BRAINSTORM CUSTOMER TERMS OF SERVICE

Effective Date: August 27, 2026

PLEASE READ THIS AGREEMENT CAREFULLY.

This BrainStorm Customer Terms of Service (this "Agreement") is a contract between the customer identified in the Order Form ("Customer"), and BrainStorm, Inc. ("BrainStorm"). Sometimes this Agreement will refer to Customer and BrainStorm individually as a "Party" or collectively as the "Parties." This Agreement describes the Subscription Services BrainStorm will provide to Customer, how the Parties will interact, and other aspects of the business relationship between BrainStorm and Customer. BrainStorm will not provide the Subscription Service to Customer unless Customer has agreed to the terms and conditions of this Agreement. By using the Subscription Service, Customer accepts and agrees to be bound by this Agreement.

BrainStorm will provide Customer with notice of any material update to the terms and conditions of this Agreement, as provided in Section 15(b) below. Customer will be notified via email or through the Admin Portal.

1. **Definitions.**

    a. "**Agreement**" means this Agreement and all materials referred to or linked to herein.

    b. **"Billing Period"** means the period for which Customer agrees to prepay Fees under an Order Form, which will be the same as or shorter than the Subscription Term. For example, if Customer subscribes to the Subscription 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 Add-Ons**" means the individual platform features provided by BrainStorm, as identified and set forth in the Order Form.

    d. **"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 provided by BrainStorm to Customer via the Website, as identified and set forth in the Order Form.

    e. **"BrainStorm Material"** 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 Customer via the Subscription Service or otherwise.

    f. "**BrainStorm Platform**" means the online, cloud-based software application(s) that are provided by BrainStorm to Customer via the Website (as defined below).

    g. "**BrainStorm Support**" means the specific customer support services set forth in Section 5(c) and, if any, the Order Form.

    h. "**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. BrainStorm's Confidential Information includes, without limitation and regardless of whether it has been identified as confidential, (a) any content provided to Customer in connection with the Subscription Service, and (b) any materials or content provided to Customer as part of the implementation services or any other services provided by BrainStorm.

i. "**Content Specific Terms**" means the additional content-related terms that apply to Customer's subscription to or use of Third-Party Content, as set forth in the Order Form or Order Form Addendum, as the case may be

j. "**Customer Data**" means all data, Personal Information (as defined below), text, reports, or other information Customer submits to, or BrainStorm collects via the Subscription Service in order to, among other things, create and manage User accounts, track User actions within the Subscription Services, or otherwise deliver the Subscription Service.

k. "**Customer Content**" means all data, text, messages, information, survey responses, 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 Subscription Service. Customer Content will not include any content prepared or created by or for BrainStorm or that is originally provided to Customer by BrainStorm.

l. **"De-Identified Usage Data**" means the de-identified data and metadata that BrainStorm collects and stores relating to each customer's use of the Subscription Services, including, without limitation, platform and content usage statistics, diagnostic data, telemetry data, and/or Third-Party software usage data (i.e., Microsoft, Google, Zoom, etc.). De-identified Usage Data does not contain any personally identifiable information about Users, the identity of Customer, Customer Data or Customer Content.

m. "**Fees**" means the amount Customer agrees to pay for the Subscription Service and any other services that BrainStorm may provide, as evidenced by the Order Form.

n. "**Order Form**" means a mutually accepted, formal, transaction document, such as an invoice or order form, as applicable, that includes some or all of the following information: a listing of the BrainStorm Platform, BrainStorm Content, BrainStorm Add-ons, and/or Third-Party Content to be provided by BrainStorm 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 Subscription Service, and any maintenance and support being purchased (if applicable).

o. "**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 (as defined in the DPA).

p. "**Subscription Service**" means the BrainStorm Platform, BrainStorm Content, BrainStorm Material, BrainStorm Add-ons and/or any Third-Party Content (as defined below) that are provided to Customer via the Website, including any ancillary products or services, including web-hosting, that BrainStorm will provide to Customer.

q. "**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."

r. "**Subscription Term**" means the Initial Term (as defined below) of Customer's subscription (or access) to the Subscription Service, as specified in the Order Form, and any subsequent Renewal Term (as defined below), during which Customer agrees to pay (or prepay) the Fees under an Order Form.

s. "**Third-Party Providers**" means third-party content vendors who sell Third-Party Content and/or collect Third-Party Data via the BrainStorm Platform.

t. "**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 Customer via the Website, as identified and set forth in the Order Form.

u. "**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.

v. "**Usage Data**" means the data and metadata that BrainStorm collects and stores for each customer's use of the Subscription Services, including, without limitation, platform and content usage statistics, diagnostic data, telemetry data, and/or third-party software usage data (i.e., Microsoft, Google, Zoom, etc.).

w. "**Users**" means individuals who are authorized by Customer to access and use the Subscription 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.

x. "**Website**" means the following websites where Customer and its Users will access and use the Subscription Service: app.brainstorminc.com; admin.brainstorminc.com; sts.brainstorminc.com; help.brainstorminc.com; api.brainstorminc.com; support.brainstorminc.com; feedback.brainstorminc.com, and any other URLs from which BrainStorm will provide the Subscription Service, in whole or in part.

2. **The Subscription Service**.

a. **Access**. Subject to the terms and conditions of this Agreement and the applicable Order Form, and upon Customer's payment of the applicable Fees, BrainStorm will provide Customer and its Users with access to the Subscription Service via the Internet during the Subscription Term. Customer understands and agrees that its purchase of a subscription to the Subscription 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.

b. **Additional Purchases**. Access to additional BrainStorm Content, BrainStorm Add-ons, or Third-Party Content not set forth in the original Order Form will require a separate purchase(s) and Order Forms, and may be governed by separate or additional terms and conditions, such as Content Specific Terms.

c. **Maximum Authorized Users**. The Subscription 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. The maximum number of Users cannot be decreased during the Subscription Term.

d. **In-Product Marketing**. Customer acknowledges that the BrainStorm Platform contains a marketplace for Customer to purchase additional BrainStorm Content, BrainStorm Add-ons, and/or Third-Party Content (the "**Marketplace**"). Customer consents to BrainStorm sending those Users who Customer designates in the Subscription Service as admins or group owners in-product marketing communications and BrainStorm Platform-generated messages in order to notify the Customer about the Marketplace.

e. **Content Specific Terms**. Customer also acknowledges that a purchase of BrainStorm Content or Third-Party Content may require the acceptance of Content Specific Terms.

f. **No-Fee Content**

i. **No-Fee Services**. BrainStorm, in its sole discretion, may make certain services, content, features, Packs or Bundles of the BrainStorm Platform available to Customer free of charge ("No-Fee Services") as specified in an Order Form or within Customer's account. If Customer uses the No-Fee Services, Customer agrees to do so subject to this Section and the terms and conditions of this Agreement governing the Subscription Service, and in the event of any conflict or inconsistency between the terms of this Section and the rest of the Agreement, the terms of this Section will control with respect to the No-Fee Services. BrainStorm may at any time revoke, terminate, suspend, modify, or limit use of the No-Fee Services without notice to Customer for any reason or no reason. Any use of features not included in the No-Fee Services will be subject to Customer's payment of fees as agreed between BrainStorm and Customer in an Order Form or as selected by Customer through its account.

ii. **No Warranty**. BrainStorm may, but is not obligated to, provide any support, maintenance services, service levels, or uptime guarantees with respect to the No-Fee Services. The No-Fee Services are provided solely and exclusively "as-is," "as-available" and "with all faults" with no express, statutory or implied warranty of any kind, including without limitation any implied warranty of merchantability, non-infringement or fitness for a particular purpose. Any Customer Data or Customer Content entered into the No-Fee Services may be permanently lost; Customer is advised to use caution and not to rely in any way on the functioning or performance of the No-Fee Services. CUSTOMER ASSUMES AND UNCONDITIONALLY RELEASES BRAINSTORM FROM ALL RISKS ASSOCIATED WITH THE USE OF ANY NO-FEE SERVICES.

iii. **Limitation of Liability**. Notwithstanding anything to the contrary in this Agreement, BRAINSTORM SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY KIND WITH RESPECT TO THE NO-FEE SERVICES, UNLESS SUCH EXCLUSION IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE BRAINSTORM'S LIABILITY TO CUSTOMER SHALL NOT EXCEED $100.00. CUSTOMER SHALL BE FULLY LIABLE TO BRAINSTORM FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE NO-FEE SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER. Customer acknowledges that the No-Fee Services are provided to it without any compensation to BrainStorm; therefore, this Section is a fundamental element to the provision of No-Fee Services and BrainStorm would not provide the No-Fee Services without such limitations.

3. **Fees and Payment**.

a. **Subscription Fees**. Customer will pay the Fees as set forth in the Order Form(s). All Fees are non-refundable and non-cancelable unless specifically provided otherwise in this Agreement.

b. **Payment by Credit Card**. If Customer pays the Fees by credit card, Customer authorizes BrainStorm to charge Customer's credit card or bank account for all Fees payable during the Subscription Term, including any credit card transaction fees that BrainStorm may pass on to the Customer. Customer further authorizes BrainStorm to use a third party to process payments, and consent to the disclosure of Customer's payment information to such third party.

c. **Late Payments**. All undisputed amounts are due according to the payment terms stated on the applicable Order Form or Invoice. Any undisputed amount not paid when due shall accrue interest at the lesser of 1.5% per month (18% annually) or the maximum rate permitted by applicable law, beginning on the due date and

continuing until paid in full. Customer shall be responsible for all reasonable costs incurred in collecting past due amounts, including attorney fees and collection agency fees where permitted by law.

d. **Invoices**. BrainStorm will invoice Customer 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 in advance and within thirty (30) days from the date of invoice.

e. **Suspension of the Subscription Service.** BrainStorm will provide Customer with notice of non-payment of any undisputed amount due. If the Fees are thirty (30) days or more overdue, BrainStorm may, without limiting its other rights and remedies, suspend Customer's access to the Subscription Service (or any portion thereof) until such amounts are paid in full. In addition, BrainStorm may also suspend Customer's access to any portion or all of the Subscription Service if: (i) BrainStorm reasonably determines that: (A) Customer's or any User's use of the Subscription Service poses a security risk to BrainStorm or to any other customer or Third-Party Provider of BrainStorm; (B) Customer, or any User, is using the Subscription Service in breach of this Agreement (including, without limitation, in breach of Section 7(h)) or in violation of applicable law; (C) 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; (D) BrainStorm's provision of the Subscription Service to Customer is or becomes prohibited by applicable law; or (E) any Third-Party Provider has suspended or terminated BrainStorm's access to or use of any Third-Party Data, Third-Party Content or any other services or products required to enable BrainStorm to provide or Customer to access and use the Subscription Service. BrainStorm shall use commercially reasonable efforts to provide written notice of any service suspension under this Section 3(d) (a "**Service Suspension**") to Customer and to provide updates regarding resumption of access to the Subscription Service following any Service Suspension. BrainStorm shall use commercially reasonable efforts to resume providing access to the Subscription Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. BrainStorm will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a Service Suspension.

f. **Payment Disputes.** BrainStorm will not exercise its right to suspend Customer's access to the Subscription Service under Section 3(d) (Suspension of the Subscription Service), if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

g. **Taxes.** To the extent Customer is subject to such tax liabilities, Customer agrees to pay all applicable taxes levied by any tax authority on the Subscription Service or on Customer's use thereof, which may be separately invoiced, excluding any and all taxes based on the net income of BrainStorm.

4. **Term and Termination**.

a. **Term**. Customer's Subscription Term will be as specified in Customer's Order Form (the "**Term**").

b. **No Early Termination; No Refunds**. The Subscription Term cannot be canceled early and will end on the expiration date established in the Order Form, unless otherwise extended by execution of a subsequent Order Form. BrainStorm will not provide refunds if Customer decides to stop using the Subscription Service during Customer's Subscription Term.

c. **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, upon BrainStorm's reasonable belief, BrainStorm determines that Customer is acting, or has acted, in a way that has or may

negatively reflect on or affect BrainStorm, its prospects, or its customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.

d. **Effects of Termination**. If Customer terminates 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, Customer 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 Customer of its obligation to pay any Fees payable to BrainStorm for the period prior to the effective date of termination. In addition, upon any expiration or termination of this Agreement, all rights, licenses, consents and authorizations granted by BrainStorm to Customer hereunder will immediately terminate, and Customer shall immediately cease all use of the Subscription Service.

e. **Survival**. Sections 1, 4(d), and 5-15 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.

5. **Updates, Changes, and Support.**

a. **Updates and Maintenance**. BrainStorm will support, maintain, upgrade, and update the Subscription Service as appropriate and in BrainStorm's sole determination in order to fulfill its obligations under this Agreement. By way of information, BrainStorm's scheduled maintenance window is from 12:00 a.m. to 4:00 a.m. Mountain Time. Except as provided elsewhere in this Section 5 or as specifically agreed in an Order Form, BrainStorm shall have no other maintenance or support obligations to Customer.

b. **Changes**. BrainStorm reserves the right to, but not the obligation to, change, remove, edit, modify, block or deprecate (collectively, "**Changes**") BrainStorm Content or certain features or functionality of the BrainStorm Platform, in its sole discretion, at any time, without notice to Customer and for any reason or no reason at all. Notwithstanding the foregoing, BrainStorm will provide Customer with prior notice of any material Changes made to the Subscription Service. BrainStorm will, in its sole discretion, continue supporting prior versions of the BrainStorm Platform for up to twelve (12) months after BrainStorm provides notice of its intent to deprecate the prior version(s), except where doing so would (a) pose a security risk or intellectual property issue, (b) be economically or technically burdensome, or (c) violate applicable law. BrainStorm will notify Customer of any material change to or discontinuation of a prior version of the BrainStorm Platform.

c. **Support**. In addition to the ongoing customer service support that BrainStorm will provide as described in Section 5(a), BrainStorm will provide technical support to Customer during the Subscription Term during normal business hours of 8:00 a.m. - 6:00 p.m. MST, Monday through Friday, excluding holidays. Support is limited to the designated admins within the Subscription Service and is generally not available to Customer's Users. Customer's point of contact may reach the support helpdesk at support@brainstorminc.com.

6. **Customer Responsibilities and Restrictions**. Customer agrees that:

a. It and its Users will comply with the terms and conditions of this Agreement, as well as any applicable laws and regulations. Customer will promptly notify BrainStorm of any suspected or alleged violation of this Agreement by its 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.

b. It will be responsible for its and its Users' use of the Subscription Service, including, without limitation, any use of the Subscription Service that is in violation of applicable laws, regulations, and/or BrainStorm's Privacy Policy. Customer shall have sole responsibility for the accuracy, quality, and legality of all Customer Data.

c. It will not (a) access or use the Subscription Service except as expressly permitted by this Agreement, (b) make the Subscription Service available to anyone other than Customer's Users, (c) copy, modify, sell, resell, distribute, rent, lease, or create derivative works of the Subscription Service, except as may be authorized in writing by BrainStorm, (d) knowingly interfere with or disrupt the integrity or performance of the Subscription Service or any of its content, (e) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to gain unauthorized access to the Subscription Service's underlying systems or networks, or (f) access or use the Subscription Service for purposes of competitive analysis of the Subscription Service, the development, provision or use of a competing software service or product or any other purpose that is to BrainStorm's detriment or commercial disadvantage.

d. It will not access and use the Subscription Service if Customer is a direct competitor, is a subsidiary of a direct competitor, or has an ownership interest in a direct competitor of BrainStorm.

e. It will not use or access the Subscription Service if Customer is legally prohibited from receiving or using the Subscription Service under the laws of the country in which Customer is a resident or from which Customer will access or use the Subscription Service. The Subscription 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 Customer may not use the Subscription Service or upload Customer Data to the Subscription Service where Customer's use would be subject to such laws.

f. IT WILL NOT USE THE SUBSCRIPTION SERVICE TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION, AND WILL NOT PROVIDE ANY SENSITIVE INFORMATION TO BRAINSTORM VIA THE SUBSCRIPTION SERVICE. BRAINSTORM WILL NOT HAVE ANY LIABILITY THAT MAY RESULT FROM CUSTOMER'S USE OF THE SUBSCRIPTION SERVICE TO COLLECT OR MANAGE SENSITIVE INFORMATION. CUSTOMER ACKNOWLEDGES THAT THE SUBSCRIPTION SERVICE WAS NOT DESIGNED OR INTENDED TO PROCESS OR MANAGE SENSITIVE INFORMATION.

g. The Subscription 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.

7. **Data and Content**

a. **Safeguards.** BrainStorm will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. Customer consents to the processing of Customer Data in the United States.

b. **Ownership of Customer Data.** As between the Parties, Customer owns and retains all rights to Customer Data. BrainStorm will use Customer Data only in order to provide the Subscription Service to Customer and only as permitted by applicable law, this Agreement, and the Data Processing Addendum (if applicable). For more information, please see BrainStorm's Privacy Policy, located at https://www.brainstorminc.com/privacypolicy.

c. **BrainStorm License to Customer Data**. By importing or processing Customer Data in the Subscription Service, Customer hereby grants BrainStorm a worldwide, non-exclusive, royalty-free, license to reproduce, distribute, modify, and adapt Customer Data for the sole purpose of providing the Subscription Service and otherwise performing under this Agreement, including the right to disclose Customer Data to BrainStorm's sub-processors as necessary to provide the Subscription Service. BrainStorm will not use, display, disclose or transfer Customer Data without Customer's prior written consent, except as otherwise set forth in this Agreement or in BrainStorm's Privacy Policy.

d. **De-identified Usage Data**. BrainStorm may collect, generate, use, analyze, combine, and aggregate De-Identified Usage Data for any lawful business purpose, including to provide, maintain, secure, analyze, test, develop, evaluate, and improve the Subscription Service and BrainStorm's other products and services; develop benchmarks, analytics, insights, and recommendations; and develop, train, test, evaluate, and improve artificial intelligence and machine-learning models, systems, and features. BrainStorm may combine De-Identified Usage Data derived from Customer with de-identified or aggregated data derived from other customers or sources, provided that such data does not identify Customer or any individual. BrainStorm's use of data obtained from third-party products or services will remain subject to applicable restrictions imposed by the provider of the applicable product or service.

e. **Sharing Data with Third Parties**. Customer hereby consents to BrainStorm's aggregation and sharing of Customer Data and/or Customer's Usage Data with Third-Party Providers from whom Customer has purchased Third-Party Content, or through whom Customer has received access to the Services. Notwithstanding any provisions to the contrary, Customer hereby grants BrainStorm and any such Third-Party Provider with an irrevocable, non-exclusive, royalty-free, fully paid up, perpetual, worldwide right and license, with the right to sublicense, use, reproduce, publish, distribute, perform, aggregate, anonymize, and display, both during and after the Term, Customer Data and/or Customer's Usage Data that is derived from Customer's or its Users' use of the Subscription Service; provided, however, that BrainStorm and/or the Third-Party Provider will only use the Customer Data and/or Usage Data is in accordance with any applicable laws (without limitation, data privacy laws) and for the purpose of providing the Subscription Service.

f. **UK, 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 United Kingdom or European Union General Data Protection Regulation, on Customer's behalf, in the provision of the Subscription Service hereunder, the terms of the BrainStorm Data Processing Agreement, located at https://legal.brainstorminc.com, which are hereby incorporated by reference, will apply. For Customers that are located in the United Kingdom or 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 BrainStorm under this Agreement and pursuant to the provisions of the BrainStorm Data Processing Agreement, will apply. Customer acknowledges in all cases that BrainStorm acts as the data processor of Customer Data and that Customer is the data controller of Customer Data under all applicable data protection laws or regulations. Customer represents and warrants that, to the extent required, it has a lawful basis for the processing of Personal Data. Customer also agrees 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.

g. **Customer Content**

    i. **Ownership of Customer Content**. By providing Customer Content to BrainStorm via the BrainStorm Platform, Customer represents and warrants that Customer or its licensors own or have the necessary licenses, rights, consents, and permissions to grant the licenses granted below to BrainStorm. As between the Parties, Customer owns all right, title, and interest in and to the Customer Content submitted to, uploaded to, or created in the BrainStorm Platform, including all intellectual property and proprietary rights therein. Except as set forth herein, BrainStorm acquires no right, title, or interest from Customer in or to Customer Content. Customer Content shall be considered "Confidential Information" and shall be subject to the confidentiality restrictions contained in the Agreement.

ii. **Content Submission.** The BrainStorm Platform provides Customer the ability to post, upload, submit, publish, display, or transmit Customer Content on or through the BrainStorm Platform, which can be displayed to and used by Customer and its Users. Customer is responsible for any Customer Content submitted or contributed to the BrainStorm Platform by any of its Users, and Customer is fully responsible for such content and Customer's and Users' use of such content, including without limitation its legality, reliability, accuracy, and appropriateness. BrainStorm is not responsible or liable for the content or accuracy of any Customer Content posted by Customer or any of its Users. Customer agrees not to upload any Customer Content to the Subscription Service that (i) violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export or transfer of data or software to and from the US or other countries), including but not limited to, copyright and trademark laws and data privacy laws, (ii) does not comply with the Content Standards (See Section 7(g)(d)), (iii) introduces any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful, or attempts to gain unauthorized access to any parts of the Cloud Service, or (iv) otherwise knowingly interferes with the proper working of the Subscription Service.

iii. **BrainStorm License to Customer Content**. Solely for the purpose of, and only to the extent necessary for BrainStorm to perform its obligations under the Agreement, Customer hereby grants to BrainStorm a worldwide, assignable, sublicensable, royalty-free, revocable license during the Term to display, perform, reproduce, distribute, transmit, broadcast, create Derivatives of, provide User access to, and otherwise use the Customer Content and any Derivatives through and on the BrainStorm Platform. For purposes of this Agreement, the term "Derivatives" of any subject matter shall mean and include, without limitation, all derivatives, enhancements, extensions, improvements, modifications, new products and the like, that to any extent incorporate or are based on or related to any portion of that subject matter.

iv. **Customer Content Standards**. All Customer Content must comply with the following standards (the "**Content Standards**"): Customer Content must not (i) contain any material that is defamatory, violent, pornographic, or depicts or engages in harassment 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) involve commercial activities, advertising or sales, such as contests, sweepstakes and other sales promotions, or (vi) give the impression that the Customer Content emanates from or is endorsed by BrainStorm or any other person or entity.

v. **Violations**. Violations of this Section 7(g) may, in BrainStorm's sole discretion, result in the suspension of Customer's access to the Subscription Service or termination of the applicable Order Form or the Agreement entirely.

8. **BrainStorm's Proprietary Rights.**

a. **Reservation of Rights**. This is an Agreement for access to and use of the Subscription Service, and Customer is 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 Subscription 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 its licensors (if any), and BrainStorm and its licensors retain all ownership rights therein.

b. **Copyrights, Trademarks, and Patents**. The Subscription Service is copyrighted and protected by the laws of the United States and other countries, and by international treaty provisions. In no circumstance is Customer permitted to remove any copyright notice from the Subscription Service. "BrainStorm" 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 Subscription Service.

c. **Suggestions**. BrainStorm encourages all customers to provide comments, feedback, and suggestions to improve, correct, change, or modify the Subscription Service or its operation ("**Suggestions**"). Customer agrees that all such Suggestions will be non-confidential and that BrainStorm will own all rights to use and incorporate such Suggestions into the Subscription Service, without payment or attribution to Customer. Any Suggestions incorporated into the Subscription Service shall not contain any Customer Data.

9. **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.

10. **Indemnification**.

a. **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 BrainStorm Platform and BrainStorm Content, 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 6 and 7(h) 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 Subscription Service with software or other materials not supplied by BrainStorm, (ii) any alteration or modification of the Subscription 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 Section 7(h).

b. **Remedy for Infringement.** Should Customer's right to use the Subscription 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 Customer the right to continue to access and use the Subscription Service; (ii) modify the Subscription Service to render it non-infringing but substantially functionally equivalent to the Subscription 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 Customer any amounts prepaid by Customer for the Subscription Service for the unused portion of the Subscription Term.

11. **Warranties**.

a. **BrainStorm Warranties**. BrainStorm warrants that the BrainStorm Platform and BrainStorm Content will be provided materially in accordance with BrainStorm's published documentation for the BrainStorm Platform and BrainStorm Content, as found on the Website. 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 Subscription Service has been modified or altered by anyone other than BrainStorm, or if the Subscription Service has been abused or misapplied.

b. **Customer Warranties**. When Customer shares Customer Data with BrainStorm or uploads Customer Data to the Subscription Service, Customer represents and warrants that it is the creator and owner of, or that Customer has the necessary licenses, rights, consents, and permissions to use and to authorize BrainStorm to use and distribute the Customer Data as necessary for BrainStorm and its licensors to provide Customer with access to and use of the Subscription Service and to otherwise perform its obligations under this Agreement.

c. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SUBSCRIPTION SERVICE 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 THE SUBSCRIPTION SERVICE WILL SATISFY CUSTOMER'S REQUIREMENTS OR (WITHOUT PREJUDICE TO THE LIMITED WARRANTY ABOVE) THAT IT IS WITHOUT DEFECT OR ERROR OR THAT CUSTOMER'S ACCESS THERETO WILL BE UNINTERRUPTED.

12. **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 SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS CONTAINED HEREIN, NEITHER PARTY'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 THE SUBSCRIPTION SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. THE FOREGOING WILL NOT LIMIT CUSTOMER'S OBLIGATION TO PAY FEES UNDER THIS AGREEMENT AND THE ORDER FORM. THE PARTIES ACKNOWLEDGE THAT THE AMOUNT OF FEES PAYABLE BY CUSTOMER TO BRAINSTORM HEREUNDER REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEITEHR PARTY 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.

13. **THIRD-PARTY CONENT.** BRAINSTORM DISCLAIMS ALL LIABILITY WITH RESPECT TO THIRD-PARTY CONTENT THAT CUSTOMER PURCHASES FROM THE MARKETPLACE. BRAINSTORM'S LICENSORS WILL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

14. **GOVERNING LAW.** THIS AGREEMENT AND ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE AND THE UNITED STATES OF AMERICA, EXCLUDING ITS PRINCIPLES OF CONFLICT OR CHOICE OF LAWS. REGARDLESS OF THE APPLICABLE GOVERNING LAW, CUSTOMER AND BRAINSTORM AGREE TO EXCLUDE THE 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 OR ANY THIRD-PARTY PROVIDER'S INTELLECTUAL PROPERTY RIGHTS. In the event that a Party who engages 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.

15. **Miscellaneous.**

    a. **Entire Agreement**. This Agreement, each Order Form, the Data Protection Addendum (if applicable), and the BrainStorm Privacy Policy together constitute the entire agreement between the Parties for the provision of and access to the Subscription Service, and supersede all other proposals and agreements, whether electronic, oral or written, between the Parties. BrainStorm objects to and rejects any additional or different terms proposed by Customer, including those contained on Customer's 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 Subscription Service (but Customer's Fees and charges will not change during the Subscription Term except as explained in the Fees section above). If BrainStorm makes a material update or change to these terms and conditions, BrainStorm will provide notice 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 Customer does not agree with a modification to this Agreement, Customer must notify BrainStorm in writing within thirty (30) days after receiving notice of the modification. If Customer gives this notice, Customer's subscription will continue to be governed by the terms and conditions of this Agreement prior to modification for the remainder of Customer's 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.** Customer may not assign, sublicense, or transfer this Agreement, Customer's access to the Subscription 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 Customer with 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 or any Content Specific Terms, Customer agrees 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 events 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 herein and will be deemed delivered as of the date of actual receipt.

    i. If to BrainStorm: BrainStorm, Inc. Ten South Center Street, American Fork, Utah 84003, Attn: Legal Department

    ii. To Customer: Customer's address set forth in the Order Form.

    iii. BrainStorm may give electronic notices by general notice via the Subscription Service Admin Portal to the designated admin accounts, via email to Customer's e-mail address(es) on record with BrainStorm, or as otherwise agreed. Customer must keep all of its account contact information current.

k. **Injunctive Relief.** Customer hereby expressly agrees 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. **Service Supplied to the Government.** The Subscription 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 Subscription 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.

m. **Export Law Assurances.** Customer will not export or re-export or allow the export or re-export of the Subscription 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.

n. **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.