



BETA TESTING AGREEMENT

Important: Please read this Beta Testing Agreement (“Agreement”) carefully as it sets out the terms and conditions you must agree to in order to participate as a Beta test site.

GENERAL TERMS AND CONDITIONS

- A. Brainshark frequently develops pre-release Beta versions of software functionality, not immediately available for public release, including modifications, enhancements, improvements, updates, additions, derivative works, documentation and related material (“Beta Software”).
- B. Brainshark desires that the Beta Software be tested prior to a generally available commercial release.
- C. Licensee wishes to serve as a Beta test site for such Beta Software and acknowledges the Beta Disclaimer;

BETA DISCLAIMER

THE BETA SOFTWARE LICENSED HEREUNDER IS BELIEVED TO CONTAIN DEFECTS AND A PRIMARY PURPOSE OF THIS BETA TESTING AGREEMENT IS TO OBTAIN FEEDBACK ON SOFTWARE PERFORMANCE AND THE IDENTIFICATION OF DEFECTS. LICENSEE IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE BETA SOFTWARE AND/OR ACCOMPANYING MATERIALS.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree as follows:

1. **LICENSE GRANT.** Brainshark grants to Licensee a non-exclusive, non-transferable, revocable license to use the Beta Software solely for Beta testing and use from the acceptance date of this Agreement until the official release date of the generally available commercial version of the Beta Software, subject to the term and conditions below. Brainshark may vary the duration of the test period at any time and for any reason.
2. **FEEDBACK.** In consideration for receiving access to the Beta Software for testing, Licensee agrees to serve as a “Beta test site” for the Beta Software and will gather and report test data to Brainshark in the manner and within the time period of this Agreement. Licensee agrees to give Brainshark feedback, comments or enhancement suggestions on the Beta Software (the “Feedback”) and hereby assigns to Brainshark all rights, title and interest to such ideas for enhancements, including any product enhancements developed as a result of such ideas. Licensee agrees that Brainshark may use the Feedback for any purpose.
3. **CONFIDENTIAL INFORMATION.** Licensee agrees that the Beta Software is the sole and exclusive property of Brainshark and includes valuable trade secrets and other intellectual property of Brainshark. Licensee agrees to treat the Beta Software and any documentation or other materials

provided with the Beta Software as confidential, and will not without the prior express written authorization of Brainshark:

- a) Demonstrate, copy, sell, market or grant access to the Beta Software to any third party; or
 - b) Publish or otherwise disclose information relating to performance or quality of the Beta Software to any third party or share any documentation or other materials relating to the Beta Software with any third party; or
 - c) Modify, reuse, disassemble, decompile, reverse engineer or otherwise translate the Beta Software or any portion thereof.
4. **NO WARRANTY.** The Beta Software is prerelease code and is not at the level of performance or compatibility of a final, generally available product offering. The Beta Software may not operate correctly and may be substantially modified prior to first commercial shipment, never released commercially, or withdrawn after commercial release. The Beta Software is provided "AS IS" without warranty of any kind, including without limitation, any warranty as to performance, non-infringement of third party rights, merchantability, or fitness for a particular purpose. The entire risk arising out of the use or performance of the Beta Software remains with Licensee. In no event shall Brainshark be liable for any damage whatsoever arising out of the use of or inability to use the Beta Software, including without limitation, any direct, indirect, consequential, exemplary, special, incidental or punitive damages, or damages for lost data or lost profits, even if Brainshark has been advised of the possibility of such damages.
 5. **REFERENCE.** Upon completion of the Beta testing period, Brainshark may request Licensee to provide material, statistics, or information that is not deemed confidential to Licensee's business for use in press releases, customer testimonials, and as a reference in marketing and sales initiatives by Brainshark.
 6. **PRODUCT SUPPORT.** Licensee acknowledges that Brainshark is under no obligation to provide (a) technical support under the terms of this Agreement, (b) to continue to develop, productize, support, repair, offer for sale or in any other way continue to provide or develop Beta Software either to Licensee or to any other party, and (c) provides no assurance that any specific errors or discrepancies in the Beta Software will be corrected.
 7. **EXPIRATION.** Licensee's rights with respect to the Beta Software will expire upon the generally available commercial release of the Beta Software. Either party may terminate this Agreement at any time with or without reason by providing advance written notice. Upon any expiration or termination of this Agreement, the rights and licenses granted under this Agreement shall immediately terminate. Licensee participation privileges may be terminated immediately without written notice upon failure to comply with any of the terms and conditions of this Agreement or failure to provide reasonable feedback in a timely manner.
 8. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement constitutes the entire and only agreement between the parties for Beta Software and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.
 9. **GOVERNING LAW.** This Agreement shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.