COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED $100,000)

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

BrainStorm, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0   GENERAL DESCRIPTION.

1.01   The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide QuickHelp Subscription for 9 months, including 3 hours of installation support.

2.0   PAYMENT PROVISIONS.

2.01   County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of $ $29,880.00   .

3.0   TERM OF AGREEMENT.

3.01   The term of this Agreement is from   June 20, 2016   to   March 19, 2017   , unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02   The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0   SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01   The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A   **Scope of Services/Payment Provisions**

Exhibit B   End User License Agreement (EULA) for BrainStorm QuickHelp

5.0   PERFORMANCE STANDARDS.

5.01   CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02   CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03   CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0   PAYMENT CONDITIONS.

6.01   Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.

6.02   Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.

6.03   Invoice amounts shall be billed directly to the ordering department.

6.04   CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0   TERMINATION.

7.01   During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02   The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.03   The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0   INDEMNIFICATION.

8.01   Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9.0   INSURANCE REQUIREMENTS.

9.01   Evidence of Coverage:
Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02   Qualifying Insurers:
All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03   Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than $1,000,000 per occurrence.

> *(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than $500,000 per occurrence.

> *(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than $1,000,000 each person, $1,000,000 each accident and $1,000,000 each disease.

> *(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than $1,000,000 per claim and $2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

> *(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

9.04   Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0   RECORDS AND CONFIDENTIALITY.

10.01   Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02 County Records.   When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.

10.03 Maintenance of Records.   CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04 Access to and Audit of Records.   The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of $10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05 Royalties and Inventions.   County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0   INDEPENDENT CONTRACTOR.

13.01   In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0   NOTICES.

14.01   Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Michael Gross, Division Manager	David Hatch, Senior Manager, Sales
Name and Title	Name and Title
1590 Moffett Street Salinas, California 93905	PO Box 495 Orem, Utah 84059
Address	Address
831-759-6941	801-229-1337
Phone	Phone

15.0   MISCELLANEOUS PROVISIONS.

15.01   Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02   Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.

15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

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16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY	CONTRACTOR

COUNTY OF MONTEREY

By: _____
        Contracts/Purchasing Officer

Date: _____

By: _____
        Department Head (if applicable)

Date: _____

Approved as to Form[1]

By: _____
        County Counsel

Date: _____

Approved as to Fiscal Provisions[2]

By: _____
        Auditor/Controller

Date: _____

Approved as to Liability Provisions[3]

By: _____
        Risk Management

Date: _____

CONTRACTOR

_____
BrainStorm, Inc.
Contractor's Business Name*

By: _____
        (Signature of Chair, President, or
        Vice-President)*

_____
Name and Title

Date: _____

By: _____
        (Signature of Secretary, Asst. Secretary, CFO,
        Treasurer or Asst. Treasurer)*

_____
Name and Title

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

[1]Approval by County Counsel is required
[2]Approval by Auditor/Controller is required
[3]Approval by Risk Management is required only if changes are made in sections 7 or 8

Exhibit A

END-USER LICENSE AGREEMENT FOR BRAINSTORM QUICKHELP

This End-User License Agreement (this "Exhibit A") is attached to and made part of that Standard Agreement (the "Standard Agreement") made by and between BrainStorm, Inc., and the County of Monterey, a political subdivision of the State of California ("Licensee") effective as of the date set forth in the Standard Agreement. Licensee and BSI each may be referred to individually as a "Party" or collectively as the "Parties."

1.   Software. For the purpose of this Exhibit A, the licensed QuickHelp computer software and electronic instructional content downloaded and/or installed, together with the supporting documentation for such, including any modified, updated or enhanced versions thereof in the future, will be referred to as the "Software."

2.   License. Subject to the terms and conditions of this Exhibit A and upon Licensee's full payment of the applicable fees, BSI hereby grants to Licensee, and Licensee hereby accepts from BSI, a non-exclusive, non-transferable, non-sublicensable, time-limited, restricted, revocable internal license to Use (as defined below) the Software in connection with the number of authorized seats set forth in the Order Form (as defined below). "Use" means that Licensee may, subject to the terms and conditions of this Exhibit A, install, use, access, run, or otherwise interact with the Software for its internal business or personal purposes, as the case may be, in accordance with the applicable documentation. Licensee shall not allow more than one individual user to utilize a seat, though Licensee may reassign seats from time to time to new users who are replacing former users who have terminated employment or otherwise changed job status or function. "Order Form" means the initial order form or invoice, whether submitted online or in hard copy, which evidences, together with this Exhibit A, the initial license of the Software, including any subsequent order forms submitted online or in hard copy by Licensee in connection with this Exhibit A, and which BSI has accepted, which includes some or all of the following information: the name of the Licensee, the Licensee's address and billing information, the length of the Term (if applicable), the license and other fees due from Licensee (if applicable), the quantity of authorized seats being licensed hereunder (if applicable), and any maintenance and support being purchased (if applicable).

3.   Use Restrictions. BSI and, as applicable, BSI's licensors, vendors and/or suppliers, reserve all rights not expressly granted to Licensee herein. Without limiting the generality of the foregoing, Licensee shall not (except to the limited extent expressly permitted by applicable law): (a) copy, modify, adapt, rent, lease, assign, sell, 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 Software or any portion thereof except as provided in this Exhibit A; (b) timeshare the Software, make the Software available to others on the Internet or any on-line service, or allow others to copy, access or use the Software; (c) translate, merge, reverse engineer, decompile, or disassemble the Software; (d) use any individual component of Software in a standalone mode; (e) create derivative works based upon the Software; (f) use the Software to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory, nor to perform any activity which breaches the rights of any third party; (g) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement that is not otherwise applicable; or (h) transfer the Software or Licensee's license rights under this Exhibit A, in whole or in part. All restrictions on Licensee's use of the Software in this Section 3 shall also apply with respect to any third-party software included in the Software. Licensee agrees to defend, indemnify, and hold BSI harmless from and against any and all claims arising out of Licensee's unauthorized use of the Software or other breach of this Exhibit A. Licensee may not Use the Software if Licensee is, or is affiliated with, a direct competitor of BSI.

4.   Ownership of the Software and Intellectual Property. All rights, title and interest in and to the Software (including any updates or upgrades thereto (if any) provided through this Exhibit A or in connection with a separate support or maintenance agreement), including all worldwide intellectual property rights therein, shall remain with BSI or its licensors, vendors and/or suppliers, as the case may be. No title to or ownership of the Software is transferred to Licensee. BSI may make changes to the Software at any time without notice, and except as otherwise expressly set forth herein, is not obligated to support, maintain, upgrade or update the Software. The Software is licensed to Licensee, not sold. Except as otherwise expressly provided herein, BSI grants no express or implied right under any BSI patent, copyright, trademark, or other intellectual property right. Licensee acknowledges that the Software constitutes proprietary information and trade secrets of BSI or its licensors, vendors and/or suppliers, whether or not any portion thereof is or may be the subject of a valid copyright, trademark or patent. Licensee shall maintain all information and data contained in the Software or any portion thereof in strict confidence and shall not publish, use, communicate or disclose, or permit to be published, used, communicated or disclosed, to third parties such information and data without BSI's prior written consent.

5.   Maintenance and Support. BSI may provide up to ten (10) hours of technical support to Licensee per twelve (12) month period during the Term, in BSI's sole discretion. Additionally, BSI may provide updates and upgrades, if any, to Licensee on the same basis that BSI provides updates and upgrades to its other customers, in BSI's sole discretion. BSI shall have no other maintenance or support obligations to Licensee.

6.   Third-Party Software. The Software may include or be bundled with hardware or other software programs licensed or sold by a licensor other than BSI. BSI DOES NOT WARRANT NON-BSI SOFTWARE OR PRODUCTS. ANY AND ALL SUCH THIRD-PARTY PRODUCTS WHICH MAY BE DISTRIBUTED WITH THE SOFTWARE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND LICENSEE'S INSTALLATION AND USE THEREOF, AND ANY RELATED WARRANTY SERVICE, IS SUBJECT TO THE APPLICABLE THIRD-PARTY WARRANTY, IF ANY.

7.   Limited Warranty. BSI warrants for a period of thirty (30) days from the delivery date of the Software that (a) the media provided by BSI, if any, on which the Software is recorded will be free from material defects in materials and workmanship under normal use, and (b) the operation of the Software, as provided by BSI, will substantially conform to BSI's published documentation for the Software; *provided, however,* that BSI shall not be liable under these limited warranties if the Software has been modified or altered by anyone other than BSI, if the Software has been abused or misapplied, or if Licensee has failed to incorporate all upgrades and updates that BSI provided to Licensee. If such a defect under warranty Section 7(a) above is reported during the warranty period, licensee shall return the BSI media to BSI for repair or replacement, in BSI's sole discretion. If a reproducible defect under warranty Section 7(b) above is reported by Licensee during the warranty period, Licensee shall promptly notify BSI or return the Software to BSI, as the case may be, and BSI shall, in its sole discretion, either use its commercially reasonable efforts to resolve the nonconformity or refund the license fees paid by Licensee for the Software.

8.   NO OTHER WARRANTIES. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS INDEPENDENTLY VERIFIED THAT THE SOFTWARE IS APPROPRIATE FOR THE PURPOSES FOR WHICH LICENSEE INTENDS TO USE IT, AND THAT LICENSEE DID NOT RELY UPON ANY SKILL OR JUDGMENT OF BSI OR ITS OR ITS LICENSORS, VENDORS AND/OR SUPPLIERS, AS THE CASE MAY BE, IN SELECTING THE SOFTWARE. THE LIMITED WARRANTIES IN SECTION 7 HEREOF ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, AND BSI'S ONLY WARRANTY LIABILITIES, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. LICENSEE ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE. THE FOREGOING LIMITED WARRANTIES DO NOT APPLY TO UPDATES, UPGRADES, MAINTENANCE, OR SUPPORT; WHICH IF PROVIDED ARE PROVIDED "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BSI AND ITS LICENSORS, VENDORS AND/OR SUPPLIERS DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR OTHER WARRANTIES, CONDITIONS

OR TERMS OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS OF MERCHANTABILITY, TITLE, SATISFACTORY QUALITY, NONINFRINGEMENT, COMPATIBILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED THROUGH THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT. ANY EXPRESS WARRANTY MADE OUTSIDE OF THIS EXHIBIT A IS EXCLUDED AND SUPERSEDED. BSI DOES NOT WARRANT THAT THE SOFTWARE SHALL SATISFY LICENSEE'S REQUIREMENTS OR (WITHOUT PREJUDICE TO THE LIMITED WARRANTY ABOVE) THAT IT IS WITHOUT DEFECT OR ERROR OR THAT THE OPERATION THEREOF SHALL BE UNINTERRUPTED OR ERROR FREE.

9.   **LIMITATIONS OF LIABILITY.** IN NO EVENT WILL BSI, OR ANY OF ITS LICENSORS, VENDORS, SUPPLIERS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING, BE LIABLE TO LICENSEE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF BSI OR A BSI REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. BSI'S CUMULATIVE LIABILITY FOR DAMAGES 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 BSI FOR THE SOFTWARE THAT CAUSED THE DAMAGES. LICENSEE ACKNOWLEDGES THAT THE LICENSE AND OTHER FEES PAYABLE BY LICENSEE TO BSI HEREUNDER REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS EXHIBIT A AND THAT BSI WOULD NOT ENTER INTO THE STANDARD AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THESE LIABILITY LIMITATIONS APPLY EVEN IF CONTRACTUAL REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IN ADDITION, BSI DISCLAIMS ALL LIABILITY OF ANY KIND OF BSI'S LICENSORS, VENDORS, AND SUPPLIERS. NO ACTION MAY BE BROUGHT AGAINST BSI LATER THAN ONE YEAR FROM THE COMMENCEMENT OF THE STANDARD AGREEMENT.

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13.   Payment for the Software. Licensee shall be invoiced by BSI and payment in U.S. dollars shall be as and when provided in the invoice (typically net 30). The Standard Agreement, including the license and any services, support or maintenance which may apply, shall automatically terminate if Licensee fails to pay any required fees when due. Except as otherwise expressly provided herein, all payments are non-cancellable and non-refundable. The license or other fees due during any month or year of the term shall be at BSI's then current rates, as such my change from time to time. If Licensee is late in paying any amounts to BSI, such overdue amounts shall accrue interest at a rate of 1.5% per month until Licensee pays in full (including interest).

14.   Payment of Taxes. In the event that any withholding, sales, value-added, use or other taxes or government fees, assessments or charges are payable because of the Standard Agreement, the license of the Software to Licensee, or because of any payment by Licensee, then Licensee shall pay all such taxes, fees, assessments and charges in addition to all other payments, regardless of when such tax liability is asserted. If BSI is required to make any such payments, Licensee agrees to reimburse BSI for such payments promptly upon notice from BSI.

15.   Audit. Licensee shall permit BSI or its agents, at BSI's expense, to conduct audits to verify Licensee's compliance with this Exhibit A. Such audits shall be conducted during normal business hours and after reasonable advance notice from BSI to Licensee.

16.   Term. Unless otherwise terminated as provided herein, the Standard Agreement shall have the term specified in the body of the Standard Agreement and shall automatically renew for successive one year periods unless either party gives the other party notice of its intent not to renew at least thirty (30) days prior to the expiration of the current term (the "Term"). License and other fees due from Licensee to BSI during the Term shall be at BSI's then current rates, as such may change from time to time.

17.   Termination. The Standard Agreement, including the license, together with any maintenance, and/or support that may be granted in connection herewith, shall automatically terminate, without any notice or action by either party, upon the occurrence of any of the following: (a) at the end of the Term; (b) if Licensee materially breaches any provision of the Standard Agreement; (c) upon thirty (30) days notice from BSI of its desire to terminate, for any reason or no reason; or (d) upon non-payment by Licensee of any license or other fees when due. Upon expiration or termination of the Standard Agreement, Licensee shall immediately, in BSI's sole discretion, either (x) cease all use of the Software, uninstall all the Software, and erase or destroy all copies of the Software within the possession or control of Licensee, or (y) return all the Software, the related documentation, and all associated end-user materials, including all copies thereof, to BSI. Furthermore, upon expiration or termination of the Standard Agreement, BSI may disable all functionality of the Software and refuse Licensee further access to BSI's website. The foregoing shall not limit or affect any remedy available to BSI as a result of any breach of the Standard Agreement by Licensee.

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18.   Survival. Sections 3, 4, 6, 8–24, and 26 shall survive termination of the Standard Agreement for any reason whatsoever.

19.   GOVERNING LAW; SUBMISSION TO JURISDICTION AND VENUE. THE STANDARD AGREEMENT AND ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AND THE UNITED STATES OF AMERICA, EXCLUDING ITS PRINCIPLES OF CONFLICT OR CHOICE OF LAWS.

REGARDLESS OF THE APPLICABLE GOVERNING LAW, LICENSEE AND BSI AGREE TO EXCLUDE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. TO THE EXTENT PERMITTED UNDER THE APPLICABLE LAW, BSI MAY BRING AN ACTION IN ANY JURISDICTION FOR THE PURPOSE OF: (A) ENFORCING A JUDGMENT; OR (B) PROTECTING BSI'S INTELLECTUAL PROPERTY RIGHTS.

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22.   Severability. If any provision in this Exhibit A shall be found or be held to be invalid, unenforceable, or in conflict with applicable law in any jurisdiction in which this Exhibit A is being performed, such provision shall be construed, limited, or altered, as necessary, to eliminate the invalidity, unenforceability, or conflict, and all other provisions of this Exhibit A shall remain unaffected.

23.   Waiver. No action taken pursuant to the Standard Agreement, including any investigation by or on behalf of any party, shall 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 the Standard Agreement or failure to perform by the other party shall 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 shall operate as a waiver thereof, nor shall 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.

24.   Assignment. Licensee may not assign, sublicense, or transfer the Standard Agreement without prior written consent of BSI. Any such purported assignment, sublicense, or transfer shall be null and void. BSI may terminate the Standard Agreement in the event of any such attempted assignment, sublicense, or transfer upon written notice to Licensee.

25.   Publication. Licensee hereby consents to BSI's written and oral disclosure of Licensee's name as an end user of the Software in a factual listing of BSI's customers (with or without a list of the License Category of the Software licensed by Licensee) to be published within marketing and promotional materials, in presentations, on tradeshow signs and materials, on BSI external website and/or to financial and industry analysts.

26.   Entire Agreement; Amendment. This Exhibit A, together with the Standard Agreement and all applicable Order Forms (which are hereby incorporated herein by reference), sets forth the entire

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