

QuickHelp™ Terms & Conditions

Last Modified: April 6, 2020

PLEASE READ THIS AGREEMENT CAREFULLY.

These QuickHelp Terms & Conditions (this “Agreement”) is a contract between you (“You,” “Your,” or “Customer”) and us (“Us,” “We,” “Our,” or “BrainStorm”). Sometimes, this Agreement will refer to You and BrainStorm individually as a “Party” or collectively as the “Parties.” This Agreement describes the services BrainStorm will provide to You, how the Parties will interact, and other aspects of the business relationship between You and BrainStorm. We cannot provide the Service to You unless You agree to the terms and conditions of this Agreement. By using the Service, You accept and agree to be bound by these terms and conditions.

BrainStorm will periodically update the terms and conditions of this Agreement as provided in Section 6(b) below. You will be notified of any material updates or changes via email or through the Admin Portal.

1. Definitions.

- a. **“Agreement”** means this Subscription Agreement and all materials referred to or linked to herein.
- b. **“Billing Period”** means the period for which You agree to prepay Fees under an Order Form, which will be the same as or shorter than the Subscription Term. For example, if You subscribe to the Service for a three (3) year Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.
- c. **“BrainStorm Content”** means all data, text, information, images, audio and video clips, works of authorship and other content that is created by or for BrainStorm and provided to You via the Service or otherwise.
- d. **“Confidential Information”** means all confidential or proprietary information disclosed orally or in writing by one Party (the “Discloser”) to the other (the “Receiver”) that is identified at the time of disclosure as confidential. Confidential Information includes, without limitation, Customer Data, any information about the Discloser’s business plans or technical data, and the terms of the Order Form. Except when contradictory to applicable privacy laws and regulations, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser, (ii) was known to the Receiver before receipt from the Discloser, or (iii) is lawfully disclosed to the Receiver by a third party without restriction on disclosure or any breach of confidence. Our Confidential Information includes, without limitation and regardless of whether it has been identified as confidential, (a) any content provided to You in connection with the Service, or (b) any materials or content provided to You as part of the implementation services or any other services provided by Us.
- e. **“Customer Data”** means all data, text, information, images, audio and video clips, works of authorship and other content that is created or originally provided by Customer and/or Users and submitted, uploaded, posted or displayed on or via the Service. Customer Data will not include any content prepared or created by or for BrainStorm or that is originally provided to Customer by BrainStorm.
- f. **“Fees”** means the amount You agree to pay for the Service and any other services we may provide, as evidenced by the Order Form.
- g. **“Order Form”** means a mutually accepted, formal, transaction document, such as the invoice or order form,

as applicable, that includes some or all of the following information: a listing of the software applications and BrainStorm Content to be provided to Customer, the name of Customer, Customer's address and billing information, the length of the Subscription Term (if applicable), the Fees due from Customer, the maximum number of Users authorized to access and use the Service, and any maintenance and support being purchased (if applicable).

- h. "**Service**" means the online, cloud-based software application(s) and BrainStorm Content that are identified in the Order Form as being included in Customer's purchase and that are provided by BrainStorm to Customer via the website <https://www.quickhelp.com>.
- i. "**Sensitive Information**" means (a) credit or debit card numbers; personal financial account information; Social Security numbers or local equivalents; passport numbers; driver's license numbers or similar identifiers; passwords; racial or ethnic origin; physical or mental health condition or information; or other employment, financial or health information, including any information subject to the Health Insurance Portability and Accountability Act ("HIPPA"), the Payment Card Industry Data Security Standards, and other regulations, laws or industry standards designed to protect similar information; and (b) any information defined under European Union data protection laws as "Sensitive Personal Data."
- j. "**Subscription Term**" means the Initial Term (as defined below) of Your subscription (or access) to the Service, as specified in the Order Form, and any subsequent Renewal Term (as defined below), during which You agree to pay (or prepay) the Fees under an Order Form.
- k. "**Users**" means individuals who are authorized by Customer to access and use the Service and who have been supplied user identifications and login credentials by Customer (or by BrainStorm at Customer's request). Users may include employees, consultants, contractors and agents of Customer.

2. General Commercial Terms

a. The Service.

- i. **Access.** Subject to the terms and conditions of this Agreement and the applicable Order Form, and upon Your payment of the applicable Fees, BrainStorm will provide You with access to the Service via the Internet during the Subscription Term. You understand and agree that Your purchase of a subscription to the Service is not contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by BrainStorm regarding future functionality or features.
- ii. **Maximum Authorized Users.** The Service may not be accessed or used by more than the maximum number of Users, as set forth in the Order Form. User accounts cannot be shared or used by more than one User. You may, however, reassign a former User's account to a new User. The maximum number of Users cannot be decreased during the Subscription Term. If, at the end of any year of the Subscription Term, the actual number of Users exceeds the maximum number of Users listed in the Order Form by ten percent (10%) or more, then BrainStorm will increase the Fees to account for such additional Users on a pro rata basis for the remainder of the Subscription Term. For this to happen, BrainStorm will complete a review of active Users between ninety (90) and sixty (60) days before the end of each year. BrainStorm will not count Users deleted, removed, or reassigned, unless the Users are temporarily removed to avoid a fee increase. This review and increase process will continue for each year of Your Subscription Term

b. Fees and Payment.

- i. **Subscription Fees.** The Fees are set forth in the Order Form and will remain fixed during Your Subscription Term unless (a) You exceed Your maximum Users (see Section 2(a)(b)), or (b) You

and BrainStorm mutually agree in writing to modify or amend the Order Form. All payment obligations hereunder are non-cancelable, and Fees paid are non-refundable, unless specifically provided otherwise in this Agreement.

- ii. **Fee Increases at Renewal.** The pricing for any Renewal Term (as defined below) may be set forth in Your Order Form. If Your Order Form does not include any pricing for a Renewal Term, then BrainStorm's standard pricing available at the date of renewal will apply. Prior to each Renewal Term, BrainStorm may increase the Fees to the then-current rate for the Service. BrainStorm will provide notice of any Fee increase prior to renewal.
- iii. **Payment by Credit Card.** If You are paying by credit card, You authorize Us to charge Your credit card or bank account for all Fees payable during the Subscription Term. You further authorize Us to use a third party to process payments, and consent to the disclosure of Your payment information to such third party.
- iv. **Invoices.** BrainStorm will invoice You in accordance with the terms of the Order Form (generally at the beginning of each Billing Period). Unless the Order Form states differently, all amounts invoiced are due and payable within thirty (30) days from the date of invoice.
- v. **Late Fees.** If BrainStorm does not receive payment of the invoiced Fees on the appropriate due date, then Your Fees will accrue late interest at the rate of one and a half percent (1.5%) of the outstanding Fees per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- vi. **Suspension of the Service.** BrainStorm will provide You with notice of non-payment of any amount due. If Your Fees are thirty (30) days or more overdue, BrainStorm may, without limiting its other rights and remedies, suspend Your access to the Service (or any portion thereof) until such amounts are paid in full.
- vii. **Payment Disputes.** BrainStorm will not exercise its right to charge interest under Section 2(b) (e) (Late Fees), or its right to suspend Your access to the Service under Section 2(b)(f) (Suspension of the Service), if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- viii. **Taxes.** You agree to pay all applicable taxes levied by any tax authority on the Service or on Your use thereof, which may be separately invoiced, excluding any and all taxes based on the net income of BrainStorm.

c. **Additional BrainStorm Obligations.**

- i. **Maintenance and Support.** In addition to the ongoing customer service support that BrainStorm will provide via a Client Success Manager, BrainStorm will provide product support during normal business hours of 8:00 AM - 6:00 PM MST, Monday through Friday, excluding holidays. Support is limited to the points of contact agreed to by the Parties (such as Your designated QuickHelp™ admins) and is generally not available directly to Your Users. You may contact BrainStorm by calling the support helpdesk at 801-229-1337 or sending an email to qhsupport@brainstorminc.com. Except as provided in this Section 2(c), BrainStorm will not have any other maintenance or support obligations to You.
- ii. **Updates to the Service.** BrainStorm will support, maintain, upgrade, and update the Service as appropriate and in BrainStorm's sole determination in order to fulfill its obligations under this Agreement.

d. **Term and Termination.**

- i. **Term and Renewal.** Your initial Subscription Term will be specified in Your Order Form (the “Initial Term”). Immediately following the Initial Term, Your subscription to the Service will automatically renew for an additional, successive one (1) year terms (each, a “Renewal Term”), unless either Party provides written notice of its intent not to automatically renew at least sixty (60) days prior to the end of the Initial Term or the then-current Renewal Term. You may notify BrainStorm of Your intent not to renew by sending such notice to renewals@brainstorminc.com.
- ii. **No Early Termination; No Refunds.** Unless renewed as provided in Section 2(d)(a) above, the Subscription Term cannot be cancelled early and will end on the expiration date established in the Order Form. BrainStorm will not provide refunds if You decide to stop using the Service during Your Subscription Term.
- iii. **Termination for Cause.** Either Party may terminate this Agreement for cause (i) upon thirty (30) days’ written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. BrainStorm may also terminate this Agreement for cause on thirty (30) days’ notice if We determine that You are acting, or have acted, in a way that has or may negatively reflect on or affect Us, Our prospects, or Our customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.
- iv. **Effects of Termination.** If You terminate this Agreement for cause, BrainStorm will refund any prepaid fees covering the unused portion of the Subscription Term. If BrainStorm terminates this Agreement for cause, without limiting any other available remedies, You will pay any unpaid fees covering the remainder of the Subscription Term after the effective date of termination. In no event will any termination relieve You of Your obligation to pay any Fees payable to BrainStorm for the period prior to the effective date of termination.
- v. **Survival.** Sections 1, 2(d)(d), 3, 4, 5 and 6 and any other terms in this Agreement which by their nature must survive after the Subscription Term to give their intended effect will survive any termination or expiration of this Agreement.

3. General Legal Terms

a. Service Data

- i. **Customer Data.** As between the Parties, You own and retain all rights to Customer Data. BrainStorm will use Customer Data only in order to provide the Service to You and only as permitted by applicable law, this Agreement, and Our Privacy Policy, available at info.brainstorminc.com/legal/#privacy-policy. By importing or processing Customer Data in the Service, You grant BrainStorm a worldwide, non-exclusive, royalty-free, license to reproduce, distribute, modify, and adapt Customer Data for the purpose of providing the Service and otherwise performing under this Agreement, including the right to disclose Customer Data to BrainStorm’s sub-processors as necessary to provide the Service. BrainStorm will not use, display, disclose or transfer Customer Data in any manner that specifically identifies Customer or its Users without Your prior written consent, except as otherwise set forth in Section 4 herein or in our Privacy Policy.
- ii. **De-Identified Data.** BrainStorm monitors its Customers’ use of the Service and uses the information gathered for internal purposes in an aggregated and anonymous manner to improve the Service and BrainStorm Content. Notwithstanding any provision of this Agreement to the contrary, You hereby grant to BrainStorm an irrevocable, non-exclusive, royalty-free, fully

paid up, perpetual, worldwide right and license, with the right to sublicense, use, reproduce, publish, distribute, perform, anonymize, and display, both during and after the Subscription Term, any usage statistics, usage data, or metadata We derive from Your or Your Users' use of the Service, including any reports You share with Us from Your use of Microsoft Graph API, in order (i) to improve the Service, (ii) to produce and share aggregated insights from the usage statistics or usage data, or (iii) compare usage and adoption rates of Yours and others organizations; provided that BrainStorm will only use such usage statistics and usage data in an anonymized, de-identified or aggregated form ("**De-Identified Data**"), but only so long as the De-Identified Data is not individually identifiable and is used in accordance with any applicable laws (without limitation, data privacy laws). To be clear, Customer Data does not include De-Identified Data. In no event will BrainStorm disclose or provide Customer Data or Your identity to third parties, except as provided in this Agreement or BrainStorm's Privacy Policy.

- iii. **Safeguards.** BrainStorm will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. You consent to the processing of Customer Data in the United States.
- iv. **EU/EEA and Switzerland Data Processing.** To the extent that BrainStorm processes any Personal Data (as defined by the BrainStorm Data Processing Agreement) as part of Customer Data that is subject to the General Data Protection Regulation, on Your behalf, in the provision of the Service hereunder, the terms of the BrainStorm Data Processing Agreement, located at <https://info.brainstorminc.com/legal#website-data>, which are hereby incorporated by reference, will apply. For Customers that are located in the European Union or the European Economic Area, the Standard Contractual Clauses adopted by the European Commission and attached to the BrainStorm Data Processing Agreement, which provide adequate safeguards with respect to the Personal Data processed by Us under this Agreement and pursuant to the provisions of the BrainStorm Data Processing Agreement, will apply. You acknowledge in all cases that BrainStorm acts as the data processor of Customer Data and You are the data controller of Customer Data under all applicable data protection laws or regulations. You agree that, to the extent required, you have a lawful basis for the processing of the Personal Data. You also agree to obtain and maintain any consents necessary to permit the processing or cross-border transfer of Customer Data under this Agreement. To the extent that there is any conflict or discrepancy between this Agreement and the BrainStorm Data Processing Agreement, the latter will control.

b. BrainStorm's Proprietary Rights.

- i. **Reservation of Rights.** This is an Agreement for access to and use of the Service, and You are not granted a license to any software by this Agreement, or any other intellectual property right, other than the limited rights and licenses specified in this Agreement. The Service, and its associated code, content, etc., is protected by intellectual property laws and, as between the Parties, belongs to and is the property of BrainStorm and Our licensors (if any), and We retain all ownership rights therein.
- ii. **Copyrights, Trademarks, and Patents.** The Service is copyrighted and protected by the laws of the United States and other countries, and by international treaty provisions. In no circumstance are You permitted to remove any copyright notice from the Service. "QuickHelp" is either a registered trademark or trademark of BrainStorm in the United States and/or other countries. One or more patents, as well as other patent pending technology, may apply to the Service.
- iii. **Suggestions.** We encourage all Customers to provide comments, feedback, and suggestions to improve, correct, change, or modify the Service or its operation ("Suggestions"). You agree that

all such Suggestions will be non-confidential and that BrainStorm will own all rights to use and incorporate such Suggestions into the Service, without payment or attribution to You. Any Suggestions incorporated into the Service shall not contain any Customer Data.

c. Customer Responsibilities and Restrictions.

i. You agree that:

- i. You and Your Users will comply with BrainStorm's Privacy Policy, located at <https://info.brainstorminc.com/legal#privacy-policy>, and its Content Submission Policy, which can be accessed at <https://info.brainstorminc.com/legal#content-submission>, as well as all applicable laws and regulations. You will promptly notify BrainStorm of any suspected or alleged violation of this Agreement by Your Users and will cooperate with BrainStorm in its efforts to (a) investigate any alleged or suspected violation of this Agreement and (b) enforce this Agreement.
- ii. You will not attempt or permit others to attempt to gain unauthorized access to or use of the Service and will notify BrainStorm promptly of any known or suspected unauthorized access or use. You will notify BrainStorm immediately of any known or suspected unauthorized use of Your Users' identifications and passwords or Your account by contacting support@quickhelp.com.
- iii. You will be responsible for Your and Your Users' use of the Service and any Customer Data, including, without limitation, any use of the Service and/or Customer Data that is in violation of applicable laws, regulations, Your policies, and/or BrainStorm's Privacy Policy.
- iv. You will not make access to or use of the Service and/or Customer Data a condition of any User's employment if such a requirement would violate any privacy or security law or regulation. If User consents are required for You to provide to Us, or for Us to access or use, any Customer Data, You will be solely responsible for obtaining and documenting such consents and ensuring that such consents are freely and validly provided by each User. You will make such records of consents available to BrainStorm upon request.
- v. You will not (a) make the Service available to anyone other than Your Users, (b) sell, resell, rent or lease the Service, (c) interfere with or disrupt the integrity or performance of the Service or any of its content, or (d) attempt to gain unauthorized access to the Service's underlying systems or networks.
- vi. You may not access and use the Service if You are a direct competitor or are affiliated with a direct competitor of BrainStorm.
- vii. You will not use the Service if You are legally prohibited from receiving or using the Service under the laws of the country in which You are a resident or from which You access or use the Service. The Service is not designed to comply with industry-specific regulations such as HIPAA, the Gramm-Leach-Bliley Act (GLBA), or the Federal Information Security Management Act (FISMA), so You may not use the Service or upload Customer Data to the Service where Your use would be subject to such laws.
- viii. YOU AGREE NOT TO USE THE SERVICE TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION. YOU FURTHER AGREE THAT YOU WILL NOT PROVIDE ANY SENSITIVE INFORMATION TO US. WE WILL NOT HAVE ANY LIABILITY THAT

MAY RESULT FROM YOUR USE OF THE SERVICE TO COLLECT OR MANAGE SENSITIVE INFORMATION.

- ix. You will only access or use the Service as expressly permitted by this Agreement.
 - x. You will not copy, rent, lease, sell, distribute, or create derivative works based on the Service or BrainStorm Content, in whole or in part, by any means and for any reason whatsoever, except as expressly authorized in writing by BrainStorm.
 - xi. The Service constitutes the proprietary information and trade secrets of BrainStorm or its licensors, and/or suppliers, whether or not any portion thereof is or may be the subject of a valid copyright, trademark or patent.
- d. **Confidentiality.** Each Party (as a Receiver), agrees to hold the other's (as a Discloser) Confidential Information in confidence, and not to use or disclose such Confidential Information other than in connection with the performance of its obligations hereunder. Notwithstanding the foregoing, either Party may disclose any of the other Party's Confidential Information to its employees, subcontractors, advisers, and/or agents that have a need to know such Confidential Information in connection with such Party's performance under this Agreement and that have agreed to be bound by confidentiality obligations similar to those in this Section. Upon notice to the Discloser, the Receiver may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.
- e. **Indemnification.**
- i. **Indemnification.** Each Party (each, an "Indemnifying Party") agrees to defend the other Party (each, an "Indemnified Party") from and against any claims, demands, suits, or proceedings (each, a "Claim") made or brought by a third party against the Indemnified Party alleging that material provided by the Indemnifying Party (the Service, in the case of BrainStorm as the Indemnifying Party, and Customer Data, in the case of Customer as the Indemnifying Party) infringes or misappropriates the intellectual property rights of a third party or arising out of a failure by Customer to comply with Sections 3(c) and BrainStorm's Content Submission Policy, located at <https://info.brainstorminc.com/legal#content-submission> and to indemnify the Indemnified Party from any damages finally awarded by a court of competent jurisdiction against the Indemnified Party or amounts agreed to in settlement in connection with any such Claim. The Indemnifying Party's obligations under this paragraph will only apply to the extent that: (a) the Indemnified Party promptly notifies the Indemnifying Party in writing of the Claim, provided that failure to give or delay in giving such notice to the Indemnifying Party will not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party demonstrates that the defense of such action is materially prejudiced thereby; (b) the Indemnifying Party has control of the defense and all related settlement negotiations relating to the Claim, provided, however, the settlement of any Claim will not be made without advance written permission of the Indemnified Party, which will not be unreasonably withheld; and (c) the Indemnified Party provides the Indemnifying Party with the assistance, information and authority reasonably necessary to perform the above. In no event will BrainStorm have any obligation or liability under this paragraph for any Claim or action under any legal theory to the extent that the Claim or action is caused by, or results from: (i) Customer's combination, operation or use of the Service with software or other materials not supplied by BrainStorm, (ii) any alteration or modification of the Service by Customer, (iii) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (iv) the actions or omissions of any person or entity other than BrainStorm, or (v) Customer's failure to comply with Sections 3(c) and BrainStorm's Content Submission Policy, located at

<https://info.brainstorminc.com/legal#content-submission>.

- ii. **Indemnification for Unauthorized Use.** You agree to defend, indemnify, and hold BrainStorm harmless from and against any and all claims arising out of Your unauthorized use of the Service or other breach of this Agreement.
- iii. **Remedy for Infringement.** Should Your right to use the Service pursuant to this Agreement be subject to a Claim of infringement or if BrainStorm reasonably believes such a Claim of infringement may arise, BrainStorm may, at its option and in its sole discretion, (i) procure for You the right to continue to access and use the Service; (ii) modify the Service to render it non-infringing but substantially functionally equivalent to the Service prior to such modification; or (iii) if the alternatives described in clauses (i) and (ii) of this paragraph are not commercially practicable, then BrainStorm may terminate this Agreement and refund to You any amounts prepaid by You for the Service for the unused portion of the Subscription Term.

f. Warranties.

- i. **BrainStorm Warranties.** BrainStorm warrants that the Service will be provided materially in accordance with BrainStorm's published documentation for the Service, as found on BrainStorm's websites, www.brainstorminc.com, support.quickhelp.com, and www.quickhelp.com. For any breach of such warranty, Customer's exclusive remedy will be as provided in the "Termination for Cause" and "Effects of Termination" sections above. BrainStorm will have no liability under this section if the Service has been modified or altered by anyone other than BrainStorm, or if the Service has been abused or misapplied. If You promptly report a reproducible defect under this warranty, BrainStorm shall, in its sole discretion, either use its commercially reasonable efforts to resolve the nonconformity or terminate this Agreement and refund Your prepaid Fees for the unused portion of the Subscription Term.
 - ii. **Customer Warranties.** When You share Customer Data with BrainStorm or upload Customer Data to the Service, You represent and warrant that You are the creator and owner of, or that You have the necessary licenses, rights, consents, and permissions to use and to authorize BrainStorm to use and distribute, Customer Data as necessary for BrainStorm to provide You with access to the Service and to otherwise perform its obligations under this Agreement.
 - iii. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, QUICKHELP IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BRAINSTORM DOES NOT WARRANT THAT QUICKHELP WILL SATISFY YOUR REQUIREMENTS OR (WITHOUT PREJUDICE TO THE LIMITED WARRANTY ABOVE) THAT IT IS WITHOUT DEFECT OR ERROR OR THAT YOUR ACCESS THERETO WILL BE UNINTERRUPTED.
- g. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR BRAINSTORM'S INDEMNIFICATION OBLIGATIONS CONTAINED HEREIN, BRAINSTORM'S CUMULATIVE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO NO GREATER THAN THE AMOUNT OF MONEY PAID TO BRAINSTORM FOR QUICKHELP DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. THE FOREGOING WILL NOT LIMIT

YOUR OBLIGATION TO PAY FEES UNDER THIS AGREEMENT AND THE ORDER FORM. YOU ACKNOWLEDGE THAT THE AMOUNT OF FEES PAYABLE BY YOU TO BRAINSTORM HEREUNDER REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT BRAINSTORM WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS ON ITS LIABILITY CONTAINED IN THIS SECTION. THESE LIABILITY LIMITATIONS APPLY EVEN IF CONTRACTUAL REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

- c. **THIRD-PARTY PRODUCTS.** BRAINSTORM DISCLAIMS ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS WILL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.
4. **Publicity.** You agree that BrainStorm may disclose Your company's name, whether in written or oral form, as a user of the Service in a factual listing of BrainStorm's Customers 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.
5. **GOVERNING LAW; SUBMISSION TO JURISDICTION AND VENUE.** THIS AGREEMENT AND ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH AND THE UNITED STATES OF AMERICA, EXCLUDING ITS PRINCIPLES OF CONFLICT OR CHOICE OF LAWS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UTAH STATE COURT OR UNITED STATES FEDERAL COURT, IN EITHER CASE SITTING IN UTAH OVER ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT BY ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AGREES THAT ALL CLAIMS WITH RESPECT TO ANY SUCH SUIT, ACTION OR OTHER PROCEEDING WILL BE HEARD AND DETERMINED IN SUCH COURTS. REGARDLESS OF THE APPLICABLE GOVERNING LAW, CUSTOMER AND BRAINSTORM AGREE TO EXCLUDE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, BRAINSTORM MAY BRING AN ACTION IN ANY JURISDICTION FOR THE PURPOSE OF: (A) ENFORCING A JUDGMENT OR (B) PROTECTING BRAINSTORM'S INTELLECTUAL PROPERTY RIGHTS. In the event that a Party hereto who is required to engage the services of legal counsel to enforce the terms and conditions hereof against the other is successful in doing so, such Party will be entitled to the reimbursement by the other Party of all reasonable attorneys' fees and court costs incurred by the successful Party.
6. **Miscellaneous.**
 - a. **Entire Agreement.** This Agreement, each Order Form, the BrainStorm Privacy Policy, and the BrainStorm Acceptable Use Policy together constitute the entire agreement between the Parties for the provision of and access to the Service, and supersede all other proposals and agreements, whether electronic, oral or written, between the Parties. We object to and reject any additional or different terms proposed by You, including those contained in Your purchase order, acceptance or website.
 - b. **Amendment; No Waiver.** BrainStorm may update and change any part or all of this Agreement, including the fees and charges associated with the use of the Service (but, Your Fees and charges won't change during the Subscription Term except as explained in the Fees section above). If We update or change these terms and conditions, the updated terms and conditions will be posted at <https://info.brainstorminc.com/legal#terms> and We will let You know via email and/or in-app notification. The updated Agreement will become effective and binding on the effective date indicated at the top of the updated Agreement. If You do not agree with a modification to this Agreement, You must notify Us in writing within thirty (30) days after receiving notice of the modification. If You give Us this notice, Your subscription will continue to be governed by the terms and conditions of this Agreement prior to modification for the remainder of Your current Subscription Term. Upon renewal, the updated Agreement, as published on BrainStorm's website, will apply. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.
 - c. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to

law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

- d. **Assignment.** You may not assign, sublicense, or transfer this Agreement, Your access to the Service, any right to maintenance and/or support, or any rights or obligations hereunder without prior written consent of BrainStorm. Any such purported assignment, sublicense, or transfer will be null and void. BrainStorm may terminate this Agreement in the event of any such attempted assignment, sublicense, or transfer by providing You written notice.
- e. **Authority.** Each Party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such Party and enforceable in accordance with its terms.
- f. **No Third-Party Beneficiaries.** Unless otherwise specifically agreed to in the Order Form, You agree that there will be no third-party beneficiaries to this Agreement.
- g. **Precedence.** In the event of a conflict between the terms of this Agreement and an Order Form, the terms of the Order Form will control, but only as to that Order Form.
- h. **Force Majeure.** Neither Party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, Internet, or telecommunication outage that is not caused by the obligated Party; government restrictions; or other event outside the reasonable control of the obligated Party. Each Party will use reasonable efforts to mitigate the effect of a force majeure event.
- i. **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- j. **Notice.** Notice will be sent to the contact address set forth in the Order Form, or unless otherwise indicated in writing, and will be deemed delivered as of the date of actual receipt.
- k. **Injunctive Relief.** You hereby expressly agree that BrainStorm, in addition to any other rights or remedies that BrainStorm may possess, will be entitled to seek injunctive and other equitable relief (including specific performance) without having to post bond or other security to prevent a material breach or continuing material breach of this Agreement.
- l. **Audit.** You will permit BrainStorm or its agents, at BrainStorm's expense, to conduct audits to verify Your compliance with this Agreement. Such audits will be conducted during normal business hours and after reasonable advance notice from BrainStorm to You.
- m. **Service Supplied to the Government.** The Service is a "commercial item," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Service by the U.S. government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted herein.
- n. **Export Law Assurances.** You will not export or re-export or allow the export or re-export of the Service or any copy, portion or direct product of the foregoing, in violation of any export laws, restrictions, national security controls or regulations of the United States or other applicable foreign agency or authority.
- o. **Waiver.** No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by such Party of any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement or failure to perform by the other Party will not operate or be construed as a further or continuing waiver of such breach or failure to perform or as a waiver of any other or subsequent breach or failure to perform. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as

a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable law.