

# BrainStorm Platform Early Access Addendum

PLEASE READ THIS BETA TEST ADDENDUM (THIS "ADDENDUM") CAREFULLY. BY USING THE SERVICE UPDATED SERVICE (AS DEFINED BELOW) YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS ADDENDUM. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY USE THE UPDATED SERVICE.

YOU HEREBY AGREE TO THE USE OF ELECTRONIC COMMUNICATION TO ENTER INTO BINDING CONTRACTS. TO THE EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER THE LAWS OR REGULATIONS OF ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS.

This Addendum is a supplement to the Subscription Agreement or other such agreement for the provision and use of the Services (the "Agreement") between BrainStorm, Inc. ("BrainStorm") and your organization, the party accepting the Agreement ("Customer").

1. **Addendum Governs; Definitions.** BrainStorm is releasing a new version of its cloud-based QuickHelp™ SaaS platform (the "Updated Service") and is willing to provide Customer with a beta test subscription to the Updated Service for testing and evaluation purposes (the "Beta Test") pursuant to the terms of this Addendum. Accordingly, Customer's use of the Beta Service is contingent upon Customer's agreement to abide by all the terms and conditions of the Agreement and this Addendum. The Agreement is hereby expressly supplemented and amended by the terms and conditions contained in this Addendum. Except as otherwise provided in this Addendum, the terms of the Agreement will continue to govern Customer's access and use of the Service. In the event of any conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall control. All capitalized terms that are used but not defined in this Addendum shall have the meaning ascribed to such terms in the Agreement. Updated Service
2. **Beta Test.** During the Beta Test, Customer will have access to and use of the Updated Service subject to all of the terms and conditions of the Agreement (as amended by this Addendum) applicable to the Service.
3. **Publicity; Case Studies; Customer Feedback.**
  - a. Notwithstanding anything to the contrary in the Agreement, BrainStorm may disclose Customer's name, whether in written or oral form, in a factual listing of BrainStorm's Customers of the Updated Service and Beta Test to be published within marketing and promotional materials, in presentations, on tradeshow signs and materials, on BrainStorm's external website and/or to financial and industry analysts
  - b. Customer agrees to cooperate and work with BrainStorm to complete a case study describing Customer's experience with the Updated Service during the Beta Test. As part of the case study, Customer agrees to provide written reports, such as through surveys, to BrainStorm describing its experience with the Updated Service as reasonably requested by BrainStorm and to promptly notify BrainStorm of the discovery of any material error or difficulty in accessing or using the Updated Service. Such reports shall be provided on a schedule mutually agreed to by the parties and shall also include such other information as BSI may reasonably request.
  - c. Customer hereby grants to BrainStorm a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Updated Service any suggestions, enhancement requests, recommendations, reports or other feedback provided by Customer relating to the Updated Service.
  - d. Customer hereby consents to BrainStorm's publication and any other written or oral disclosure of Customer's case study developed by BrainStorm based on Customer's use of the Updated Service. Such case study or

case studies may be published in BrainStorm's marketing and promotional materials, in presentations, on tradeshow signs and materials, on BrainStorm's external website, to financial and industry analysts, or as BrainStorm otherwise deems appropriate. Notwithstanding the foregoing, BrainStorm shall not disclose the name or use the marks of Customer, unless Customer provides prior written consent.

4. **Fees.** No additional fees will be charged for the Updated Service. The fees for the Service described in the Agreement will continue to apply.
5. **Warranty Disclaimer.** Customer acknowledges that the Updated Service is still in a beta form and that it is provided during the term of the Beta Test for testing and evaluation purposes only. The parties further acknowledge and agree that the Updated Service is provided during the term of the Beta Test on an "AS IS" basis and without warranty of any kind. Accordingly, during the term of the Beta Test, this Section shall supersede and replace the warranties included in the Agreement as applicable to the Updated Service. BSI DISCLAIMS ALL WARRANTIES RELATING TO THE UPDATED SERVICE, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
6. **Confidentiality.** Customer acknowledges that during the course of the Beta Test it will obtain information relating to the Updated Service and its functionality (all such information is referred to herein as "**Proprietary Information**"). Such Proprietary Information shall belong solely to BSI and shall be deemed to be the Confidential Information of BSI and subject to the confidentiality restrictions of the Agreement and any other non-disclosure agreement in place between the parties.
7. **Limitation on Remedies and Damages.** The following shall supplement the limitation of liability section of the Agreement: UNDER NO CIRCUMSTANCES WILL BSI BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF OR RELATED TO THE BETA TEST OR THIS ADDENDUM, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF BSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL BSI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE BETA TEST EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO BSI FOR THE SERVICE DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.
8. **Term and Termination.**
  - a. Term. Unless otherwise terminated herein, the term of the Beta Test and this Addendum shall commence upon acceptance of this Addendum and shall be coterminous with the Term set forth in Customer's Agreement or until the general release of the Updated Services, whichever comes first.
  - b. Termination. The Beta Test and this Addendum may be terminated by BSI for any reason or no reason upon thirty (30) days' written notice to Customer. Upon any such termination, Customer will have the right to continue accessing and using the Service as provided in the Agreement as if this Addendum had not been accepted.
9. **Miscellaneous Provisions.** Except as expressly amended by this Addendum, all of the terms and conditions of the Agreement shall remain in full force and effect, as if this Addendum had not been accepted. The section and subsection headings in this Addendum are inserted solely as a matter of convenience and for reference, and shall not be considered in the construction or interpretation of any provision hereof.