.io/.

9.4. <u>Scheduled Downtime</u>. BCD will use commercially reasonable efforts to give Client at least fourteen (14) days prior notice of all scheduled outages of the Software ("**Scheduled Downtime**").

9.5. <u>Service Credit</u>. As Client's sole remedy and BCD sole liability for failure to achieve the Availability Guaranty, BCD will issue a credit against future Subscription Fees and any amounts otherwise due by Client ("**Service Credit**") if the uptime of the Editor falls below 99.5% in any calendar month, calculated as follows:
- With monthly Availability higher than or equal to 98% but lower than 99.5%, the Client is entitled to a rebate of 3% of the Monthly Fees for the product in question per month.
- With monthly Availability higher than or equal to 97% but lower than 98%, the rebate is 5% of the Monthly Fees for the product in question per month.
- With monthly Availability higher than or equal to 96% but lower than 97%, the rebate is 7% of the Monthly Fees for the product in question per month.
- With monthly Availability higher than or equal to 95% but less than 96%, the rebate is 10% of the Monthly Fees for the product in question per month.

"Monthly Fees" are calculated as one-twelfth of the Subscription Fee that would be payable by the Client over a one-year period. No refunds or cash value will be given, provided, however, that availability measured below 95% for more than two months in a row constitutes material breach of this Agreement and the Client may give BCD notice of immediate termination of this Agreement and BCD shall refund the applicable Monthly Fee corresponding to the remaining Term. Service Credits may not be transferred or applied to any other BCD account.

To apply for a Service Credit, Client must submit a request to support@beefree.io within ten (10) days from the time Client becomes eligible to receive the applicable Service Credit. The request must include: (a) "SLA Claim" as the subject of the ticket; (b) the dates and times of Unavailability for which a credit is being claimed; (c) any documentation of the applicable Unavailability. Each Service Credit will be applied to future amounts payable by Client in connection with the applicable BCD product. All Unavailability is subject to independent verification in BCD's reasonable discretion. Service Credits are the sole remedy for Unavailability of the Editor or the Software or BCD failure to meet the monthly Availability Guaranty. Client shall not be entitled to any Service Credit in case of failure or delay in submitting a request for Service Credit.

9.6. <u>Support</u>. For free Subscription Plans, BCD will not provide any direct support to Client, but online manuals and other documentation are available at https://devportal.beefree.io/hc/en-

us and https://docs.beefree.io. For paid Subscription Plans, BCD will use commercially reasonable efforts to provide standard support services to Client through:

a) online manuals and other documentation available at https://devportal.beefree.io/hc/en-us and https://docs.beefree.io;

b) online community available at https://support.beefree.io/hc/communities/public/topics;

c) via e-mail by opening a support ticket at support@beefree.io. When a support ticket is opened, BCD staff will use commercially reasonable efforts to respond in a timely manner: A reply to the support ticket is typically provided within twelve (12) business hours.

10. Representations and Warranties

10.1. <u>Warranties by Client</u>. Client represents and warrants that:

(i) It has the full power and authority to enter into and fully perform this Agreement.

(ii) Client Software Packages, services, products, materials, contents of the messages, data, and information used by Client in connection with this Agreement and the Software do not as of the Effective Date, and will not during the Term of this Agreement, operate in any manner that would violate any applicable law or regulation.

In the event of any breach, or reasonably anticipated breach, of any of Client's warranties herein, in addition to any other remedies available at law or in equity, BCD will have the right to immediately, in BCD's sole discretion, suspend the access and use of the Software if deemed reasonably necessary by BCD to prevent any harm to BCD or its business.

10.2. <u>Warranties by BCD</u>. BCD represents and warrants that:

(i) it has the full power and authority to enter into and fully perform this Agreement.

(ii) it owns or controls all right, title, and interest in and to all Intellectual Property rights necessary to carry out its obligations hereunder and to grant and assign any rights and licenses granted to Client herein.

(iii) the Software will perform in a commercially reasonable manner.

(iv) the Software will not during the Term of this Agreement, operate in any manner that would violate any applicable law or regulation.

10.3. EXCEPT FOR THE FOREGOING AND AS PROVIDED IN SECTION 9, THE SOFTWARE AND THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE SOFTWARE IS AT ITS OWN RISK. BCD DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. BCD DOES NOT WARRANT THAT SOFTWARE AND THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. WITHOUT LIMITING THE FOREGOING, BCD MAKES NO WARRANTY OF ANY KIND THAT SOFTWARE AND THE SERVICES OR BCD MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF,

WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, RELIABLE, AVAILABLE, TIMELY, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS, INCLUDING WITHOUT LIMITATION ANY ADDONS MADE AVAILABLE TO CLIENT WITH OR THROUGH THE SOFTWARE, ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

10.4. <u>Exclusions and Disclaimers Applicable to FREE PLAN</u>. The provisions of Sections 9.1 (Service Level), 9.4 (Scheduled Downtime), 9.5 (Service Credit), 9.6 (Support), 10.2 (Warranties by BCD), 11.2 (BCD's Indemnification), and 12.2 (Cap on Liability), shall not apply to Free Plans. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, BCD DISCLAIMS ALL OBLIGATIONS OR LIABILITIES WITH RESPECT TO FREE PLANS, INCLUDING ANY SUPPORT SERVICES, WARRANTY, AND INDEMNITY OBLIGATIONS. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, BCD'S MAXIMUM AGGREGATE LIABILITY IN RESPECT OF FREE PLANS WILL BE US$15.00.

11. Indemnification

11.1. <u>Client's Indemnification</u>. Client shall indemnify, defend and hold harmless BCD and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "**BCD Indemnitee**") from and against any Losses incurred or suffered by such BCD Indemnitee (1) that would not have been incurred or suffered if (i) Client had fulfilled the obligations undertaken upon entering into this Agreement, and (ii) the representations and warranties provided by Client by entering into this Agreement had been truthful, accurate, complete and not misleading; or (2) in connection with any Action by a third party that arise out of or relate to any:

a) Client Data, including any processing of Client Data by or on behalf of BCD in accordance with this Agreement;

b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Client or any User, including BCD's compliance with any specifications or directions provided by or on behalf of Client or any User to the extent prepared without any contribution by BCD;

c) allegation of facts that, if true, would constitute Client's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or

d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any User, or any third party on behalf of Client or any User, in connection with this Agreement.

11.2.   BCD's Indemnification. BCD shall indemnify, defend and hold harmless Client from and against any and all Losses incurred by such Client arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an Affiliate of Client) that Client's or a User's use of the Software (excluding Client Software Packages, Client Data and third party materials) in compliance with this Agreement (including the Specifications) infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to:

a) Any access to or use of the Software or BCD Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by BCD;

b) any modification of the Software or BCD Materials other than: (i) by or on behalf of BCD; or (ii) with BCD's written approval in accordance with BCD's written specifications;

c) any failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Client by or on behalf of BCD; or

d) any act, omission or other matter described in Section 11.1, whether or not the same results in any Action against or Losses by any BCD Indemnitee.

11.3. Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11 except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

11.4. Mitigation. If any of the Software or BCD Materials are, or in BCD 's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client's or any User's use of the Software or BCD Materials is enjoined or threatened to be enjoined, BCD may, at its option and sole cost and expense:

a) obtain the right for Client to continue to use the Software and BCD Materials substantially as contemplated by this Agreement;

b) modify or replace the Software and BCD Materials, in whole or in part, to seek to make the Software and BCD Materials (as so modified or replaced) non-infringing, while providing substantially equivalent features and functionality, in which case such modifications or replacements will constitute Software and BCD Materials, as applicable, under this Agreement; or

c) by written notice to Client, terminate this Agreement and require Client to immediately cease any use of the Software and BCD Materials.

THIS SECTION 11 SETS FORTH CLIENT'S SOLE REMEDIES AND BCD'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS

THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SOFTWARE AND BCD MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

12. Limitations of Liability

12.1. <u>EXCLUSION OF DAMAGES</u>. IN NO EVENT WILL BCD OR ANY OF ITS LICENSORS (INCLUDING WITHOUT LIMITATION ADDON PROVIDERS), SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SOFTWARE, (c) LOSS, DAMAGE, CORRUPTION, UNAUTHORIZED ACCESS TO OR ALTERATION OF CLIENT'S DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2. <u>CAP ON MONETARY LIABILITY</u>. IN NO EVENT WILL THE AGGREGATE LIABILITY OF BCD AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE FEE PAID BY CLIENT TO BCD DURING THE CONTRACT PERIOD IN WHICH THE DAMAGES FIRST OCCURRED (I.E., THE FEE PAID DURING THE INITIAL TERM, IF THE DAMAGES OCCUR DURING THE INITIAL TERM; OR THE FEE PAID DURING THE SPECIFIC RENEWAL TERM THEN IN EFFECT, IF THE DAMAGES OCCUR DURING SUCH RENEWAL TERM).

12.3. <u>Unauthorized Access</u>. BCD shall not be responsible for any damages, losses or liability to Client, authorized users, or any other person if any event leading to such damages, losses or liability would have been prevented by the use of 2FA. Additionally, Client is responsible for all Access Credentials for administrator accounts as well the accounts of Client's authorized users. BCD will not be responsible for any damages, losses or liability to Client, authorized users, or any other person, if such information is not kept confidential by Client or its authorized users, or if such information is used by an unauthorized third party logging into and accessing the Software.

13. Improvements

Client recognizes that BCD is always innovating and finding ways to improve the Software with new features and services. Therefore, Client agrees that the Software may change from time to time and no warranty, representation or other commitment is given in relation

to the continuity of any functionality of the Software. BCD will use its reasonable commercial effort to inform Client of any upcoming Software changes and to only introduce features that substantially alter the functioning of the Software in a disabled state, permitting the Client to activate them at its leisure.

14. **Force Majeure**

BCD and Client may not be deemed in any way liable for failure to perform this Agreement caused by factors falling outside its reasonable control (a "**Force Majeure Event**") including by way of example and without any limitation, acts of God, uprisings, acts of terrorism and war, strikes, labor stoppages or slowdowns or other industrial disturbances, electrical, internet, telecommunication, or cloud computing service provider outages, riots, tornadoes, hurricanes, floods, mudslides and landslides, fires, earthquakes or explosions, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergencies, passage of law or any action taken by a governmental or public authority, or national or regional shortage of adequate power or telecommunications or transportation.

15. **Assignment**

Client may not assign its rights or delegate its duties under this Agreement either in whole or in part and either voluntarily or by operation of law without the prior written consent of BCD. Any attempted assignment or delegation without such consent will be void. BCD may assign this Agreement in whole or part without Client's consent upon fifteen (15) days prior written notice to Client. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

Without prejudice to the prohibition of transferring the account to third parties, BCD may, at its own discretion, authorise the change of ownership of an account registered with a corporate domain if (a) the client company proves its ownership, (b) declares that it has removed or anonymised any personal data of the previous user, and (c) assumes all liability arising from the transfer.

16.   Ownership of the Software

16.1. <u>Software and BCD Materials</u>. All right, title and interest in and to the Software and BCD Materials, including all Intellectual Property Rights therein, are and will remain with BCD or BCD licensor's, as applicable. Client has no right, license or authorization with respect to any of the Software or BCD Materials except as expressly set forth in Section 3.1 and 3.2, in each case subject to Sections 4 and 6. All other rights in and to the Software and BCD Materials are expressly reserved by BCD and the respective third-party licensors. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to BCD an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

16.2. <u>Client Data</u>. As between Client and BCD, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 16.3.

16.3. <u>Consent to Use Client Data</u>. Client hereby irrevocably grants all such rights and permissions in or relating to Client Data: (a) to BCD, its Subcontractors and the BCD personnel as are necessary or useful to perform the Software; and (b) to BCD as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

17.   Data Protection

17.1. Each Party undertakes to comply with the data protection legislation applicable at the time and place and to process all personal data and information of the other Party, its legal representatives, employees and collaborators to which it may have access in the context of the conclusion and execution of this Contract, solely for specified and legitimate purposes.

17.2. The Client acknowledges, represents, warrants, and agrees that:

    a)   BCD's Services are not intended to process personal data and shall not be used to process personal data, including but not limited to certain configurations of the Services, such as the setting of UID parameter which should not contain personal data (as explicitly requested in the Software documentation available at https://docs.beefree.io/how-the-uid-parameter-works/);

    b)   during the performance of this Agreement, BCD does not process personal data and information on behalf of the Client as a Data Processor, as it acts autonomously as Data Controller establishing the purposes and means of any processing operations as described in the privacy policy available at https://beefree.io/privacy-policy/;

    c)   BCD may process IP addresses of those Users who connect to the Software for BCD's own security purposes. To this end, BCD represents, warrants, and agrees that: (i) BCD will collect the IP addresses of the Users solely to monitor log-in activity for its own security purposes; (ii) BCD is the Data Controller of such IP addresses; and (iii) BCD will collect the IP addresses directly from the Users. The Client represents, warrants, and agrees to (i) directly inform the Users who are customers of Client that IP addresses can be collected and processed through the use of the Software (as embedded in the Client Application) and such party collecting and

processing the IP addresses is doing so as a Data Controller; (ii) directly provide BCD's privacy policy to the Users as available at https://beefree.io/privacy-policy/

17.3. Notwithstanding the foregoing, if Client or Users autonomously decide to upload personal data while using the Software, in violation of BCD's privacy policy, BCD shall not be deemed to be engaged as data processor. BCD declines any liability with respect to any independent upload by Client or Users of personal data while using the Software. BCD declines any liability that may derive from any accidental and unintended access to such personal data or from being considered as a data processor of personal data on Client's behalf.

18. Accessibility

Client acknowledges and agrees that BCD does not guarantee that content created using the Software is compliant with applicable accessibility laws, regulations, or standards, including but not limited to the Web Content Accessibility Guidelines (WCAG), the Americans with Disabilities Act (ADA), or the European Accessibility Act (EAA).

Therefore, Client is solely responsible for ensuring that the content Client creates, customizes, or publishes through the Software complies with applicable accessibility requirements based on its intended use and distribution context. BCD shall not be held liable for any non-compliance of Client content with accessibility standards or regulations.

Nevertheless, BCD may, in accordance with commercially reasonable efforts, to align its products and features with evolving industry standards and general accessibility guidelines. BCD further undertakes to pursue ongoing product improvements that facilitate Client's compliance with accessibility standards and regulations, to the extent technically and operationally feasible. However, such efforts shall not constitute a warranty of compliance, nor create any binding obligation to deliver specific accessibility outcomes.

19. Tax Costs

Any tax cost deriving from the performance of this Agreement, including taxes for advertising activities, shall be borne by Client.

20. Notices
If to BCD:

Unless otherwise provided in this Agreement, any notice or communication to BCD under this Agreement shall be in writing and in English, and shall be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier; (c) when sent, if by e-mail, with confirmation of transmission and shall be sent to BCD at the addresses specified below:

BEE Content Design, Inc. to the address indicated at the following page: https://beefree.io/contact/

Email: support@beefree.io

If to Client:

Unless otherwise provided in this Agreement, any notice or communication to Client under this Agreement shall be in writing, and shall be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier; (c) when sent, if by e-mail, with confirmation of transmission; (d) when posted, if by post on BCD's website or at https://app.getbeamer.com/developersbeefreeio/en , and, unless posted on BCD's website or at https://app.getbeamer.com/developersbeefreeio/en , shall be sent to Client at the last email or physical address the Client provided to BCD. The Client is aware and accepts that, for purposes of providing notice, BCD may use any email or physical address within the Client's account, including contact information associated with an account's primary contact, billing contact information, owner profile, or any other profile or contact associated with the account. Client acknowledges and agrees that any notices provided by BCD shall be deemed effective when posted on BCD's website or at https://app.getbeamer.com/developersbeefreeio/en, and further agrees to assume full responsibility for periodically checking BCD's website and the Control Console for such notices.

The Parties hereby agree that: (a) words in electronic form shall be deemed to be "writing" for the purposes of all applicable legislation where "writing" is required; and (b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the Parties.

21. Confidentiality

21.1. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, clients, technology, and products, including the terms and conditions of this Agreement ("**Confidential Information**"). Confidential Information includes, without limitation, trade secrets, ideas, processes, formulae, computer software (including source code), algorithms, data, data structures, scripts, applications, programming interfaces, protocols, know-how, copyrightable material, improvements, inventions (whether or not patentable), techniques, strategies, business plans, product development plans, timetables, forecasts, client and supplier lists, product and/or service designs, specifications and schematics, product and/or service costs, product and/or service prices, product and/or service names, financial information, employee information, marketing plans, business opportunities, research activities and results, market research activities and results, and development activities and results. Each party shall not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants, and other advisors as reasonably necessary), any of the other party's Confidential Information and shall take reasonable precautions to protect the confidentiality of such information.

21.2. Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) the receiving party can demonstrate by written or other documentary records is independently developed by the receiving party without reference to or use of any Confidential Information.

21.3. The provisions of this Section 21 (Confidentiality) shall supersede any non-disclosure agreement between the Parties entered prior to this Agreement that would purport to address the confidentiality of Confidential Information and such agreement shall have no further force or effect with respect to Confidential Information.

22. Client Code of Conduct

22.1. The Client may request BCD to acknowledge or adhere to its own codes of conduct, business principles, compliance policies, or similar documents (collectively, "Customer Policies"). Subject to BCD exclusive discretion, BCD may review such Customer Policies in good faith and shall make reasonable efforts to align its practices with them to the extent they are not in conflict with this Agreement. However, the parties expressly agree that this Agreement shall prevail over any conflicting provision contained in such Customer Policies, and BCD shall not be deemed in breach of this Agreement for any non-compliance with Customer Policies, except to the extent expressly agreed in writing by BCD.

22.2. Any audit rights granted to the Client in relation to BCD's compliance with Customer Policies shall be subject to prior written agreement between the parties regarding scope, timing, method, confidentiality, and cost allocation. In any case, the Client's sole and exclusive remedy for BCD's failure to comply with the Customer Policies or to grant audit access shall be the right to terminate this Agreement upon written notice. No additional penalties, damages, or indemnifications shall apply.

23. Survival

The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 4 (Use Policy), Section 7.4 (Effect of Expiration or Termination), Section 8 (Fee and Payments), Section 10 (Representations and Warranties), Section 11 (Indemnification), Section 12 (Limitations of Liability), Section 16 (Ownership of the Software), Section 20 (Confidential Information), Section 24 (Ownership of Resultant Data), Section 27 (AddOns), Section 32 (Miscellaneous), Section 33 (Governing Law, Venue and Jurisdiction) and this Section 23.

24. Ownership of Resultant Data

BCD will derive aggregated data, information, and other content by or through the Software from processing Client Data, which is sufficiently different from such Client Data and cannot be identified from the inspection, analysis or further processing of such data, information, or content (the "**Resultant Data**"). Where possible and at BCD's full discretion, Resultant Data will not include personal data. Client authorizes BCD to use the Resultant Data in order to contribute to the effective improvement of the functioning of the Software and the production of statistical information that may be published by BCD in aggregate form. BCD reserves the right at all times to disclose the Resultant Data as it deems necessary to satisfy any applicable law, regulation, legal process or governmental request. Further information on the processing activities carried out on this regard may be found in BCD's privacy policy available at https://beefree.io/privacy-policy/.

25. Validity of amendments and supplements

BCD may unilaterally amend or supplement this Agreement. All amendments or supplements will be effective from the moment in which BCD notifies Client of the amendment or supplement by email and makes available the new version of this Agreement on the Website. Any subsequent use of the Software shall be deemed an acceptance by Client of the same amendments or supplements.

26. Banner and links

In case of a free Subscription Plan, Client acknowledges and accepts that BCD may display in the interface of the Software:
- a wording and/or a logo of BCD, containing a link to one of BCD's Web sites;
- advertisements and advertising banner including, but not limited to, video advertising, social media advertising, image ads or text ads that may contain a link to third party sites. We have no responsibility or liability for the content and activities of these linked sites;

- "in-app", purchasable by the Users. The content and activities of these "in-app" are subject to their respective terms and policies.

27. AddOns

27.1. BCD in its absolute discretion may make available additional features, functionality, and services offered by third-party providers ("**AddOns"**) with the Software. Client's use of AddOns is subject to a separate agreement between Client and the third-party licensor of that AddOn (the "**AddOn Provider**") and BCD is not and in no event will be considered as a party to, or a third party beneficiary of, such agreement. Therefore, Section 9 of this Agreement does not apply to AddOns, and BCD is not committed to provide technical support and maintenance to the connected applications whether they are provided by third parties or the Client. Client's use of the AddOn is strictly at Client's risk. The AddOn Provider is solely responsible for that AddOn, its content, performance, and security and the privacy and security of any of Client Data processed or affected, directly or indirectly, by the AddOn. NEITHER BCD NOR ANY OF BCD AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ADDONS, THEIR SECURITY, LEGALITY, PERFORMANCE, ACCURACY, OR RELIABILITY. BCD DISCLAIMS ANY LIABILITY IN CONNECTION WITH ANY CLAIMS THAT CLIENT OR ANY OTHER PARTY MAY HAVE RELATING TO ANY ADDON OR CLIENT'S USE OF THAT ADDON. Client shall indemnify, defend and hold harmless BCD and BCD Indemnitee, from and against any Losses incurred or suffered by such BCD indemnitees in connection with any Action by a third party that arise out of or relate to the use of AddOns.

27.2. By subscribing to or purchasing an AddOn, Client grants BCD permission to share Client Application, Client Data, and Resultant Data with the AddOn Provider as necessary in order to provide Client the AddOn. BCD disclaims any responsibility as to Provider's use or misuse of such Client Application, Client Data, and Resultant Data.

28. Betas

If Client receives access to the Service or Service features as alpha, beta or early access offering ("**Betas**"), use is permitted only for Client's internal evaluation during the period designated by BCD (or if not designated 90 days). Betas are optional and either party may terminate Betas at any time for any reason. Betas may be inoperable, incomplete, or include features that BCD may never release, and their features and performance information are BCD's Confidential Information. Subject to the terms and conditions of this Agreement, BCD grants to Client a non-exclusive, revocable, non-sublicensable, non-transferable license to use Betas in accordance with, if any, the Documentation solely for purposes of internal testing and evaluation. Notwithstanding anything else in this Agreement, BCD provides no warranty, indemnity, or support for Betas and its liability for Betas will not exceed US$15. BETAS AND, IF ANY, DOCUMENTATION ARE STILL IN TESTING PHASE AND LICENSED "AS IS". BCD DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, USABILITY OR

FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABLE QUALITY, TITLE OR NON INFRINGEMENT OF THIRD PARTY RIGHTS, TO THE EXTENT AUTHORIZED BY LAW. CLIENT IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF BETAS AND/OR ACCOMPANYING MATERIALS.

29. Artificial Intelligence Features (AIF)

29.1. BCD may offer products, features, or tools as part of the Services that are powered by Artificial Intelligence (collectively, the "**Artificial Intelligence Features**" or "**AIF**"). AIF will only be enabled by the Client through the admin console. The terms in this section govern the use of the AIF, when enabled by the Client, within the Services provided by BCD to Client under this Agreement.

29.2. If the AIF is provided as a Beta Section 28 of this Agreement shall apply. The availability of Artificial Intelligence and some of the AIF in the Client's account may be toggled on or off by the client; the Client can adjust these settings at any time by activating the appropriate functions in the applicable widget. Additional information is available in the Documentation.

29.3. <u>Input and Output</u>. Client, also on behalf of its Users is responsible for any text, images, or other content uploaded or submitted to the AIF ("Input") as well as the text, images, or other content generated by the AIF based on Client's or Authorized Users' Input ("Output"). Client will ensure that Client and Authorized Users' use of the AIF, including Input and Output, complies with this Agreement and applicable law. Client acknowledges that (i) Input will not be treated as Confidential information, therefore, Client shall not include any data or information in Input that is restricted from using or sharing (for example, third-party confidential information or intellectual property); (ii) Input will not include any sensitive personal data (including data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, health data or data concerning anybody's sex life or sexual orientation); (iii) Output will not be Confidential Information; (iv) Output may not be accurate or reliable and a human should independently review all Output before using or sharing it; and (v) a human will manually review each Output before using, sharing or while streaming.

29.4. <u>Certain Prohibitions to the Use of AIF</u>. Client shall not: (i) mislead anyone that the content generated by AIF is human-generated; (ii) provide medical advice or any content regarding the treatment, prevention, diagnosis or transmission of diseases; (iii) provide legal or financial advice; (iv) generate contracts or legally binding obligations; (v) generate political content including for dissemination in electoral campaigns; (vi) generate source code; (vii) generate spam, ransomware, keyloggers, viruses or other software; (viii) generate nudity or shocking content including obscene gestures, bodily fluids or other profane subjects; (ix) generate or disseminate information to be used for the administration of justice or other legal purposes; (x) implement fully-automated decision making.

29.5. <u>Terms that Apply to Input and Output</u>. Between Client and BCD, the Client retains all rights, title, and interest (including all intellectual property rights) in and to any Input or Output, and BCD retains all rights, title and interest to AIF. This means that Client can use Input and

Output for any lawful purpose, provided that Client complies with this Agreement and accepts that any such use is at its own risk. Client acknowledges that Output may not be unique across users and that the AIF may generate the same or similar Output for the Client or a third party.

29.6. <u>Disclaimers</u>. THE CLIENT ACKNOWLEDGES THAT OUTPUT IS GENERATED BY MACHINE LEARNING CAPABILITIES AND FUNCTIONALITY, AND BCD MAKES NO WARRANTY OF ANY KIND AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF THE OUTPUT. THE OUTPUT MAY CONTAIN BUGS, ERRORS, OR OMISSIONS. AIF IS PROVIDED "AS IS" AND BCD EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. CLIENT'S USE OF AIF IS AT ITS SOLE RISK, AND BCD MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF AIF OR THE ACCURACY OF ANY INFORMATION OBTAINED THROUGH AIF. DUE TO THE NATURE OF ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING, INCLUDING CHANGES AND UPDATES TO THE DATA MODELS AND UNDERLYING DATA USED BY THESE MODELS, OUTPUT MAY CONTAIN MATERIAL INACCURACIES. CLIENT SHOULD INDEPENDENTLY VERIFY THE VALIDITY OF THE OUTPUT. BCD MAKES NO WARRANTY THAT CLIENT'S DATA, INPUT, OR OUTPUT WILL NOT BE LOST OR DAMAGED WHEN USING AIF. BCD DOES NOT MAKE ANY WARRANTY REGARDING THE AVAILABILITY OR UPTIME OF AIF AND MAY DISCONTINUE OR MODIFY THE AVAILABILITY OF AIF OR THESE TERMS AT ANY TIME IN ITS SOLE DISCRETION. Due to the nature of AIF, (i) Output may not be unique to Client and Authorized Users, (ii) Output does not represent BCD's views, and (iii) BCD has not verified the accuracy of the Output. Client acknowledges that BCD may disclose such content to law enforcement or other governmental authorities or in response to a court order.

29.7. <u>Limitation of Liability</u>. NEITHER BCD NOR ANY OF BCD'S AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA OR OTHER LOSSES, EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BCD'S AGGREGATE LIABILITY UNDER THESE TERMS SHALL NOT EXCEED ONE HUNDRED DOLLARS ($100). THE LIMITATIONS IN THIS SECTION ONLY APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

29.8. <u>Third Party Providers</u>. BCD provides some elements of the AIF through third-party service providers ("AIF Providers"). The Client acknowledges that Input and Output, including Authorized User Input and Output, will be shared with and processed by BCD's AIF Providers, listed here, to enable the use of AIF. The Client and Authorized Users may not use the AIF in a manner that violates any terms or policy of any AIF Provider. The Client and Authorized Users can review the AIF Provider's policies directly here.

32

29.9. <u>Availability and Modifications</u>. BCD does not guarantee the availability of the AIF in any or all geographical areas or at all times. Notwithstanding anything to the contrary in this Agreement, any production downtime impacting the AIF will not be included in the Availability Guaranty. Notwithstanding anything to the contrary in this Agreement, BCD may make changes to the AIF that materially reduce the functionality provided to Client and Authorized Users during the Term or change the limits to the use of the AIF that apply to the Client at any time in BCD's sole discretion. The Client may be notified when they have reached the maximum number of Outputs for the account, if applicable. Some AIF are not available in all languages.

29.9. Without prejudice to the remainder of the Agreement, Section 8.3, Section 8.5, and this Section 29 will not apply unless AIF are activated by the Client.

30. Automated Information Retrieval

30.1. Subject to the terms and conditions of this Agreement, BCD may offer products, features, or tools as part of the Services that use Automated Information Retrieval services ("**AIR Feature**").

30.2. Client may choose to allow BCD to automatically retrieve data from Client's system(s), and/or websites on Client's behalf and/or may use the AIR Feature to do so at Client's direction. Client hereby represents and warrants that it has the necessary permission, authority, and rights to use the AIR Feature to access, or to allow BCD to automatically access, Client's system(s), and/or websites, and hereby grants BCD permission to access such system(s), and/or websites to retrieve data. Client further represents and warrants that its use of the AIR Feature will not violate any terms of service, agreements, privacy policies, or any express or implied communications, requests, or demands from any third party. BCD disclaims any and all liability associated with accessing and retrieving data from such system(s), and/or websites on Client's behalf.

30.3. BCD shall not be responsible or liable for any server overload, performance degradation, downtime, or other disruptions to the Client's system(s), and/or websites resulting from the use of the AIR Feature, including but not limited to the transmission of data, automated queries, or any other usage that may place an excessive load on any server or system. Client acknowledges and agrees that it is solely responsible for monitoring and managing the impact of the AIR Feature on its own system(s), and/or websites, and for implementing any necessary measures to prevent or mitigate server overload or other technical issues.

30.4. Client is expressly prohibited from using the AIR Feature on any system, website, or service that is not owned or operated by Client. The AIR Feature shall only be used in connection with Client's own system(s), and/or websites. Any unauthorized use of the AIR Feature in violation of this provision may result in immediate termination of this Agreement, and Client shall indemnify and hold BCD harmless from any claims, damages, or liabilities arising from such unauthorized use.

30.5. By submitting data obtained from any of Client's own system(s), and/or websites to BCD, Client hereby grants, represents, and warrants that Client has all rights necessary to grant,

all rights and licenses to such data required for BCD and its Subcontractors and service providers to provide the AIR Feature.

30.6. The Client acknowledges, represent, warrants, and agrees that the AIR Feature is not intended to process personal data and shall not be used to process personal data pursuant to clause 17.2 of this Agreement. Any breach of this provision shall be the sole responsibility of the Client. Therefore, the Client shall be required to ensure full compliance with all relevant actions in accordance with applicable laws and regulations.

30.7. CLIENT ACKNOWLEDGES THAT BCD DOES NOT MANAGE OR CONTROL THE DATA THAT CLIENT ACCESSES, STORES, OR DISTRIBUTES THROUGH THE AIR FEATURE, AND ACCEPTS NO RESPONSIBILITY OR LIABILITY FOR THAT INFORMATION REGARDLESS OF WHETHER SUCH DATA IS TRANSMITTED TO OR BY CLIENT IN BREACH OF THIS AGREEMENT. BCD MAKES NO WARRANTY WITH RESPECT TO SUCH DATA CLIENT MAY ACCESS, STORE OR DISTRIBUTE THROUGH THE AIR FEATURE. IN PARTICULAR, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BCD MAKES NO WARRANTY THAT SUCH DATA WILL BE FREE OF ANY VIRUS, WORM, TROJAN HORSE, EASTER EGG, TIME BOMB, CANCELBOT, OR OTHER DESTRUCTIVE OR MALICIOUS CODE OR PROGRAMS. CLIENT AGREES TO WAIVE, AND HEREBY DOES WAIVE, ANY LEGAL OR EQUITABLE RIGHTS OR REMEDIES CLIENT HAS OR MAY HAVE AGAINST BCD WITH RESPECT TO DATA THAT CLIENT CHOOSES TO ACCESS, STORE OR DISTRIBUTE, THROUGH THE AIR FEATURE.

31. Export Controls and Sanctions Compliance

31.1.   The Client acknowledges and agrees that access to and use of the Services (including the Beefree App, SDK, and any related software, features, or components) is subject to applicable U.S. export control laws and economic sanctions regulations, including, without limitation, the Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce and the sanctions programs administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, as well as any other applicable laws or regulations in jurisdictions where the Services are accessed or used, or where the Client or Users are located or established (collectively, "Sanctions and Export Control Laws").

31.2.   The Client represents and warrants that neither it nor its Affiliates, beneficial owners, officers, directors, employees, or agents: (i) are located in, established under the laws of, or ordinarily resident in any jurisdiction subject to comprehensive U.S. sanctions (including, without limitation, Iran, Syria, North Korea, Cuba, and the Crimea, Donetsk, and Luhansk regions of Ukraine), or (ii) appear on any restricted party lists issued by the United States government or any other applicable authority, including but not limited to OFAC's Specially Designated Nationals and Blocked Persons List, the OFAC Foreign Sanctions Evaders List, the BIS Denied Persons List, or the BIS Entity List.

31.3.   The Client agrees not to directly or indirectly export, re-export, transfer, access, or otherwise make the Services available: (a) in violation of any applicable Sanctions and Export Control Laws, (b) to any Sanctioned Jurisdiction or restricted party, or (c) for any prohibited end use, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical/biological weapons.

31.4.   Notwithstanding any other provision of this Agreement, BCD may suspend or terminate the Client's access to the Services, in whole or in part, with immediate effect and without prior notice, in the event of an actual or suspected violation of this Section. The Client agrees to cooperate with BCD to provide any information reasonably requested to assess or ensure compliance with applicable laws.

31.5.   U.S. Government End Users. The Services (including the Beefree SDK and any related software or documentation) are provided as "Commercial Items," as defined in 48 C.F.R. §2.101, and consist of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. If the Client embeds the Services or makes them available within an application or solution delivered to a U.S. government agency or entity, the Client represents and warrants that such integration shall comply with all applicable U.S. federal acquisition regulations. The Services are licensed to U.S. government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other end users pursuant to this Agreement.

No additional rights or licenses are granted under any government acquisition regulations. All unpublished rights are reserved under the copyright laws of the United States

32. **Miscellaneous**

32.1. <u>Entire agreement</u>. This Agreement, including the external links which constitute an integral part hereof, sets forth the entire agreement of the parties and supersedes all previous agreements, understandings and negotiations, whether written or oral, between the Parties concerning the subject matter of this Agreement.

32.2. <u>Waiver</u>. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

32.3. <u>Severability</u>. If one or more of the clauses of this Agreement is declared null and void or unenforceable by the competent court of law, the remaining clauses of this Agreement shall continue to be valid and effective between the Parties, unless such clause constituted a determinant reason for the conclusion of this Agreement.

32.4. <u>Headings</u>. The headings contained in this Agreement or in any exhibit or schedule hereto, or linked document, as applicable, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

32.5. <u>No relationship</u>. The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

32.6. <u>Advertising</u>. Client hereby acknowledges and accepts that BCD can use Client's name and Client Trademarks in presentations, marketing materials, client lists and financial reports.

33. Governing Law, Venue and Jurisdiction

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State. Each party hereto irrevocably submits to the exclusive jurisdiction of (a) the Supreme Court of the State of California, San Francisco County, or (b) the United States District Court for the Northern District of California, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby or thereby. Each of Client and BCD agrees to commence any such action, suit or proceeding either in the United States District Court for the Northern District of California or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Superior Court of the State of California, San Francisco County. Each of Client and BCD further agrees that service of any process, summons, notice or documents by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any action, suit or proceeding in California with respect to any maters to which it has submitted to jurisdiction in this Section. Each of Client and BCD irrevocably and unconditionally waives any objection

to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby and thereby in (i) the Superior Court of the State of California, San Francisco County, or (ii) the United States District Court for the Northern District of California, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has BCD brought in an inconvenient forum.