

Software Vendor Services Agreement

This Software Vendor Services Agreement (this “**Agreement**”) is made effective as of the acceptance date of this Agreement (the “**Effective Date**”), by and between the party accepting this Agreement (“**Software Vendor**”) and BrainStorm, Inc., a Delaware corporation located at Ten South Center Street, American Fork, Utah 84003 (“**BrainStorm**”). Software Vendor and BrainStorm are each sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, BrainStorm has developed and makes available to its customers a proprietary, Internet-based Software as a Service platform (the “**BrainStorm Platform**”) that allows such customers the ability to distribute training content and other content to their end customers;

WHEREAS, Software Vendor has developed or will develop certain training and other content relating to its products and services (the “**Software Vendor Original Content**”) that it desires to make available and deliver to its end customers via the BrainStorm Platform;

WHEREAS, Software Vendor may also desire to work with BrainStorm to further develop, enhance and improve the Software Vendor Original Content; and

WHEREAS, Software Vendor desires to obtain the right to access and use the BrainStorm Platform in order to deliver the Software Vendor Original Content to its end customers and BrainStorm is willing to include the Software Vendor Original Content on the BrainStorm Platform, and to make the same available to Software Vendor’s end customers, all in accordance with and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.** Unless otherwise defined in the context in which they are used, any capitalized terms used herein will have the meanings set forth in this Section.
 - a. “**Applicable Data Protection Laws**” means: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or “**GDPR**”) and any data protection laws in any European Union Member State, including laws implementing such Regulation; (ii) the California Consumer Privacy Act of 2018 (“**CCPA**”), including any regulations promulgated thereunder, as amended from time to time, and other U.S. state privacy laws; (iii) the UK GDPR; and (iv) any other applicable data protection law.
 - b. “**BrainStorm Add-Ons**” means the individual platform features provided by BrainStorm.
 - c. “**BrainStorm Content**” means the individual Packs or Bundles (as identified in the BrainStorm Platform) of video content, email templates, flows, polls, assessments and other supporting components offered to and/or provided by BrainStorm to Customer via the BrainStorm Platform.
 - d. “**Customer**” means any person or entity that is a customer of Software Vendor and obtains access to and use of the BrainStorm Platform and Software Vendor Content from Software Vendor.
 - e. “**Customer Information**” means all information, in any form, submitted to BrainStorm or entered into the BrainStorm Platform by or with respect to Customers, or submitted by or on behalf of Software Vendor with respect to Customers, including, without limitation, Personal Information, information that uniquely identifies a current, former, or prospective Customer, customer names, addresses and telephone numbers and all information regarding their activity on the BrainStorm Platform.

- f. **"Documentation"** means all information published by BrainStorm (including user manuals and product specifications) relating to the operation and functionality of the Brainstorm Platform that is in existence as of the Effective Date and any modifications, enhancements, updates, upgrades and revisions thereof.
- g. **"DPA"** means the data processing agreement entered into or to be entered into between BrainStorm and Software Vendor.
- h. **"Force Majeure Event"** means fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, pandemic, rebellions or revolutions, strikes, lockouts or labor difficulties, or any other cause beyond the reasonable control of a Party.
- i. **"Intellectual Property Rights"** means copyright (including rights in audiovisual works), moral rights, trademarks (including logos, slogans, domain names, trade names, service marks), rights of privacy and publicity, patent rights (including patent applications and disclosures), inventions, rights of priority, and trade secret rights or any other intellectual property right recognized in any country or jurisdiction in the world.
- j. **"Personal Information"** means any information or data relating to an identified or identifiable individual where such information is protected similarly as personal data or personally identifiable information under Applicable Data Protection Laws.
- k. **"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 ("**HIPAA**"), 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."
- l. **"Software"** means the software underlying the BrainStorm Platform.
- m. **"Software Vendor Content"** means Software Vendor Original Content and Enhanced Content made available to Customers via the BrainStorm Platform.
- n. **"Software Vendor Pack(s)"** means the Software Vendor Content that is made available for resale to other BrainStorm customers through the BrainStorm Platform.
- o. **"Subscription Term"** means the term of a Customer's subscription to the Software Vendor Content.
- p. **"Third-Party Data"** means the data and metadata that Third-Party Providers collect regarding each Customer's use of the Third-Party Content, including, without limitation, content usage statistics, diagnostic data, telemetry data, and/or software usage data of that third party.
- q. **"Third-Party Providers"** means third-party content providers who sell Third-Party Content and/or collect Third-Party Data via the BrainStorm Platform.
- r. **"Third-Party Content"** means the individual Packs or Bundles (as identified in the BrainStorm Platform) of video content, email templates, flows, polls, assessments, and other supporting components provided and sold by third parties to Customers via the BrainStorm Platform.
- s. **References.** In this Agreement: (a) references to any law, rule or regulation will include any changes, supplements, or replacements to or for such law, rule, or regulation; (b) references to and mentions of the word "including" will mean "including, without limitation."

2. **BrainStorm Platform; Content Hosting and Related Services.**

- a. **Software Vendor Original Content.** Software Vendor will provide BrainStorm with a copy of all Software Vendor Original Content that Software Vendor desires to make available via the BrainStorm Platform. For the

avoidance of doubt, Software Vendor shall be under no obligation to make any particular Software Vendor Original Content available via the BrainStorm Platform.

- b. **Review and Enhancement of Software Vendor Original Content.** Prior to making any Software Vendor Original Content available via the BrainStorm Platform, BrainStorm will have the right to review the Software Vendor Original Content. Following such review, BrainStorm shall have the right to make any necessary modifications to the Software Vendor Original Content in order to properly host or display the Software Vendor Content on the BrainStorm Platform. BrainStorm may then make such edits, enhancements, and improvements as the Parties may agree or as BrainStorm deems reasonably appropriate. Any such Software Vendor Original Content that is edited (e.g., text editing or video editing), enhanced, improved through combination with other content, such as poll assessments, graphics, shooting, or additional scripts, or otherwise revised or modified in any way by BrainStorm shall be referred to herein as **"Enhanced Content."** Prior to initial publication of any Enhanced Content on the Platform or after any material changes to already-published Enhanced Content, the Parties shall have the right to review and approve of such Enhanced Content.
- c. **Software Vendor Content on the BrainStorm Platform.** Accordingly, BrainStorm hereby grants to Software Vendor a non-transferable, non-exclusive, limited license to include Software Vendor Content on the BrainStorm Platform, and to make such Software Vendor Content available to its Customers via the BrainStorm Platform. Software Vendor further acknowledges that, due to ongoing changes in technology, BrainStorm reserves the right to unilaterally update, modify, alter, change, or replace the BrainStorm Platform at any time and from time to time during the Term of this Agreement without liability to Software Vendor or any other person.
- d. **Software Vendor Access to the BrainStorm Platform.** In addition to having access to upload and submit Software Vendor Original Content to the BrainStorm Platform, Software Vendor shall also be granted access to the BrainStorm Platform and all Software Vendor Content, subject to Software Vendor's acceptance of the standard BrainStorm Customer Terms of Service, available at legal.brainstorminc.com. As with BrainStorm's other customers, Software Vendor may purchase other Packs through the Marketplace as an individual customer of the BrainStorm Platform.
- e. **In-Product Marketing.** Software Vendor acknowledges that the BrainStorm Platform contains a marketplace for Customers to purchase additional BrainStorm Content, BrainStorm Add-ons and/or Third-Party Content (the **"Marketplace"**). Software Vendor acknowledges that (i) BrainStorm will send in-product marketing communications in order to notify the Customers about the Marketplace and to any other marketing communications BrainStorm may elect to provide to the Customers, (ii) BrainStorm may enter into additional agreements with Customers relating to other BrainStorm products and services, (iii) Software Vendor will not be entitled to any compensation should a Customer purchase other BrainStorm Content or Third-Party Content via the Marketplace, and (iv) Third-Party Content available on the Marketplace may be competitive to the services offered by Software Vendor.
- f. **Unauthorized Uses.** Except as otherwise expressly authorized in this Agreement, Software Vendor shall not directly or indirectly do or permit any other person or entity to do any of the following: (i) access or use any portion of the BrainStorm Platform that has not been expressly and properly licensed to Software Vendor; (ii) copy, modify, adapt, rent, lease, assign, sell, license, distribute, export, re-export, use in a service bureau or service provider for third parties or other similar type of environment, sublicense, translate, or reprogram the BrainStorm Platform, the Software, or any portion thereof; (iii) allow others to copy, access, or use the BrainStorm Platform; (iv) translate, merge, reverse engineer, decompile, or disassemble the Software or the BrainStorm Platform, except as expressly provided by applicable law; (v) create derivative works based on the BrainStorm Platform or the Software; (vi) disclose or publish any performance benchmark results for the BrainStorm Platform to any third party without BrainStorm's prior written consent; or (vii) manufacture, distribute, or sell products similar to or competitive with the BrainStorm Platform or otherwise use the

BrainStorm Platform for the creation of new applications, software modules, products, services, or programs of any kind.

- g. **Professional Services.** Software Vendor may from time-to-time request that BrainStorm provide training services, consulting services or other professional services relating to the further enhancement and development of Software Vendor Content ("**Professional Services**"). To the extent mutually agreed by the Parties, BrainStorm will provide such Professional Services pursuant to the terms and conditions of a separate statement of work mutually agreed to by the Parties (each, a "**Statement of Work**"). Among other things, each such Statement of Work will describe the specific Professional Services to be provided by BrainStorm, the fees associated with such Professional Services and such other terms relating to the Professional Services as may be mutually agreed by the Parties. Once signed, any such Statement of Work will be considered a part of this Agreement and subject to its terms and conditions.
- h. **License to Software Vendor Content.** Subject to the terms and conditions of this Agreement, Software Vendor hereby grants to BrainStorm, during the Term, a non-exclusive, non-transferable, and irrevocable right and license to (i) host, copy, transmit, promote, market, demonstrate, distribute, resell, display, adapt, and use the Software Vendor Content, (ii) grant its customers and Software Vendor's Customers the right and license to access and use the Software Vendor Content via the BrainStorm Platform, and (iii) otherwise use the Software Vendor Content to fulfill its rights and obligations under this Agreement.
- i. **Products Licensed and Not Sold.** For purposes of clarity, any references in this Agreement to the sale of the Software Vendor Content or the BrainStorm Platform or any other product or any copy thereof refers to the sale of a license or subscription thereof.

3. **Distribution of Software Vendor Content.**

- a. **Promotional Rights.** Subject to the terms and conditions of this Agreement, BrainStorm hereby grants to Software Vendor a non-exclusive, non-transferable, non-sublicensable right to market, promote, and demonstrate the BrainStorm Platform and the Software Vendor Content solely to Software Vendor's Customers. Any marking, promotional, and demonstration of the BrainStorm Platform or Software Vendor Content by Software Vendor shall be at Software Vendor's own expense.
- b. **Non-Exclusive Arrangement.** The rights granted to Software Vendor under this Agreement relating to the marketing and promotion of the BrainStorm Platform are non-exclusive, meaning that BrainStorm reserves the right in its sole discretion to market, promote, demonstrate, distribute, support, and sell the BrainStorm Platform to Customers (or any other customers) directly or indirectly through any number of resellers or distributors, without obligation or liability of any kind to Software Vendor.
- c. **Go-to-Market Strategy and Press Releases.** Upon execution of this Agreement, each Party may issue a press release that is mutually agreed to by both Parties announcing the Parties' relationship under this Agreement. The Parties will collaborate and mutually agree upon marketing collateral, public relations strategy, webinars, events, and other promotional activities targeted at Customers to advertise the Parties' relationship and collaboration.
- d. **Provisioning Access.** Unless otherwise agreed to in writing, BrainStorm will be responsible for provisioning Customer's access to the Software Vendor Content via the BrainStorm Platform. Without limiting the foregoing, BrainStorm reserves the right to refuse, cancel, or delay Customer access to the BrainStorm Platform if Software Vendor is delinquent in payments, when Software Vendor has otherwise failed to perform its material obligations under this Agreement or if Customer is determined to be in violation of the Customer Terms & Conditions (as defined below).
- e. **Content Standards.** The Parties agree that all Software Vendor Content included on the BrainStorm Platform must conform to the following content standards (the "**Content Standards**"): Software Vendor Content must not (i) contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent,

hateful, inflammatory, or otherwise objectionable, (ii) promote or contain any sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age, (iii) infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person, (iv) violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with this Agreement, (v) be likely to deceive any person, (vi) promote any illegal activity, or advocate, promote, or assist any unlawful act, (vii) cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person, (viii) impersonate any person, or misrepresent any customer's or any user's identity or affiliation with any person or organization, or (ix) involve commercial activities, advertising, or sales, such as contests, sweepstakes, and other sales promotions. If BrainStorm reasonably determines that any Software Vendor Content, after being published to the BrainStorm Platform, violates the Content Standards, then BrainStorm shall have the right to remove such Software Vendor Content from the BrainStorm Platform until it can be modified to conform to the Content Standards by mutual agreement.

- f. **Staff Training.** Software Vendor will ensure that its personnel are sufficiently trained to market, promote, and demonstrate (and, if mutually agreed upon, to provision accounts for) the Software Vendor Content. BrainStorm will, upon Software Vendor's request, provide such training to enable Software Vendor's personnel to be sufficiently trained.
- g. **Notice of Unauthorized Use or Infringement by Third Parties.** Software Vendor shall promptly notify BrainStorm in the event it becomes aware of any unauthorized use of the Software Vendor Content or of any infringement by third parties of BrainStorm's Intellectual Property Rights. In the event of any infringement of BrainStorm's Intellectual Property Rights, Software Vendor shall cooperate with BrainStorm in the prosecution of any such infringement. BrainStorm shall be responsible for all costs in connection with such action and shall reimburse Software Vendor for any costs it incurs on behalf of BrainStorm in connection with such action.
- h. **No Adverse Conduct.** Each Party agrees: (a) to conduct its business in a manner that reflects favorably at all times on the Software Vendor Content, the BrainStorm Platform, and the good name, goodwill, and reputation of the other Party; (b) to avoid deceptive, misleading, or unethical practices that are or might be detrimental to the other Party, the BrainStorm Platform, Software Vendor Content, Customers or to the public, including, but not limited to, disparaging comments of the same; (c) not to make false or misleading representations with regard to the other Party or the BrainStorm Platform or the Software Vendor Content; (d) not to publish, employ, or cooperate in the publication or employment of any misleading or deceptive advertising material; and (e) to make no representations, warranties, or guarantees to Customers or to potential Customers with respect to the specifications, features, or capabilities of the BrainStorm Platform or the Software Vendor Content that are inconsistent with the literature distributed by BrainStorm, including, without limitation, all warranties and disclaimers contained in such literature. Each Party shall indemnify the other Party from and against any and all losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of any representations made by indemnifying Party relating to the BrainStorm Platform or the Software Vendor Content, any breach of its obligations under this Section, or out of any other act or omission of Software Vendor in connection with its marketing of the Software Vendor Content.
- i. **New Content.** BrainStorm retains the right to create content that is the same or covers similar topics covered by the Software Vendor Content without any liability or obligation to Software Vendor, provided that any such new content shall not make use of any Software Vendor Content.

4. Customers.

- a. **BrainStorm's Relationship with Customers.** Unless otherwise agreed to in writing, upon mutual agreement

by the Parties, BrainStorm will work with Customers directly for the right to access and use the Software Vendor Content. In the event that Software Vendor ceases business and/or the provisioning of the Software Vendor Content, BrainStorm is under no obligation to provide the BrainStorm Platform (or Software Vendor Content) to Customers or to assume any relationship with a Customer. In the event that a Customer has purchased other BrainStorm Content from the Marketplace prior to the termination of access to the Software Vendor Content(s), then BrainStorm shall have the right to continue providing those Customers with access to the BrainStorm Platform and purchased BrainStorm Content.

- b. **Customer Terms & Conditions.** Each Customer desiring to access the Software Vendor Content or the BrainStorm Platform will be required to accept the BrainStorm Platform's standard customer terms of service (the "**Customer Terms & Conditions**," may be provided to Software Vendor promptly upon reasonable request), and BrainStorm shall be named as a third-party beneficiary of each such Customer Agreement and shall be entitled to enforce the applicable provisions of each such Customer Agreement to the maximum extent permitted by applicable law as if it was an original party thereto.
- c. **Customer Support.** Unless otherwise agreed to in writing, BrainStorm will provide all technical support for the Software Vendor Content provided via the BrainStorm Platform to all Customers.
- d. **Suspension of Service by BrainStorm.** Software Vendor acknowledges and understands that BrainStorm may suspend a Customer's access to the BrainStorm Platform if: (i) BrainStorm reasonably determines that: (A) such Customer's use of the BrainStorm Platform disrupts or poses a security risk to BrainStorm or to any other customer or Software Vendor of BrainStorm; (B) such Customer is using the BrainStorm Platform in breach of this Agreement or in violation of applicable law; (C) such Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors, or similar disposition of its assets or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (D) BrainStorm's provision of the Software Vendor Content to Customers is or becomes prohibited by applicable law; (ii) any Software Vendor of BrainStorm has suspended or terminated BrainStorm's access to or use of any third-party services or products required to enable Customers to access and use the Software Vendor Content; or (iii) any charge owing by Software Vendor on behalf of such Customer is thirty (30) days or more overdue (each, a "**Suspension**"). BrainStorm shall use commercially reasonable efforts to provide written notice of any Suspension to the applicable Customer and to provide updates regarding resumption of access to the Software Vendor Content following any Suspension. BrainStorm will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or Software Vendor may incur as a result of a Suspension. Software Vendor will remain liable to BrainStorm for the fees for the BrainStorm Platform until the end of the applicable subscription term, notwithstanding any such Suspension.

5. Payment Terms.

- a. **Fees and Payment Terms.** The fees to be paid by Software Vendor to BrainStorm for the BrainStorm Platform and for providing Customers with access to the Software Vendor Content are as set forth in Appendix A to be signed separately from this Agreement and which is hereby incorporated by this reference. In no event will Software Vendor pay BrainStorm any less than \$1,000 per month, regardless of how many of its Customers are licensing or using the Software, and regardless of how many seats are licensed by Software Vendor's Customers. Except for the payment of fees set forth in Appendix A and any other amounts expressly set forth in this Agreement, the Parties are each solely responsible and liable for all costs and expenses they incur in performing their obligations under this Agreement.
- b. **Invoicing and Payment.** Fees will be invoiced in advance in accordance with the terms of Appendix A. Unless otherwise provided in Appendix A, all fees are due thirty (30) days from the invoice date. If any amounts invoiced hereunder are not received by BrainStorm by the due date, then such amounts shall accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever

is lower, from the date such payment was due until the date paid.

- c. **Taxes.** Software Vendor agrees to pay all applicable taxes levied by any tax authority on the services provided by BrainStorm hereunder, which shall be separately invoiced, excluding taxes based on the net income of BrainStorm.
- d. **Customer Fees.** Software Vendor may elect to provide the Software Vendor Content to its Customers for free or for a fee. If it charges a fee, Software Vendors is free to determine its own prices and payment terms for access to the Software Vendor Content. Software Vendor is solely responsible for billing and collecting such fees for the Software Vendor Content from its Customers, if applicable. Payments due to BrainStorm for the BrainStorm Platform will not depend on Software Vendor's receipt of payments from its Customers. In the event that Software Vendor ceases business and/or the provisioning of the Software Vendor Content, BrainStorm is under no obligation to refund to a Customer any fees paid by such Customer to Software Vendor.

6. **Branding of the Software Vendor Products.**

- a. **Branding of Software Vendor Content.** Software Vendor may market, promote, and demonstrate the Software Vendor Content under any title, trade name, logo, or other identification as Software Vendor in its sole discretion may choose; provided, however, that it must include a designation on all such materials and communications to Customers that the Software Vendor Content are hosted on and provided by the BrainStorm Platform. In addition, the Parties agree that the BrainStorm Platform must be identified using such names, logos, and other identifications of BrainStorm as BrainStorm may determine.
- b. **Ownership of Marks; Mutual License.** Each Party will retain all right, title, and interest in and to its trademarks, service marks, trade names, logos, or other commercial or product designations (collectively, "**Marks**"), and all goodwill associated therewith will inure solely to the benefit of the owner of the Mark. Subject to the terms and conditions of this Agreement, to facilitate the marketing of the Software Vendor Content, each Party (each, a "**Licensor**") hereby grants to the other Party (each, a "**Licensee**") a limited, non-exclusive, non-transferable, revocable, royalty-free license (without the right to grant sublicenses) to use the Licensor's Marks, but only in connection with its marketing and promotion of the Software Vendor Content. Licensee agrees to state in appropriate places on all materials using Licensor's Marks that Licensor's Marks are trademarks of Licensor, to include the symbol ™ or ® as appropriate, and to otherwise comply with Licensor's trademark policies communicated to Licensee. Licensor grants no rights in Licensor's Marks other than those expressly granted in this Section. Licensee acknowledges Licensor's exclusive ownership of Licensor's Marks and Licensee agrees not to take any action inconsistent with such ownership and to cooperate, at Licensor's request and expense, in any action (including the conduct of legal proceedings) which Licensor deems necessary or desirable to establish or preserve Licensor's exclusive rights in and to Licensor's Marks. Licensee will not adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to Licensor's Marks or in such a way as to create combination marks with Licensor's Marks. Upon request, Licensee will provide Licensor with samples of all materials that contain Licensor's Marks prior to their public use, distribution, or display for Licensor's quality assurance purposes and will obtain Licensor's written approval before such use, distribution, or display. At Licensor's request, Licensee will modify or discontinue any use of Licensor's Marks. Licensee agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything which may adversely affect the validity or enforceability of any of Licensor's Marks. Software Vendor agrees not to attach any additional trademarks, trade names, or service marks to the Software Vendor Content and not to affix any BrainStorm Mark to any product not produced by BrainStorm.

7. **Intellectual Property Rights.**

- a. **BrainStorm Platform.** Software Vendor acknowledges and agrees that, as between the Parties, the BrainStorm Platform and the BrainStorm Content and all Intellectual Property Rights therein, are and will

remain the sole property of BrainStorm, and no rights are granted to Software Vendor under this Agreement with respect to the BrainStorm Platform or the BrainStorm Content, or the Intellectual Property Rights therein, other than the limited rights and licenses set forth in this Agreement. Software Vendor will not use the BrainStorm Platform or the BrainStorm Content or the Intellectual Property Rights therein, except as expressly permitted by this Agreement.

- b. **Software Vendor Content.** As between the Parties, all right, title, and interest in and to the Software Vendor Original Content, as initially provided by Software Vendor to BrainStorm, and all Intellectual Property Rights therein, are and shall remain the sole property of Software Vendor, and no rights are granted to BrainStorm under this Agreement with respect to the Software Vendor Original Content, or the Intellectual Property Rights therein, other than the limited rights and licenses set forth in this Agreement. BrainStorm will not use the Software Vendor Original Content or the Intellectual Property Rights therein, except as permitted by this Agreement.
- c. **Enhanced Content.** The Parties will equally and jointly own all right, title, and interest in and to all Enhanced Content (and all derivative works thereof); provided, however, that neither Party may promote, market, demonstrate, distribute, resell, display, use, or license any portion of the Enhanced Content other than as contemplated by this Agreement without the express written consent of the other Party. For purposes of clarity, Enhanced Content does not include any Software Vendor Original Content.
- d. **Feedback.** BrainStorm encourages Software Vendor and its Customers to provide suggestions, proposals, ideas, recommendations, or other feedback regarding the BrainStorm Platform and any other products or services provided by BrainStorm ("**Feedback**"). BrainStorm shall own all right, title, and interest in and to all Feedback, including all Intellectual Property Rights embodied therein. To the extent Software Vendor provides Feedback, Software Vendor agrees to assign, and hereby does assign to BrainStorm, all worldwide right, title, and interest in and to the Feedback; provided that (i) this assignment does not grant rights under any issued patents owned by Software Vendor; and (ii) the Feedback is provided "as is" without any warranties, whether express, implied, or statutory. Software Vendor agrees to cooperate with BrainStorm and execute such documents as may be necessary for BrainStorm to register, record, enforce, or defend its rights in any Feedback. Software Vendor's agreements with Customers will include a provision similar to this Section assigning rights in Customer Feedback to BrainStorm.
- e. **Assignments.** The Parties hereby make all assignments necessary to accomplish the foregoing ownership provisions. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure, and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively, "**Moral Rights**"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, the assigning Party hereby ratifies and consents to any action consistent with the terms of this Agreement that would violate such Moral Rights in the absence of such ratification/consent. The assigning Party will confirm any such ratifications and consents from time to time as requested by the other Party.

8. Data Privacy.

- a. **Privacy Obligations.** Each Party will maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality, and integrity of Customer Information as processed by the Software Vendor Content. Neither Party shall (a) modify Customer Information, (b) disclose Customer Information, except as compelled by law or as expressly permitted in writing by Customer, or (c) access Customer Information, except to provide the Software Vendor Content and prevent or address service or technical problems, or at Customer's request in connection with customer support matters. In addition, each Party shall comply with all Applicable Data Protection Laws in provisioning the Software Vendor Content to Customers. Each Party agrees to maintain the confidentiality of Customer Information indefinitely following the expiration or termination of this Agreement.

- b. **DPA; Collection of Customer Information.** Together with the execution of this Agreement, the Parties will enter into a Data Processing Agreement (“**DPA**”). Software Vendor hereby represents and warrants that Software Vendor complies with the requirements in the Applicable Data Protection Laws in collecting and transferring Customer Information to BrainStorm and permitting BrainStorm to act as a processor of the Customer Information. Software Vendor agrees that it will not disclose any special categories of personal information to BrainStorm and Software Vendor will indemnify BrainStorm from any third-party claims against BrainStorm as a result of such disclosure. Software Vendor shall have sole responsibility for the accuracy, quality, and legality of the Customer Information and the means by which Software Vendor acquires the Customer Information. Software Vendor shall also obtain all consents necessary for the processing of Customer Information by the Software Vendor Content. BrainStorm shall process the Customer Information as a processor only as necessary to perform its obligations under this Agreement and the applicable Customer Agreement, and in accordance with the documented instructions of Software Vendor and/or Customer (the “**Permitted Purpose**”), except where otherwise required by any EU (or any EU Member State) law applicable to BrainStorm, in which case BrainStorm shall to the extent permitted by Applicable Data Protection Law inform Software Vendor of that legal requirement before the relevant processing of that Customer Information. In no event shall BrainStorm process Customer Information for its own purposes or those of any third party, except as set forth in this Agreement or the Customer Agreement.
- c. **Retention of Customer Data.** BrainStorm shall have no obligation to retain Customer Information, except as expressly agreed by BrainStorm in writing.
- d. **Sensitive Information.** Software Vendor agrees not to use the Software Vendor Content to collect, process, or store any Sensitive Information. Software Vendor agrees not to transmit, disclose, or make available Sensitive Information to BrainStorm, or to BrainStorm’s third-party service providers.

9. **Term and Termination.**

- a. **Term.** This Agreement is effective as of the Effective Date and will remain in effect until the latter of a period of one (1) year from the Effective Date (the “**Initial Term**”) or the term of the last provisioned Customer account prior to any notice of non-renewal, unless terminated earlier by either Party pursuant to this Section. Thereafter, this Agreement and all fee obligations contained in Appendix A will automatically renew for additional one (1)-year periods (each, a “**Renewal Term**”), unless terminated earlier by either Party pursuant to this Agreement or unless either Party gives notice of non-renewal to the other Party by no later than ninety (90) days before the end of the Initial Term or the then-current Renewal Term. The Initial Term together with any and all Renewal Terms and the Transition Period (if any, defined below) are referred to collectively as the “**Term.**”
- b. **Termination of Agreement for Cause—Material Breach.** Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement for cause by delivering a written termination notice to the other Party if the other Party materially breaches this Agreement and has not remedied the breach within thirty (30) days (the “**Cure Period**”) after receipt of a written notice (the “**Default Notice**”) from the non-breaching Party describing the breach and stating the non-breaching Party’s intention to terminate this Agreement if the breach is not remedied within the Cure Period.
- c. **Termination for Cause—Other.**
 - i. Either Party may terminate this Agreement for cause (without opportunity for cure) by delivering a written termination notice to the other Party if (i) the other Party is subject to a Change in Control in favor of a direct competitor of the terminating Party or (ii) 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.
 - ii. Either Party may terminate this Agreement for cause (without opportunity to cure) in the event

an indemnifiable Claim (as set forth in Section 12) is brought against it by a third party alleging intellectual property infringement by the other Party, and the indemnifying Party fails to remedy such infringement (as set forth in Section 12) within ninety (90) days following notification of such Claim.

- iii. **Effect of Termination Notice/Non-Renewal.** If a Party delivers a written termination notice or if this Agreement is not renewed after the expiration of the Initial Term or a Renewal Term, then Software Vendor may not distribute or sell the Software Vendor Content to any new Customers or renew any Customer Agreements for existing Customers after the date of such notice or non-renewal.
- iv. **Continuation of Services for Existing Customers.** In the event of a termination of this Agreement, for Customers with Customer Agreements in effect on the effective date of such termination, the Parties will continue to perform their respective obligations under this Agreement, including payment and support obligations, so that all then-current Customers will continue to have full and complete access to the Software Vendor Content until the expiration or termination of their then-current Customer Agreement (the “**Transition Period**”). Notwithstanding the foregoing, in the event that BrainStorm terminates this Agreement due to Software Vendor’s breach, then BrainStorm will have no further obligation to provide the BrainStorm Platform or the Software Vendor Content to any of Software Vendor’s Customers and BrainStorm may suspend or terminate Software Vendor’s and any or all of its Customers’ access to the Software Vendor Content.
- v. **Survival.** Notwithstanding any other provision of this Agreement: (a) the termination or expiration of this Agreement will not relieve either Party of its outstanding payment obligations at the time of such termination or expiration; and (b) the following provisions of this Agreement and those specified as surviving provisions in this Agreement, and all other provisions necessary to their interpretation or enforcement, will survive indefinitely after the expiration or termination of this Agreement and will remain in full force and effect and be binding upon the Parties, as applicable: Sections 1, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 16. In addition, all of the provisions of this Agreement that should reasonably survive in order for the Parties to perform their obligations during any Transition Period including, without limitation, all payment and support obligations, shall so survive until the Transition Period’s expiration or termination.

10. **Confidentiality and Personal Information Protection.**

- a. **Definition.** In this Agreement, the term “**Confidential Information**” means all information of a Party (the “**Disclosing Party**”), in any form and on any medium, disclosed to the other Party (the “**Receiving Party**”), regardless of the form of disclosure, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, and without the need to designate as confidential: (a) the terms and conditions of this Agreement; (b) the BrainStorm Platform, including its underlying Software, technology, and architecture (which are BrainStorm’s Confidential Information); and (c) the Disclosing Party’s business and marketing plans, technologies, and technical information, product designs, financial information, and business processes; and (d) the Software Vendor Content (which is Software Vendor’s Confidential Information). For the avoidance of doubt, Customer Information is the confidential information of the applicable Customer.
- b. **Exceptions.** Information will not be considered Confidential Information to the extent, but only to the extent, that such information is: (a) or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) known to the Receiving Party, free of any confidentiality, or other restriction prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c)

independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party and without reference to any Confidential Information; or (d) subsequently received by the Receiving Party from a third party, free of any confidentiality, or other restriction and without breach of any obligation owed to the Disclosing Party.

- c. **Confidentiality Obligations.** Subject to Sections 10.4 and 10.5, and unless the Disclosing Party expressly agrees in writing otherwise, the Receiving Party will: (a) use the Disclosing Party's Confidential Information only during the Term and only as necessary to perform the Receiving Party's obligations under this Agreement; (b) disclose the Disclosing Party's Confidential Information only to the Receiving Party's directors, officers, agents, employees, and authorized subcontractors and their employees and only to the extent that such disclosure is necessary to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement; (c) both during and for five (5) years after the Term maintain the confidentiality of the Disclosing Party's Confidential Information using the same degree of care as the Receiving Party affords to its own confidential information of a similar nature, which it desires not to be published or disseminated, and in no event less than reasonable care, to prevent the unauthorized use or disclosure of the Disclosing Party's Confidential Information; and (d) provide that the persons to whom the Receiving Party discloses the Disclosing Party's Confidential Information comply with the requirements and restrictions set forth in items (a), (b), and (c) above (subject to Sections 10.4 and 10.5) and are under confidentiality obligations at least as stringent as those included herein either as a condition of their employment or receiving the Confidential Information.
- d. **Compelled Disclosure.** Notwithstanding the restrictions set forth in Section 10.3, the Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such disclosure is required by a valid order of a court or governmental body of competent jurisdiction and authority or by applicable law, provided that the Receiving Party will provide the Disclosing Party with reasonable prior notice of such disclosure (to the extent legally permitted) and upon request by the Disclosing Party will reasonably assist the Disclosing Party, at the Disclosing Party's cost, to obtain an order or other relief preventing or limiting the potential disclosure or use of the Disclosing Party's Confidential Information.
- e. **Permitted Disclosures.** Notwithstanding the restrictions set forth in Section 10.3, the Receiving Party may disclose the Disclosing Party's Confidential Information to its legal, accounting, and tax advisors to the extent that such disclosure is required for a *bona fide* legal, accounting, or tax purpose, provided that the Receiving Party will ensure that such persons comply with the requirements and restrictions set forth in items (a), (b), and (c) of Section 10.3.
- f. **Remedies.** Each Party acknowledges and agrees that, in the event of a breach or threatened breach by the Receiving Party of any of the provisions of this Section 10, damages may not be an adequate remedy for the Disclosing Party and, accordingly, the Disclosing Party shall be entitled, in addition to any other remedies available to it, to seek injunctive relief against such breach or threatened breach.
- g. **Return of Confidential Information.** Upon Disclosing Party's written request upon expiration or termination of this Agreement (or at any earlier time upon written request by the Disclosing Party), the Receiving Party will: (a) promptly deliver to the Disclosing Party all originals and copies, in whatever form or medium, of all the Disclosing Party's Confidential Information and all documents, records, data, and materials, in whatever form or medium, containing such Confidential Information in the Receiving Party's possession, power, or control and the Receiving Party will delete all of the Disclosing Party's Confidential Information from any and all of the Receiving Party's computer systems, retrieval systems, and databases; and (b) request that all persons to whom it has provided any of the Disclosing Party's Confidential Information comply with this Section.

11. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other that (i) it has all right, power, and authority to execute, deliver, and perform this Agreement; (ii) this Agreement has been duly

authorized, executed, and delivered by it and is or when executed will be, its legal, valid, and binding obligations in accordance with its terms; (iii) in performing its obligations hereunder it will comply in all material respects with all applicable laws; and (iv) the execution of this Agreement by it and the performance by it of its obligations hereunder, do not and will not violate any other agreement to which it is a party or by which it is otherwise bound.

- b. **BrainStorm Representations and Warranties.** BrainStorm represents and warrants that: (i) the BrainStorm Platform will perform materially in accordance with the relevant Documentation; and (ii) it has the legal power to enter into and perform its obligations under this Agreement.
- c. **Software Vendor Representations and Warranties.** Software Vendor represents and warrants that: (i) it is legally permitted and authorized to license the Software Vendor Content to BrainStorm pursuant to this Agreement; (ii) the Software Vendor Content, to the best of Software Vendor's knowledge, does not and will not infringe any third-party intellectual property right or other interest; (iii) the Software Vendor Content will perform materially in accordance with the relevant documentation; (iv) the Software Vendor Content does not contain any injurious instructions (such as viruses) that are designed to modify, damage, delete, or disable the Software Vendor Content or the BrainStorm Platform; and (v) it will not make any representations or warranties on BrainStorm's behalf, other than those specifically authorized by BrainStorm in writing.
- d. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES DO NOT MAKE OR GIVE ANY OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES WHATSOEVER REGARDING THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT, OR ANY RELATED MATTER, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES OF EVERY NATURE AND KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY STATUTE OR REGULATION, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. BRAINSTORM DOES NOT WARRANT THAT THE BRAINSTORM PLATFORM OR THE SOFTWARE VENDOR CONTENT WILL SATISFY SOFTWARE VENDOR'S REQUIREMENTS OR THAT EITHER IS WITHOUT DEFECT OR ERROR OR THAT SOFTWARE VENDOR'S OR CUSTOMER'S ACCESS THERETO WILL BE UNINTERRUPTED. SOFTWARE VENDOR ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE VENDOR CONTENT AS THEY RELATE TO CUSTOMER ADOPTION, RETENTION, RENEWAL, OR EXPANSION RATES.

12. Mutual Indemnification.

- a. **Software Vendor Indemnification of BrainStorm.** Subject to the terms and conditions of this Agreement, Software Vendor shall defend, indemnify, and hold BrainStorm harmless from and against any and all losses, liabilities, damages, costs, or expenses (including reasonable attorneys' fees) incurred in connection with any claims, demands, suits, or proceedings ("**Claims**") made or brought against BrainStorm by a third party (i) alleging that the Software Vendor Content or Software Vendor content separate from the BrainStorm Platform infringe the Intellectual Property Rights of, or have otherwise harmed, a third party; (ii) based upon any unauthorized representation made by Software Vendor relating to the Software Vendor Content; or (iii) based upon a breach of Section 8 (Data Privacy) or 14 (Compliance) or the DPA by Software Vendor; provided that BrainStorm (a) promptly gives written notice of the Claim to Software Vendor; (b) gives Software Vendor sole control of the defense and settlement of the Claim (provided that Software Vendor may not settle or defend any Claim unless it unconditionally releases BrainStorm of all liability); and (c) provides to Software Vendor, at Software Vendor's cost, all reasonable assistance. In the event of a Claim brought against BrainStorm by a third party alleging that the use of the Software Vendor Content or Software Vendor Content (other than the BrainStorm Platform) infringes the Intellectual Property Rights of a third party, or if Software Vendor reasonably believes the Software Vendor Content or Software Vendor content separate from the BrainStorm Platform may infringe or misappropriate, Software Vendor may, in its

discretion and at no cost to BrainStorm, (i) modify the Software Vendor Content or Software Vendor content separate from the BrainStorm Platform so that they no longer infringe or misappropriate, or (ii) obtain a license for Customers' continued use of the Software Vendor Content or Software Vendor content separate from the BrainStorm Platform in accordance with this Agreement and such other agreements between Software Vendor and Customer, as applicable.

- b. **BrainStorm Indemnification of Software Vendor.** Subject to the terms and conditions of this Agreement, BrainStorm shall defend, indemnify and hold Software Vendor harmless from and against any and all losses, liabilities, damages, costs, or expenses (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Software Vendor by a third party (i) alleging that the use of the BrainStorm Platform infringes the Intellectual Property Rights of a third party; or (ii) based upon a breach of Section 8 (Data Privacy) or the DPA by BrainStorm; provided that Software Vendor (a) promptly gives written notice of the Claim to BrainStorm; (b) gives BrainStorm sole control of the defense and settlement of the Claim (provided that BrainStorm may not settle or defend any Claim unless it unconditionally releases Software Vendor of all liability); and (c) provides to BrainStorm, at BrainStorm's cost, all reasonable assistance. In the event of a Claim brought against Software Vendor by a third party alleging that the use of the BrainStorm Platform infringes the Intellectual Property Rights of a third party, or if BrainStorm reasonably believes the BrainStorm Platform may infringe or misappropriate, BrainStorm may, in its discretion and at no cost to Software Vendor, (i) modify the BrainStorm Platform so that it no longer infringes or misappropriates, (ii) obtain a license for Software Vendor's continued resale of the BrainStorm Platform in accordance with this Agreement, or (iii) terminate this Agreement. In no event will BrainStorm have any obligation or liability under this paragraph for any Claim under any legal theory, to the extent the Claim is caused by, results from or is related to: (i) any combination, operation, or use of the BrainStorm Platform with software or other materials not supplied by BrainStorm (other than the Software Vendor Content), (ii) any unauthorized alteration or modification of the BrainStorm Platform by Software Vendor or any Customer, (iii) Software Vendor's or a Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement or (iv) the actions or omissions of any person or entity other than BrainStorm.

13. **Exclusions and Limitations of Liability.**

- a. **LIMITATION OF LIABILITY.** SUBJECT TO SECTION 13.3, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID OR PAYABLE TO BRAINSTORM UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY.
- b. **EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. **EXCEPTIONS.** SECTION 13.1 DOES NOT APPLY TO: (i) THE OBLIGATIONS SET FORTH IN SECTION 12 (MUTUAL INDEMNIFICATION), (ii) THE PARTIES' CONFIDENTIALITY OBLIGATIONS UNDER SECTION 10, OR (iii) SOFTWARE VENDOR'S LIABILITY ARISING FROM ITS BREACH OF SECTION 8 (DATA PRIVACY).

14. **Compliance.**

- a. **Compliance with Laws.** Software Vendor shall comply with all applicable federal, state, and local laws and regulations in performing its duties hereunder and in any other dealings with respect to the Software Vendor Content. Software Vendor shall indemnify BrainStorm from and against any and all losses, liabilities, damages, costs, and expenses BrainStorm may incur in connection with any violation of applicable law by

Software Vendor.

- b. **Consequences of Violation.** Software Vendor shall promptly inform BrainStorm in writing upon becoming aware of any violations of law in connection with this Agreement. Software Vendor hereby acknowledges and agrees that any violation by Software Vendor of the Compliance with Laws section of this Agreement will constitute a material breach of this Agreement. In the event of such a violation, BrainStorm will have the right to terminate this Agreement, without any liability whatsoever to Software Vendor, immediately upon providing written notice of termination to Software Vendor. Termination of this Agreement by BrainStorm under this section shall be in addition to, and not in lieu of, BrainStorm's other legal rights and remedies.

15. **Continued Provision of BrainStorm Platform; Force Majeure.**

- a. **Disaster Recovery Plan.** BrainStorm will (a) maintain a disaster recovery plan, (b) periodically update and test the operability of such plan, and (c) implement the plan upon the occurrence of a Force Majeure Event or other disaster. BrainStorm will use commercially reasonable efforts to promptly reinstitute the BrainStorm Platform following the occurrence of any Force Majeure Event or other disaster.
- b. **Force Majeure.** To the extent that either Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered, or delayed, directly or indirectly, by a Force Majeure Event, and such non-performance could not have been prevented by commercially reasonable precautions, then the non-performing Party will be excused from any further performance of those obligations, to the extent prohibited or delayed due to the Force Majeure Event. The non-performing Party will only be excused for so long as such Force Majeure Event continues and such Party continues to use reasonable commercial efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, work around plans, or other means. The Party whose performance is prevented, hindered, or delayed by a Force Majeure Event will promptly notify the other Party of the occurrence of the Force Majeure event and describe the Force Majeure event in reasonable detail.

16. **Miscellaneous.**

- a. **Independent Contractors.** The Parties are independent contractors. Neither Party shall be deemed to be an employee, agent, partner, or legal representative of the other for any purpose and neither shall have any right, power, or authority to create any obligation or responsibility on behalf of the other.
- b. **Notices.** All notices required under this Agreement must be in writing and delivered by personal delivery, overnight courier, confirmed facsimile, confirmed email, or certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, one day after deposit with an overnight courier, five days after deposit in the mail, or upon confirmation of receipt of facsimile or email. Notices will be sent to a Party at its address set forth in the introductory paragraph of this Agreement or such other address as that Party may specify in writing pursuant to this Section.
- c. **Waiver.** No failure or delay by either Party in exercising any right or remedy under this Agreement shall operate or be deemed as a waiver of any such right or remedy. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing in a document that specifically refers to this Agreement and such document is signed by both of the Parties hereto.
- d. **Severability.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- e. **Assignment.** Neither Party may assign or subcontract any of its rights or obligations under this Agreement,

whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement together with all rights and obligations under this Agreement, without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section will be void and of no effect. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

- f. **Governing Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Utah without regard to its rules governing conflicts of law. Each of the Parties hereby consents to the exclusive jurisdiction of and venue in the state and federal courts located in Salt Lake County, Utah, for the adjudication of all matters relating hereto or arising hereunder.
- g. **Entire Agreement.** This Agreement, including all attachments and exhibits hereto, along with Appendix A which is signed separately, constitutes the entire agreement between the Parties as to its subject matter and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as set forth herein, no modification, amendment or waiver of any provision of this Agreement will be effective unless in writing signed by both Parties.
- h. **Interpretation of Agreement; Headings.** The Parties agree that this Agreement has been drafted with the joint participation of each of the Parties hereto and shall be construed to be neither against nor in favor of either Party hereto, but rather in accordance with the fair meaning hereof. References in this Agreement to articles, sections, exhibits, attachments, and schedules are to articles, sections, exhibits, attachments, and schedules of and to this Agreement. All exhibits, attachments, and schedules to this Agreement, either as originally existing or as the same from time to time may be supplemented, modified, or amended, are hereby incorporated herein by this reference and are deemed to be a part of this Agreement. The section and subsection headings in this Agreement 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. Unless otherwise provided herein, all prices and amounts are stated in and all payments shall be made in U.S. dollars. Unless the context otherwise specifically requires, all references to sections of this Agreement shall refer to all subsections thereof.
- i. **Attorneys' Fees.** If either Party hereto elects to pursue legal action to enforce its rights under this Agreement, then the prevailing Party in such action shall be entitled to receive from the losing Party all costs and expenses, including, but not limited to, the reasonable attorneys' fees incurred by the prevailing Party in connection with such action.
- j. **Remedies.** Except as otherwise provided herein, no remedy made available to either Party hereto by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.
- k. **Counterparts; Facsimile Signatures.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that each Party has received the other Party's executed instruments. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file (or similar format however designated), such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.