

# Threat Defense Services Addendum

The following terms apply to the Professional Services to be provided by BrainStorm to Customer. This addendum (this “**Addendum**”) is incorporated into BrainStorm Subscription Agreement (the “**Agreement**”) above.

The parties hereby agree as follows:

1. Capitalized terms used but not defined in this Addendum have the meanings given in the Agreement.
  - a. “**Third Party Marks**” shall mean any of the following that are owned by a person or entity other than BrainStorm or Customer (a) trademarks, service marks, trade dress, trade names, and other indicia of source or origin, and (b) internet domain names, social media accounts, and usernames (including “handles”).
  - b. “**Threat Defense Service**” shall mean those phishing simulation services, including, but not limited to, content, campaigns, and assessments, identified in an Order Form as being included in Customer’s purchase and that are provided by BrainStorm to Customer via the Cloud Service.

## 2. THE THREAT DEFENSE SERVICE

- a. **Provision of the Threat Defense Service.** Subject to the terms and conditions of the Agreement, this Addendum and the applicable Order Form, and upon Customer’s payment of the applicable fees set forth in Section 2.(b). below, BrainStorm shall make the Threat Defense Service available to Customer via the Internet during the Term. Customer agrees that its purchase of a subscription to the Threat Defense Service is neither 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
- b. **Fees and Payment.** In consideration of BrainStorm’s performance of the Threat Defense Service, Customer agrees to pay BrainStorm the Fees described in the applicable Order Form (the “Threat Defense Service Fees”). Except as otherwise specified in an Order Form, the fees are based on the type of license, the applications included in the Threat Defense Service, and/or the number of subscriptions purchased and not on actual usage, and payment obligations are non-cancelable and fees paid for the Cloud Service are non-refundable.
- c. **Limitation of BrainStorm Content.** Customer’s rights under this Addendum to Threat Defense Service entitles Customer to access only the content expressly listed in the Order Form. The All content and data associated with the Threat Defense Service, including the remedial training content, is hosted and accessed via the Cloud Service. Customer recognizes that, due to technical, BrainStorm cannot currently partition off and block Customer from accessing the BrainStorm Content generally available in the Cloud Service beyond the content associated with the Threat Defense Service. Therefore, Customer agrees that should Customer or its Users access any BrainStorm Content not expressly authorized in the Order Form, then BrainStorm shall have the right to charge Customer the applicable Fees (at the then current rate) for access to the Cloud Service for the remainder of the Term.
- d. **Services Support.** Support is limited to the points of contact agreed to by the parties and is generally not available to Customer’s Users. Customer’s point of contact may reach the support helpdesk support@quickhelp.com. Except as provided herein and in Section 2. of this Addendum, BrainStorm shall have no other maintenance or support obligations to Customer.
- e. **Updates to the Threat Defense Service.** BrainStorm will support, maintain, upgrade, and update the Threat

Defense Service as appropriate and in BrainStorm's sole determination in order to fulfill its obligations under this Addendum and the Agreement.

### 3. PROPRIETARY RIGHTS, RESPONSIBILITIES, & SUGGESTIONS

- a. **Reservation of Rights.** As between the parties, the Threat Defense Service (including without limitation, any updates, upgrades modifications, customizations, and improvements thereto) and all intellectual property rights therein, are and will remain the sole property of BrainStorm, and no rights are granted to Customer with respect to the Threat Defense Service, or the intellectual property rights therein, other than the limited rights and licenses specified in this Addendum or the Agreement. Customer will not access or use the Threat Defense Service except as expressly permitted by this Addendum or the Agreement.
- b. **Customer Responsibilities.** In addition to the Customer Responsibilities set forth elsewhere in this Threat Defense Service Addendum, Customer shall (i) be responsible for Customer's and its Users' compliance with this Addendum and the Agreement and all applicable laws and regulations, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Threat Defense Service, and notify BrainStorm promptly of any such known or suspected unauthorized access or use, and (iii) be responsible for Customer's and Users' use of the Threat Defense Service, including, without limitation, Customer shall solely be responsible for any use of the Threat Defense Service that is in violation of applicable laws and regulations.
- c. Customer shall not, and shall not permit any third party to (i) access or use the Threat Defense Service except, except for its Users, and as permitted herein or in an Order Form, (ii) create derivative works based on the Threat Defense Service, (iii) copy, frame, mirror or otherwise distribute any part or content of the Threat Defense Service, (iv) reverse engineer the Threat Defense Service, or (v) access the Threat Defense Service in order to (a) build a competitive product or service, or (b) copy any content, features, functions or graphics of the Threat Defense Service.
- d. **Suggestions.** BrainStorm shall have a royalty-free, worldwide, transferable, sub-licenseable, irrevocable, perpetual license to use or incorporate into the Threat Defense Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Threat Defense Service.

### 4. THIRD PARTY MARKS.

- a. Customer is not obligated, but may choose, to utilize certain Third Party Marks in the Threat Defense Service. Customer acknowledges that (a) all such Third Party Marks are registered or unregistered trademarks of their respective owners, (b) BrainStorm does not have an express license and neither BrainStorm nor Customer has been expressly authorized by the owners of the Third Party Marks to use the Third Party Marks in the Threat Defense Service, and (c) use of the Third Party Marks does not imply any affiliation with or sponsorship or endorsement by the owners of the Third Party Marks. Any references to Third Party Marks in the Threat Defense Service are provided for informational purposes only. These references do not represent the opinions of BrainStorm. Such references are neither an endorsement or approval by BrainStorm.
- b. NOTWITHSTANDING ANYTHING IN THE AGREEMENT OR THIS ADDENDUM TO THE CONTRARY, BrainStorm DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, CONCERNING THE THIRD PARTY MARKS, INCLUDING ALL IMPLIED WARRANTIES THAT THE THIRD PARTY MARKS AND/OR THE USE OF THE THIRD PARTY MARKS WILL NOT INFRINGE OR OTHERWISE VIOLATE THE RIGHTS OF ANY PERSON OR APPLICABLE LAWS.
- c. NOTWITHSTANDING ANYTHING IN THE AGREEMENT OR THIS ADDENDUM TO THE CONTRARY, TO THE FULLEST EXTENT PERMITTED BY LAW, BRAINSTORM WILL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER OR ANY OTHER PERSON FOR OR ON ACCOUNT OF INJURY, LOSS, OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE THIRD PARTY MARKS AND/OR THEIR USE,

INCLUDING, WITHOUT LIMITATION, ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS, PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS, OR OPPORTUNITIES, OR FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, VIOLATION OF APPLICABLE LAW, OR OTHERWISE, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR THE PARTY AGAINST WHOM SUCH LIABILITY IS CLAIMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- d. Notwithstanding anything in the Agreement (including, without limitation, Section 7(a)) and this Addendum to the contrary, Customer shall indemnify, defend, and hold harmless BrainStorm from and against 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, arising out of or in connection with Customer's or its designee's use of the Third Party Marks, including, without limitation, any infringement, dilution, violation of any intellectual property rights, or other violation of applicable law.
- e. CUSTOMER ACKNOWLEDGES THAT THIS SECTION 4 REPRESENTS THE NEGOTIATED ASSIGNMENT OF RISK BETWEEN THE PARTIES WITH REGARD TO THE THIRD PARTY MARKS AND BRAINSTORM WOULD NOT ENTER INTO THIS ADDENDUM WITHOUT IT.

## 5. REPRESENTATIONS AND WARRANTIES

- a. **Performance of the Threat Defense Services.** BrainStorm warrants that it will perform the Threat Defense Services:
  - i. In accordance with the terms and subject to the conditions set out in the applicable Order Form, this Addendum, and the Agreement.
  - ii. Using personnel of industry standard skill, experience, and qualifications.
  - iii. In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.
- b. BrainStorm's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this warranty shall be as follows:
  - i. BrainStorm shall use commercially reasonable efforts to promptly cure any such breach; provided, that if BrainStorm cannot cure such breach within a reasonable time after Customer's written notice of such breach, Customer may, at its option, terminate this Addendum by serving written notice of termination in accordance with the terms of the Agreement.
  - ii. In the event the Agreement is terminated pursuant to Section 2(d) above, BrainStorm shall within thirty (30) days after the effective date of termination, refund to Customer any fees paid by Customer as of the date of termination for the Threat Defense Services, less a deduction equal to the fees for BrainStorm's performance of such Threat Defense Services up to and including the date of termination on a pro-rated basis.
  - iii. The foregoing remedy shall not be available unless Customer provides written notice of such breach within thirty (30) days after delivery or performance of such Threat Defense Services.
- c. **NO WARRANTIES.** IN ADDITION TO SECTION 3(f)(c) OF THE AGREEMENT AND SECTION 4(b) OF THIS ADDENDUM, BRAINSTORM EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO WHETHER (I) THE INFORMATION ACCESSIBLE OR PROVIDED VIA THE THREAT DEFENSE SERVICES IS ACCURATE, RELIABLE, COMPLETE, OR CURRENT, (II) USE OF THE THREAT DEFENSE SERVICES OR THE ASSOCIATED BRAINSTORM CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE, (C) THE THREAT

DEFENSE SERVICES AND ASSOCIATED BRAINSTORM CONTENT WILL BE AVAILABLE AT ANY PARTICULAR TIME, OR (D) THE THREAT DEFENSE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. BRAINSTORM WILL BE LIABLE WITH RESPECT TO ANY DECISIONS MADE BY CUSTOMER OR ANY OTHER PERSON AS A RESULT OF RELIANCE ON THE THREAT DEFENSE SERVICES AND BRAINSTORM MATERIAL.

6. **TERM AND TERMINATION.** The term of this Addendum will be coterminous with the Agreement. Unless otherwise terminated as provided in the Agreement or this Addendum, this Addendum commences on the Effective Date and continues until the expiration of the term specified in the applicable Order Form. Any termination of this Addendum shall not affect the Agreement or any other Addendum between the parties.
7. **INTELLECTUAL PROPERTY RIGHTS.** The parties acknowledge and agree that this is a services arrangement only and that BrainStorm is not developing or preparing any deliverables that will be owned by Customer. Accordingly, the parties agree that, except as otherwise provided in the Agreement, BrainStorm and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the Threat Defense Services and all results thereof, and any and all intellectual property rights in and to the foregoing.
8. This Addendum is intended to be consistent with and supplementary to the Agreement. However, in the event of a direct conflict between language included in this Addendum and language included in the Agreement, the provisions of this Addendum will control solely with respect to the Threat Defense Service.