BRAINCLOUD DATA PROCESSING AGREEMENT

This Data Processing Agreement ("**DPA**") is incorporated into and forms part of the brainCloud Terms of Use and/or brainCloud Master Services Agreement ("**brainCloud Agreements**") between you ("**Customer**", "**You**", "**Your**") and bitHeads inc ("**bitHeads**", "**We**", "**Our**"), each a "**Party**" and together, "**Parties**".

This DPA establishes data protection duties and obligations between Parties relating to Your use of the brainCloud Services Platform under the brainCloud Agreements, including requirements with respect to the processing of Customer Personal Data (as defined below) that is collected, stored, or otherwise processed by bitHeads for the purpose of providing the brainCloud Services (as defined below). bitHeads is a Data Processor (as defined below) acting on Your behalf, and You continue to be the Data Controller (as defined below). This DPA is effective on the effective date of the brainCloud Agreements, unless this DPA is separately executed in which case it is effective on the date of the last signature.

1. **Definitions.** In this DPA, the following terms shall have the meanings set out below.

1.1 "**Customer Personal Data**" means the Personal Data uploaded to the brainCloud Platform by You or on Your behalf.

1.2 "**Data Protection Laws**" means the *Personal Information Protection and Electronic Documents Act,* SC 2000, ch. 5 ("**PIPEDA**"), any applicable and relevant provincial privacy legislation with deemed equivalency to PIPEDA, and, if applicable, the EU General Data Protection Regulation 2016/679 ("**GDPR**") as transposed into domestic legislation of each relevant European Union Member State;

1.3 "**EEA**" means the European Economic Area;

1.4 "**Services**" means the brainCloud Platform services as set out in the brainCloud Agreements;

1.5 "**Sub-processor**" means any Processor (including any third party) engaged by bitHeads to Process Customer Personal Data;

1.6 The terms "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processor**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR or their equivalent meaning under other Data Protection Laws.

2. **Processing of Customer Personal Data.** In the course of providing the Services to You pursuant to the brainCloud Agreements, bitHeads may Process or have a Sub-processor Process Customer Personal Data.

2.1 **Roles of the Parties**. With respect to the Processing of Customer Personal Data under the brainCloud Services Platform: i) You act as the Data Controller, ii) bitHeads acts as the Data Processor, and iii) bitHeads may engage Sub-processors defined in section 4 (Sub-processing).

2.2 **Instructions.** You hereby instruct bitHeads to Process Customer Personal Data as required to perform the Services under the brainCloud Agreements. bitHeads will only Process the types of Customer Personal Data relating to the categories of Data Subjects for the provision of the Services under or in connection with the BrainCloud Agreements, unless such Processing is required by Data Protection Laws to which bitHeads is subject.

2.3 **Data protection compliance.** Each Party agrees to comply with its obligations under Data Protection Laws. We will inform You if, in Our discretion, an instruction from You is contrary to Data Protection Laws.

2.4 **Details of Processing.**

2.4.1 **Subject Matter.** The subject matter of the Processing under this DPA is Customer Personal Data uploaded to the brainCloud Platform by You or on Your behalf.

2.4.2 **Duration.** The duration of the Processing under this DPA is until the expiration or termination of the BrainCloud Agreements in accordance with its terms.

2.4.3 **Nature and Purpose of Processing.** bitHeads is engaged to provide Services to You which involve the Processing of Customer Personal Data. The scope of the Services are set out in the BrainCloud Agreements, and Customer Personal Data will be Processed by bitHeads to deliver those Services and to comply with the terms of this DPA.

2.4.4 **Categories of Data Subjects**. Data subjects may include Your customers, employees, suppliers and end users, or any other individual whose personal data You upload to the brainCloud Platform.

2.4.5 **Types of Personal Data**. The types of Customer Personal Data processed under this DPA include any Customer Personal Data You upload to the brainCloud Platform.

2.4.6 **Processing Operations.** bitHeads will carry out Processing operations in relation to Your Personal Data for the purposes of providing the Services as set out in the BrainCloud Agreements.

3. **Personnel.** bitHeads will ensure that persons authorised to Process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

4. **Sub-processing.** Effective from the effective date of the BrainCloud Agreements, You hereby instruct and authorize bitHeads to transfer Customer Personal Data to Sub-processor recipients in Canada, the United States, and other countries as necessary for the provision of Services under the BrainCloud Agreements. Sub-processors should have substantially equivalent safeguards as in this DPA.

5. Data Subject Rights.

5.1 Taking into account the nature of the Processing, bitHeads will assist You by implementing appropriate and commercially reasonable technical and organisational measures, insofar as this is possible, to facilitate the fulfilment of Your obligation as Data Controller to respond to requests for exercising Data Subject rights in Data Protection Laws (including those rights set out in PIPEDA and/or the GDPR).

5.2 bitHeads will notify You if bitHeads receives a request from a Data Subject under any Data Protection Laws in respect of Customer Personal Data.

5.3 bitHeads may respond to that request on Your documented instructions or as required by Data Protection Laws to which bitHeads is subject.

6. Security. bitHeads will implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, taking into account the nature, scope, context and purposes of Processing.

7. **Personal Data Breach.**

7.1 bitHeads will notify You without undue delay of becoming aware of or reasonably suspecting a Personal Data Breach. Taking into account the nature of Processing and the information available to bitHeads, bitHeads will undertake to provide You with sufficient information which allows You to meet any obligations to report a Personal Data Breach under applicable Data Protection Laws. Such notification will at a minimum: (a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned; (b) communicate the name and contact details of bitHeads' privacy officer or other relevant contact from whom more information may be obtained;

(c) describe the likely consequences of the Personal Data Breach; and (d) describe the measures taken or proposed to be taken to address the Personal Data Breach.

7.2   bitHeads will co-operate with You and take such reasonable commercial steps to assist in the investigation, mitigation and remediation of each Personal Data Breach.

8.   **Data Protection Impact Assessment and Prior Consultation.** bitHeads will provide reasonable assistance to You with any data protection impact assessments which are required to undertake and with any prior consultations to any Supervisory Authority of You which are required to undertake, in each case solely in relation to Processing of Customer Personal Data by bitHeads on Your behalf and taking into account the nature of the Processing and information available to bitHeads.

9.   **Cooperating and assistance in dealing with supervisory authorities.** bitHeads will notify You of all enquiries from a Supervisory Authority that relate to Customer Personal Data that You have provided bitHeads with. bitHeads may deal directly with the authorities, and, in case bitHeads should respond to the authorities itself (e.g. when the Supervisory Authority requests this), bitHeads will comply with any specific conditions set out in the DPA.

10.   **Audit rights.** bitHeads will make available to You all information in its possession necessary to demonstrate compliance with the obligations under applicable Data Protection Laws and allow for and contribute to audits, including inspections, conducted by You or another auditor mandated by You. You shall bear the cost of any expense related to any audits, including inspections. Audits shall not occur more than once every two years, unless required by law or other authority.

11.   **Deletion or Return of Customer Personal Data.** bitHeads will either securely delete or securely return all Customer Personal Data to You, if the Customer Personal Data is still in Our possession, in such form as You reasonably request after the end of the provision of the Services. Existing copies will be securely deleted (except to the extent that storage of any such data is required by Data Protection Laws and/or applicable laws).

12.   International Transfers

12.1   bitHeads will endeavour not to Process Customer Personal Data outside the EEA, Canada or the United States.

12.2   You consent to the Processing of Customer Personal Data by a Sub-processor in a country which is considered an adequate country by the European Commission.

13.   **Miscellaneous**

13.1   **Governing Law**. This DPA shall be governed by the governing law of the BrainCloud Agreements.

13.2   **Entire Agreement; Order of Precedence.** This DPA constitutes the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes all prior understandings and agreements related to its subject matter. With regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and any other agreements (including but not limited to the BrainCloud Agreements) between the Parties, the provisions of this DPA shall prevail with regard to the Parties' data protection obligations for Customer Personal Data.

13.3   **Termination.** The Parties agree that this DPA shall terminate automatically upon (i) termination of the BrainCloud Agreements; or (ii) expiry or termination of all service contracts, statements of work, work orders or similar contract documents entered into by bitHeads with You pursuant to the BrainCloud Agreements, whichever is later.

13.4   **Severance**. Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.