

BRAINGEENERS INTERNATIONAL B.V. | TERMS & CONDITIONS

1. General

For the purposes of these Terms & Conditions, which will be applicable as of October 25, 2017, the following shall be understood by:

Customer: the natural person or legal entity having a legal relationship with Braingeeners;

Braingeeners: Braingeeners International B.V., a private company with limited liability having its address at Johan Huizingalaan 763A, 1066 VH Amsterdam, the Netherlands;

Agreement: each and any arrangement between Braingeeners and Customer in pursuance of which Braingeeners binds itself to perform services;

Performance: obligation to perform (*inspanningsverbinten*).

2. Scope

2.1 The Terms & Conditions shall be applicable to each Performance, offer, juristic act and engagement by Braingeeners for Customer, unless agreed on otherwise in writing. The Terms & Conditions shall also apply to any possible supplementary or follow-up engagements.

2.2 The general terms and conditions of the Customer shall expressly not be applicable.

3. Conclusion of agreement

3.1 The Terms & Conditions shall constitute an integral part of each and any Agreement irrespective of the way in which it was concluded.

3.2 An agreement is concluded as soon as Customer has signed the offer or engagement confirmation, and this signed offer or engagement confirmation has been received by Braingeeners.

3.3 The agreement can also be concluded verbally, but in that case only after, and as soon as Braingeeners has confirmed it in writing or via e-mail.

3.4 As long as the Agreement has not been concluded, Braingeeners reserves the right to employ the capacity available within its organization elsewhere.

3.5 The offer or engagement confirmation is based on the information supplied by Customer at that moment. The offer or engagement confirmation is assumed to be a correct and complete representation of the (contents of the) Agreement.

3.6 The Agreement replaces and integrally takes the place of any and all preceding offers, correspondence, agreements or other communication, irrespective of whether the Agreement was concluded in writing or verbally.

3.7 The Agreement has been entered into for an definite period of time, and does terminate by accomplishment, unless it appears from its contents or from its nature that it was concluded for an indefinite period of time.

4. Cooperation by Customer

4.1 Customer shall be responsible for providing access to any and all information and documents which Braingeeners deems required for the proper execution of the Agreement. Customer is obligated to supply Braingeeners with this information and these documents timely and in the way desired and in the correct form.

4.2 Customer is obligated to inform Braingeeners without any delay of facts and circumstances that may be of importance to the execution of the Agreement.

4.3 If Braingeeners will provide services at the Customer's premises, Customer shall take care of making available to Braingeeners workspace and any and all other provisions and facilities that Braingeeners deems necessary and/or required for Braingeeners to be able to execute the Agreement. This applies i.e. to making available the required digital facilities. If and in as far as Customers makes computer facilities available to Braingeeners, Customer shall be and remain liable and responsible for adequate backup protection and anti-virus procedures.

4.4 Unless the contrary arises from the nature of the Agreement, Customer shall make its employees available to Braingeeners in order to give Braingeeners the possibility to execute the Agreement. If specific employees are required, this will be laid down in the offer or engagement confirmation. Customer guarantees that the employees made available by it are sufficiently educated, skilled and experienced. If Customer is not able to make the employees required available, it shall be responsible for making additional or other employees available that meet the requirements to be imposed on them.

4.5 Customer has the independent obligation to protect the personal data in connection with the processing of such data, such as the delivery of personal data pertaining to persons working or formerly working for Customer, for its clients or third parties, also in the event such data originates from third parties or is delivered by third parties pursuant to instructions of the Customer. Braingeeners cannot be held liable in the event Customer breaches this obligation and the Customer agrees to indemnify and hold Braingeeners harmless from claims of third parties.

4.6 After parties have completed the Performance arising from them from the Agreement, Braingeeners will return to Customer, on Customer's request, the original documents placed at its disposal. If this is necessary for the reliability and/or completeness of the Performance executed by Braingeeners, copies of these aforementioned original documents will be added to Braingeeners' files. Any and all files or records of Braingeeners shall be and remain the property of Braingeeners.

4.7 Any and all extra expenses and fees in consequence of delay in the execution of the Agreement because Customer was not, or not timely, able to place the information, documents, facilities and/or employees at the disposal shall be for Customer's account.

5. Brainpeek platform

5.1 The provisions in this clause apply in addition to the rest of the Terms & Conditions if the Customer makes use of the Brainpeek platform as provided by Braingeeners.

5.2 Customer is responsible for any activity that occurs through its account and Customer agrees that it will not sell, transfer, license or assign his/her account, username, or any account rights. With the exception of people or businesses that are expressly authorized to create accounts on behalf of their employees or clients, Braingeeners prohibits the creation of and Customer agrees that it will not create an account for anyone other than itself.

5.3 Customer is responsible for keeping the passwords secret and secure.

5.4 Violation of the Agreement and/or the Terms & Conditions may, in sole discretion of Braingeeners, result in termination of Customer's Brainpeek account. Customer understands and agrees that Braingeeners cannot and will not be responsible for the content posted on the Brainpeek platform and Customer uses Brainpeek at Customer's own risk. If Customer violates the letter or spirit of the Terms & Conditions and/or the Agreement, or otherwise create risk or possible legal exposure for Braingeeners, Braingeeners may stop providing all or part of the service to Customer.

5.5 Customer is responsible for all data charges it incurs through use of the service.

5.6 Braingeeners prohibits crawling, scraping, caching or otherwise accessing any content on the service via automated means.

5.7 Braingeeners does not represent or warrant that (i) Brainpeek will be error-free or uninterrupted, (ii) that defects will be corrected, or (iii) that Brainpeek or the Braingeeners' servers that makes Brainpeek available is free from any harmful components, including, without limitation, viruses. Braingeeners does not make any representations or warranties that the information (including any instructions) on the service is accurate, complete, or useful.

5.8 Although it is the intention of Braingeeners for the service to be available as much as possible, there will be occasions when the service may be interrupted, including, without limitation, for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment.

5.9 Braingeeners is not a backup service and Customer agrees that it will not rely on the service for the purposes of Content backup or storage. Braingeeners will not be liable to you for any modification, suspension, or discontinuation of the services, or the loss of any Content. You also acknowledge that the Internet may be subject to breaches of security and that the submission of Content or other information may not be secure.

6. Execution of the agreement

6.1 Braingeeners will exert itself to execute the Agreement with due care in accordance with the requirements of good professionalism. However, Braingeeners does not guarantee achieving the result contemplated by Customer.

6.2 The Articles 7:404 and 7:407, paragraph 2, of the Civil Code shall not be applicable. Braingeeners determines in what way the Agreement will be executed, unless agreed otherwise in writing. It determines which of its staff execute the Agreement, in which matter Customer's wishes shall be taken into account as much as possible. In the event the Agreement explicitly states the name or names of staff members of Braingeeners, Braingeeners will take care of it within the limits of its ability, that this staff member or these staff members is/are available to execute the Agreement.

6.3 Braingeeners can only carry out more activities than it was instructed to carry out, and charge Customer for them if Customer has given permission for this in advance. The requirement of permission shall not apply if the carrying out of more work can be deemed in reason to fall within Braingeeners' duty of care.

6.4 Braingeeners may form a file in connection with the execution of the Agreement containing copies of relevant documents, which shall remain the property of Braingeeners.

7. Confidentiality and data protection

7.1 Unless (i) any (inter)national law, regulation or professional code requires Braingeeners to disclose; (ii) Customer or persons affiliated to or working for Braingeeners are involved on their own account in civil, administrative or criminal proceedings in which this information can be relevant, Braingeeners and its staff members shall not disclose any confidential information and personal data or release same to any third party other than the ones listed hereinafter in paragraph 2.

7.2 Customer agrees that in connection with the Agreement concluded between Braingeeners and Customer, Braingeeners may process confidential information and personal data pertaining to Customer, its clients and third parties, including the sharing thereof with other parties if necessary in the context of the execution of the Agreement.

7.3 Braingeeners will implement adequate measures to protect the confidential information and personal data and shall notify third parties and staff members engaged by it of the confidential nature of the information.

7.4 Customer is not allowed to disclose to third parties the contents of reports, opinions, advice, and/or any other written or verbal statement of Braingeeners that was/were not drawn up with the object to provide third parties with information, without prior written permission of Braingeeners.

7.5 Braingeeners may disclose its activities in global terms, not in detail, to third parties, among which (potential) clients, with the sole object to convince the third parties of Braingeeners' expertise in this field, and on the conditions that, when doing this, Braingeeners does not act in violation of the obligations arising from this clause.

8. Intellectual property

8.1 Braingeeners reserves any and all rights, including any and all intellectual property rights, related to any work used by it and/or developed by it, in as far as they arise from the law.

8.2 Customer is expressly prohibited from copying, publishing or using for commercial purposes works, including computer software, system designs, working method, opinion/advice, model contracts and other works of intellectual property as meant in paragraph 1 of this clause, all this in the broadest sense of the word, alone or together with a third party, unless these works were developed and/or made by Braingeeners with the object to be copied, published or used for commercial purposes. Copying and/or publication requires prior written permission of Braingeeners. Customer shall have the right to use and copy documents written by Braingeeners within its own organization, as long as this is in agreement with the objective of the Agreement. This provision shall continue to apply even if the Agreement is terminated (prematurely).

8.3 Customer is expressly prohibited from placing work produced by Braingeeners, whether or not within the framework of the execution of the Agreement, that are protected by rights of intellectual property, at the disposal of a third party or parties, other than with the objective to obtain an opinion from this third party or parties on the quality of Braingeeners' work.

BRAINGINEERS INTERNATIONAL B.V. | TERMS & CONDITIONS

- 8.4 The Braingineers name and logo are trademarks of Braingineers, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Braingineers. In addition, all page headers, custom graphics, button icons and scripts are proprietary rights of Braingineers, and may not be copied, imitated or used, in whole or in part, without prior written permission from Braingineers
- 9. Payment**
- 9.1 Customer is obligated to pay the fee charged in conformity with this article of the Terms & Conditions, possibly augmented with the expenses and sales tax, if any, within thirty (30) calendar days as of the date of the invoice. Customer shall not have the right to apply a deduction to the amount charged or to set it off against a counterclaim. Furthermore, under no circumstances shall Customer have the right to suspend payment of the amount charged, unless Article 262 or 263 of Book 6 of the Civil Code is applicable.
- 9.2 Payment shall be made in euros (EUR), unless explicitly otherwise agreed.
- 9.3 In the event of failure to pay the invoice timely, Customer will be in default without any further warning. In that situation Customer shall owe Braingineers the cumulative interest of 2% per month in respect of the outstanding principal amount as of the date of the written demand for payment till the day of full settlement, as well as 15% of the principal in respect of extrajudicial collection charges. Any and all judicial expenses incurred by Braingineers in connection with the collection shall be for Customer's account. The above is without prejudice to any and all other rights of Braingineers.
- 9.4 Braingineers may demand of Customer that it provide security at once in whatever form, if Braingineers presumes that Customer's financial position gives cause for this. Braingineers may on the same grounds demand advance payment of Customer. In the event Customer fails to provide the security demanded and/or make the advance payment, Braingineers may suspend the execution of the Agreement without any prior written notification, while all that Customer owes Braingineers at that moment shall become due and payable at once, and this without prejudice to the other rights of Braingineers.
- 9.5 Without prejudice to Article 7:407, paragraph 1, of the Civil Code, it shall apply, in case the Agreement was concluded by two or more Customers jointly, that they are severally liable for the payment of the amount charged, as well as severally liable for any other obligations in connection with the Agreement.
- 10. Term of execution**
- 10.1 The period of time within which Braingineers will execute the Agreement is dependent on many factors, such as the quality of the information made available by Customer, the cooperation of Customer and of third parties, so that the dates on which Braingineers will have executed the Agreement may not be considered deadlines, unless this was explicitly agreed.
- 10.2 Customer cannot terminate the Agreement prematurely in connection with exceeding the period of time agreed on, unless it has been established that it is impossible for Braingineers ever to execute the Agreement or to complete the Performances arising from the Agreement, in whole or in part, within a reasonable period after the lapse of the dates agreed on.
- 11. Termination**
- 11.1 Braingineers may terminate the Agreement (prematurely) by means of a certified letter if: Customer is adjudicated bankrupt, at any rate applies (itself) for bankruptcy, Customer is granted an official moratorium on payments, at any rate applies (itself) for a moratorium, and/or Customer does not, at any rate not fully, comply with its obligations under this Agreement.
- 11.2 Either party may terminate the Agreement, immediately upon written notice to the other party, if a force majeure event affecting the other party continues substantially uninterrupted for a period of three (3) months or more.
- 11.3 In the event the Agreement was terminated (prematurely), either party shall promptly return to the other party any and all goods, objects and documents that belong in ownership to the other party, and that it has in its possession, on condition that Braingineers may retain a copy of each document for its files.
- 12. Liability**
- 12.1 Braingineers shall execute the engagement in conformity with the requirements of good professional skill and with due observance of the care that may be expected from it. Braingineers shall not be liable for loss caused by third parties. The applicability of Article 6:76 of the Civil Code is excluded.
- 12.2 Customer is obligated to provide any and all information that may be of importance for a correct execution of the engagement. Shortcomings in consequence of incorrect or incomplete information shall be for account and risk of Customer, at any rate not for account and risk of Braingineers. Braingineers shall not be liable for any shortcoming under the Agreement, if the shortcoming is the direct or indirect consequence of fault in hardware, software or firmware of Braingineers or Customer, for the correct generating of processes and/or receiving data-related information.
- 12.3 Without prejudice to the provision in Article 6:89 of the Civil Code, the right to damages is extinguished in any case twelve months after the loss-causing event from which the liability arises presented itself, or has to be deemed to have come to the knowledge of Customer.
- 12.4 In the event one or more third parties claim from Braingineers compensation of loss they suffered in connection with a service rendered to Customer by or on behalf of Braingineers, Customer shall indemnify Braingineers against these claims and additional expenses, in as far as Braingineers has to compensate the third party or parties for more loss than it would have had to pay Customer if Customer itself had demanded compensation from Braingineers for the loss suffered by the third party/parties.
- 12.5 Customer indemnifies Braingineers from any and all claims of third parties in consequence of incorrect or incomplete information made available by or on behalf of Customer, unless Customer can prove that the liability is not related to its shortcomings or failure and/or was caused by willfulness or gross negligence on the part of Braingineers.
- 12.6 Customer accepts the exclusions and limitations of the liability of the Braingineers, as well as the extinction of the right to damages as stipulated in this Article, irrespective of the basis of the claim for damages and irrespective of whether Customer claims damages based on a right of its own, or based on a right taken over or acquired from someone else.
- 12.7 Braingineers shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is (i) beyond the reasonable control of Braingineers, (ii) materially affects the performance of any of its obligations under this agreement, and (iii) could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects.
- 12.8 Braingineers shall never and under no circumstance whatsoever be liable for indirect damage or loss and/or consequential damage or loss and/or property damage or loss and/or damage or loss because of business interruption.
- 12.9 Each and any liability for other damage or loss shall be expressly limited to a maximum amount of the total amount received by Braingineers from Customer under the Agreement, unless there is willfulness or gross negligence on the side of Braingineers.
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- 13. Waiver of rights**
- 13.1 Not immediately enforcing any provision or condition in the Agreement and/or the Terms & Conditions by Braingineers shall not affect or restrict the rights and powers of Braingineers under the Agreement and/or the Terms & Conditions.
- 13.2 Waiver of any provision or condition in the Agreement and/or the Terms & Conditions shall exclusively have effect if this was done in writing. Invalidity or nullity of any provisions in the Agreement and/or the Terms & Conditions shall not affect the validity of the other provisions of the Agreement and/or the Terms & Conditions. In that case parties undertake to adjust and/or amend any void or voidable part as meant above in such a way that the part in question will be amended in a legally valid way and will be in line with parties' intentions.
- 14. Conflicting clauses**
- In the event conflicts come to light between a provision contained in the Terms & Conditions and a provision in the Agreement, the provisions in the Agreement shall prevail.
- 15. Changes**
- 15.1 Braingineers reserves the right, in its sole discretion, to change the Terms & Conditions from time to time.
- 15.2 Unless Braingineers makes a change for legal or administrative reasons, Braingineers will provide reasonable advance notice before the updated Terms & Conditions become effective. Customer agrees that it may be notified of the updated Terms & Conditions by posting them on the Braingineers website, and that the Customer's use of the service after the effective date of the updated Terms & Conditions constitutes your agreement to the updated Terms & Conditions. Therefore, Customer should review the Terms & Conditions and any updated Terms & Conditions before using Braingineers' services.
- 15.3 The updated Terms & Conditions will be effective as of the time of posting, or such later date as may be specified in the updated Terms & Conditions, and will apply to your use of the services by Braingineers from that point forward. The Terms & Conditions will govern any disputes arising before the effective date of the updated Terms & Conditions.
- 16. Non-solicitation**
- Except as otherwise expressly agreed in writing, during the term of this Agreement and for a period of one (1) year following its termination or expiration, the Customer agrees not to directly or indirectly or through third parties solicit or hire any of Braingineers' (including its affiliates) current or previous personnel, or employees, or consultants, or anyone who worked on-site with the Customer under this Agreement unless a period of one (1) year has elapsed from the last date that the employee or consultant worked under this Agreement.
- 17. Applicable law / competent judge**
- 17.1 The Agreement and the Terms & Conditions shall be governed by the laws of the Netherlands.
- 17.2 Disputes between parties in connection with the Agreement shall be submitted to the competent Judge in the Court of First Instance of Amsterdam.
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- How to contact us**
- If you have any questions about the Terms & Conditions, please send an email to info@braingineers.com.