

Braingineers - General Terms and Conditions for Services

1. Definitions

1.1 In these General Terms and Conditions, in any Quotation and in any Agreement the following words shall have the meaning as set out hereunder, irrespective if used in the singular or plural form:

Account means each identified account as specified in the Agreement for whom the applicable subscription fee(s) have been paid by Client, and who are authorized by Client to use and access Brainpeek Online under the Agreement.

Affiliate means any corporation or entity which directly or indirectly controls, is controlled by, or is under common control with a party to an Agreement, where "control" shall mean the power to vote or direct (by reason of ownership or securities, contractual rights or otherwise) the voting of fifty percent (50%) or more of the voting stock, general partnership interests or other voting interests in such corporation or entity.

Agreement means any written instrument which is based on a Quotation, which is governed by the GTC and which demonstrates that Braingineers and Client have reached consensus on Services to be provided by Braingineers for the benefit of Client.

Braingineers means Braingineers international B.V., a private limit liability company incorporated under the laws of the Netherlands, including any Affiliate thereof.

Braingineers Information means all information, including but not limited to data, charts, graphs, diagrams, schedules, maps, visualizations and analyses, disclosed through use of any part of Brainpeek Online.

Brainpeek Online means the proprietary Braingineers software platform through which certain access rights are provided to Client, as specified in the Quotation and the Agreement.

Client means you, the natural person or legal entity that has entered into an Agreement with Braingineers.

Confidential Information means all information, including but not limited to know-how, personal data, business-, technical- or financial information in whatever form or mode of transmission, which is disclosed by Braingineers in connection with this Agreement.

Consequential Damages means all indirect or consequential damage (*gevolg schade*) as for example but without limitation: loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Client's customers and the scrambling, destruction or loss of data or documents of Client.

Consultancy Services means Services that relate to research, consultancy or training and that are executed by or on behalf of Braingineers. Such part of the Services which are provided by Braingineers are therefore specifically governed by module A of the GTC.

Data means any and all data recorded in any form, such as but not limited to reports, writings, calculations, spread sheets, methods, video- or audio files, which have been uploaded by Client into Brainpeek Online.

Documentation means the prevailing version of any supporting product help and technical specifications

documentation as provided to you by Braingineers together with Brainpeek Online

GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and the Dutch implementing Act.

General Terms & Conditions or GTC means these general terms and conditions of Braingineers, including any amendment thereof, when such has taken place in accordance with clause 2.6 hereunder. Unless explicitly stated to the contrary in a specific provision of these GTC, any reference to GTC or General Terms and Conditions includes all modules thereof.

Partner means a third party that has been explicitly commissioned with certain sales activities by and for the benefit of Braingineers as can be demonstrated by a written power of attorney to that extent.

Quotation means a written offer issued by or on behalf of Braingineers which contains a description of Services and a specified price as well as other costs, taxes and levies which are applicable.

Subscription Term means the period which starts on the effective date of the Agreement and expires twelve (12) months thereafter.

Services means certain activities as specified in the Agreement to be executed by or on behalf of Braingineers.

2. General Terms and Conditions: structure, applicability, deviations and amendments

2.1 These GTC have two (2) modules, namely the following:

- General Module: this part of the GTC is applicable to each and every Quotation and Agreement and will at a minimum at least always include certain Services that provide access to Brainpeek Online for Client;
- Module A - Consultancy Services: this part of the GTC is applicable to each and every Quotation and Agreement relating to Consultancy Services;

2.2 Additions to or deviations from these GTC shall only apply where agreed in writing between Client and Braingineers before the start of the execution of the Services.

2.3 If any part of the provisions in the aforementioned General Module is incongruent with any part of the provisions in Module A, the provisions of Module A shall prevail over the provisions in the General Module when construing the content of the Agreement. Where an addition or deviation is agreed with Client in accordance with clause 2.2 here fore, such addition or deviation shall in all events prevail over the specific part of the GTC to which such addition or deviation relates when construing the content of the Agreement.

2.4 All offers and other statements made by or on behalf of Braingineers or Partner shall be subject to contract and therefore require an Agreement in order to be legally binding upon Braingineers.

2.5 The applicability of any of the Client's conditions for procurement is herewith expressly rejected. No provision of any purchase order or other business form employed by Client, including any electronic invoicing portals and vendor registration processes, will supersede the terms and

conditions of this GTC or the Agreement and any such document shall have no legal effect.

- 2.6 Braingineers may amend this GTC from time to time at its sole discretion by releasing a new version thereof. Notwithstanding this right of Braingineers, new versions of the GTC shall only be applicable to an Agreement if and when the Agreement has a duration of more than six (6) months. Braingineers will timely provide Client with a written notification regarding each upcoming amendment of the GTC that may affect the Agreement. When Client has not objected within four (4) weeks after receiving both such notification and a copy of such new version of the GTC, such new version of the GTC is deemed accepted by Client and shall govern the Agreement as per the formal release date thereof.

3. Prices and Payment

- 3.1 Client shall pay all fees set forth in the Quotation. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Client will be invoiced for all applicable taxes, which may include but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid in relation to payments due by Client hereunder, Client will provide official receipts or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.
- 3.2 Except where explicitly agreed otherwise in the Agreement between Client and either Braingineers or Partner (as the case may be), all prices are in euros and Client shall execute all payments in euros only.
- 3.3 Amounts due to by Client shall be invoiced in accordance with the payment schedule in the Quotation and shall be paid by the Client within 30 days after the date of each respective invoice. The Client shall not be entitled to suspend the payment of any instalment or to offset any instalment in relation to an Agreement against any amounts due by Braingineers or Partner to Client or an Affiliate thereof.
- 3.4 If the Client fails to pay any amount due in a timely manner, statutory commercial interest shall be payable by the Client on the outstanding amount without any further demand or notice of default being required. Braingineers and (where applicable) Partner shall also be entitled to full reimbursement of all reasonable attorneys' fees and other costs incurred in the collection of any such overdue accounts.
- 3.5 Braingineers shall be entitled to adjust the applicable prices and rates for Services under every Agreement that has a duration of more than one (1) year, or which, unless terminated prematurely in accordance with clause 13 of the GTC, will automatically and repeatedly be prolonged every year. Aforementioned right of Braingineers is subject to the condition precedent of providing an explicit advance written notice to the Client including the exact changes in prices and rates, which notice shall be sent no later than two (2) months prior to the start of the following year for such Agreement.
- 3.6 If the Client does not wish to agree to such new prices and rates as adjusted by Braingineers in accordance with clause 3.3 of the GTC, the Client shall be entitled to terminate the Agreement in writing against the last day of that current year.

4. Delivery

- 4.1 All delivery dates in relation to a Service that are agreed with or specified by Braingineers or Partner are established on the basis of all the relevant information that was available to Braingineers or Partner at the time of concluding the Agreement. Every delivery date in relation to a Service shall

in all events be regarded as nothing but a target date by both Braingineers and Client.

- 4.2 Braingineers shall make every reasonable effort to observe every delivery date it has specified or agreed with in relation to a Service. If there is a risk that such a delivery date will be exceeded, Braingineers shall timely inform the Client in order to discuss the implications of such later delivery to the rest of the schedule, if such is explicitly included in the Agreement.
- 4.3 The mere fact that a delivery date as specified by Braingineers has been exceeded, shall not mean that Braingineers is in default. In each and every event, Braingineers shall only be in default for exceeded delivery when it has received written notice of its default by the Client including a reasonable period for performing any Service that is not timely delivered or reperforming any Service that has not been delivered in accordance with the Agreement.
- 4.4 If Client decides to issue a default notice pursuant to clause 4.3 of the GTC and the Agreement was concluded via a Partner, Client shall provide Partner a written copy of such notice and of all other formal communications with Braingineers regarding the exceeded delivery.

5. Changes to the scope of the Services

- 5.1 If Client requests additional services from Braingineers that fall outside of the content or scope of the Services, such additional services shall require a written amendment to the agreement.
- 5.2 The Client accepts that any additional Services may affect the agreed or anticipated time of completion of the Services as well as the several and joint responsibilities of the Client and Braingineers.
- 5.3 Once a written amendment is concluded with Client, Braingineers will execute any such additional services as a part of the Services in accordance with the amended Agreement.
- 5.4 When the Agreement was concluded via a Partner, the Partner shall be a party to any such written amendment.

6. Conditions for access to Brainpeek Online

- 6.1 In any event in which Client requires Services from Braingineers, access to Brainpeek Online is required. In the event where Consultancy Services are requested, such access is required in order for Client to make use of certain parts of the Braingineers Information. Services rendered by Braingineers may however also be limited solely to access for Client to Brainpeek Online where Client will upload, store and analyse its Data and from which Client may export such Data. Client herewith provides Braingineers with a free non-exclusive worldwide, irrevocable and perpetual license to use such Data as uploaded to Brainpeek Online for the improvement of its own services, such as but not limited to improvement of its database or of algorithms. Each Quotation and/or Agreement shall clarify the exact access rights which are granted by Braingineers to Client regarding Brainpeek Online.
- 6.2 Braingineers may also make free evaluation access to any part of Brainpeek Online available to Client. The Client may use such access solely for the purpose of evaluating Brainpeek Online for the designated time period to determine whether to purchase a stand-alone subscription to Brainpeek Online. The use of such evaluation access automatically expires at the end of the evaluation period.
- 6.3 Free evaluation access to Brainpeek Online may not be used for any other purposes by Client, including but not limited to competitive analysis, commercial, professional or for-profit purposes.

- 6.4 The access granted to Client for free evaluation to any part of Brainpeek Online shall be only to those uniquely identified employees of Client as specifically agreed in writing with Braingineers. Such access shall be connected to a user ID and password which Client shall need to use the parts of Brainpeek Online for which free evaluation access has been granted. This information is granted by Braingineers to each Client individually and may not be shared with any third party. Client will ensure that this information is kept strictly confidential.
- 6.5 Per Account Braingineers hereby grants to Client a non-exclusive, non-transferable, irrevocable, worldwide right during the applicable Subscription Term to access and use Brainpeek Online as described in the Agreement.
- 6.6 Braingineers and its licensors retain all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to each and every part of Brainpeek Online, the Documentation and any and all related and underlying software (including interfaces), databases (including data models, structures and any other non-customer specific data and statistical data), technology, reports, documentation, as well as any related process or methodology provided or used by Braingineers, and with respect to each of the foregoing, any copies, modifications, improvements, derivative works, or enhancements thereto however developed or provided.
- 6.7 Client shall use Brainpeek Online in accordance with: (i) the Documentation; (ii) any restrictions designated in the Agreement. Each Account may be used by different employees of Client.
- 6.8 Client will use all reasonable efforts to prevent any unauthorized access to or use of Brainpeek Online and the Documentation. When Client becomes aware of any unauthorized access or use of Brainpeek Online or Documentation, Client will promptly notify Braingineers thereof in writing and provide all reasonable cooperation to prevent and terminate such access or use.
- 6.9 It is expressly understood and agreed by Client that Braingineers Information is intended for use in Client's own internal operations. It is herewith understood and agreed by Client that pursuant to the license granted as per clause 6.5 of the GTC, it is prohibited for Client to:
- (a) use any part of the Braingineers Information for any purpose that may adversely affect the business of Braingineers, such as but not limited to publicly disseminating significant part of Braingineers Information or using Braingineers Information merely as a reseller thereof in relation to any third party;
 - (b) not include a clearly visible reference to Braingineers when using the Braingineers Information in all your communications each such communication requires a clearly visible reference to Braingineers;
 - (c) decompile, disassemble, or otherwise reverse engineer any part of the software used in relation to Brainpeek Online or attempt to reconstruct or discover any source code, APIs, underlying ideas, algorithms, file formats or programming interfaces thereof by any means whatsoever;
 - (d) distribute, sell, sublicense, rent, lease or use any part of the software used in relation to Brainpeek Online (or any portion thereof) for time sharing, hosting, service provider or like purposes;
 - (e) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in the software used in relation to Brainpeek Online nor in any reports or data printed via the use of Brainpeek Online ;
 - (d) modify any part of the software used in relation to Brainpeek Online or create a derivative work of any part thereof;
 - (f) utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy right or other protection used by Braingineers in connection with Brainpeek Online , or use any part of Brainpeek Online together with any authorization code, serial number, or other copy protection device not supplied by Braingineers;
 - (g) use any part of Brainpeek Online to develop a product or service which is competitive with any Braingineers product offerings;
 - (h) use unauthorized product keys or keycode(s) or distribute or publish keycode(s);
- 6.10 Braingineers may monitor the use of Brainpeek Online per Account in order to verify compliance with this clause 6 of the GTC. Braingineers will be granted access by Client to every one of its Accounts when Braingineers has a reasonable suspicion that the provision of this clause 6 of the GTC are not adhered to. Client shall provide all reasonable cooperation at the first request of Braingineers which is based on such suspicion. Any information found by Braingineers that substantiates such reasonable suspicion shall be reported back to Client.
- 6.11 If the applicable subscription fee regarding access to Brainpeek Online has not been timely paid, Braingineers reserves the right to suspend your access to Brainpeek Online without incurring any liability towards Client until such amounts are paid in full.
- 6.12 Approximately thirty (30) days prior to the expiration of the Subscription Term, Braingineers may notify Client of its opportunity to renew the Subscription Term. Any renewals require mutual agreement and all applicable fees for such renewals will be at Braingineers' then-current rates. If your subscription is not renewed, your access to all relevant parts of Brainpeek Online will terminate at the end of the then-current Subscription Term.
- ## 7. Termination of an Account
- 7.1 Braingineers may terminate any Account immediately upon any breach by Client of the provisions of clause 6.9 of the GTC. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement or by law.
- 7.2 Upon any termination or expiration of the Agreement, Client shall immediately cease any and all use of Brainpeek Online . Braingineers shall refund to Client any subscription fees for the portion of the Subscription Term which was paid by you but within which no services were rendered by Braingineers.
- ## 8. Limited warranty
- 8.1 Braingineers warrants that Brainpeek Online will operate in substantial conformity with the applicable Documentation. Braingineers does not warrant that use of any part of Brainpeek Online will be uninterrupted or error-free, nor does Braingineers warrant that it will review the Braingineers Information which it provides through any Brainpeek Online for accuracy or that it will preserve or maintain its data without loss.
- 8.2 In deviation from the provisions of clause 13.1 of the GTC, Braingineers' sole liability for any breach of aforementioned

warranty shall be, in Braingineers' sole discretion and at no charge to Client, to use commercially reasonable efforts to timely correct the reported non-conformity, or, if Braingineers determines such remedy to be impracticable, to allow you to terminate the applicable Agreement for the remaining part of the Subscription Term and receive as the sole remedy for any damage or loss that may have been incurred a refund of:

(a) the subscription fees specified in the Agreement which are allocable to the thirty (30) day period prior to the date the warranty claim was made; and

(b) any fees you have pre-paid for use of Brainpeek Online you have not received as of the date of the warranty claim.

8.3 The warranty provided under this clause 8 shall not apply: (i) when Client does not make a claim within thirty (30) days of the date on which it should reasonably have become aware of the condition giving rise to the claim; (ii) if any part of Brainpeek Online is used with hardware or software not authorized in the Documentation; (iii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services; (iv) to any evaluation access or other use provided on a no charge or evaluation basis; or (v) when a violation of clause 6.8 of the GTC has been established by Braingineers through an audit pursuant to clause 6.9 GTC.

8.4 THIS CLAUSE 8 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN IN THIS CLAUSE 8, ALL OF BRAINPEEK ONLINE AND ANY PART THEREOF, INCLUDING WITHOUT LIMITATION THE BRAINGINEERS INFORMATION CODE ARE PROVIDED "AS IS". NEITHER BRAINGINEERS NOR ITS LICENSORS PROVIDE ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED AS PROVIDED HEREIN. BRAINGINEERS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BRAINGINEERS.

9. Confidentiality

9.1 Confidential Information shall be treated by Client and, where explicit prior written consent thereto is obtained from Braingineers, also by its Affiliates, in accordance with this clause 9 of the GTC.

9.2 Any Confidential Information that comprises software code, pricing of Services, documentation or technical information provided by or on behalf of Braingineers, as well as performance information relating to the Services, shall be deemed Confidential Information without any marking or further designation. All other information provided by Braingineers shall be deemed to be Confidential Information either when such is identified as such by Braingineers at the time of disclosure or when it should be reasonably known by Client or its involved personnel to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure.

9.3 Client shall treat the Confidential Information with at least the same degree of care as it would use in respect of its own confidential information of similar importance, but in any event a reasonable level of care. Client shall handle, use and keep the Confidential Information in conformity with all applicable legal requirements. Client shall not disclose, publish, disseminate or make accessible any part of the Confidential Information, in any way or form, to any third Party.

9.4 The Client shall disclose Confidential Information to its directors, officers, employees or other representatives only on a need-to-know basis after informing each such person of the confidential nature of the Confidential Information. Client shall procure that the person expressly agrees to treat the Confidential Information as is provided in this clause 9 of the GTC. Notwithstanding due observance of these requirements, the Client shall be liable for any breach of those provisions by such person.

9.5 The nondisclosure obligations of Client shall not apply to Confidential Information when it can be proven that such: (a) was rightfully in possession of Client or known to Client prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Client or its personnel; (c) is rightfully obtained by Client from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of Client who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to Braingineers).

9.6 Client acknowledges that disclosure of Confidential Information could cause substantial harm to Braingineers for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by you Braingineers shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

9.7 Data is deemed Confidential Information of Client. Braingineers shall treat the Data with at least the same degree of care as it would use in respect of its own confidential information of similar importance, but in any event a reasonable level of care. Braingineers shall handle, use and keep the Confidential Information in conformity with all applicable legal requirements. All exceptions to the non-disclosure obligations of Client as set out in clause 9.5 of the GTC shall equally apply to the non-disclosure obligations of Braingineers in respect to such Data. Braingineers shall only use such Data within the limitations of its access rights as set out in clause 6.1 of the GTC, when it has been anonymized in accordance with applicable industry standards for anonymization to prevent that the data or its origin can be traced back to Client.

10. Limitation of liability

10.1 The total liability of Braingineers in connection with the Agreement, irrespective of the legal theory on which such liability is based and explicitly including failure to comply with any warranty obligation as may have been explicitly agreed with the Client, shall in any event be limited to compensation of the direct damages or loss incurred by Client as a result of an act or omission of Braingineers to a maximum amount that shall never exceed the sum of all amounts due to Braingineers under the respective Agreement.

10.2 The limitation of liability as stipulated in clause 10.2 will not be applicable to the extent any such damage or loss is caused by

wilful intent (*opzet*) or conscious recklessness (*bewuste roekeloosheid*) on the side of Braingineers or when Client is in breach of its obligations under clause 6.8 of the GTC. For such part of the damages or loss incurred by a party to the Agreement, liability shall be established in accordance with applicable law and may thus also include any Consequential Damages. Notwithstanding, such right of Client to claim for any Consequential Damages, the total liability of the Supplier for all damage or loss, for any reason whatsoever as incurred by Client in connection with the Agreement, including Consequential damages, shall under no circumstances exceed €250,000 (two hundred and fifty thousand euro).

- 10.3 Except where performance or reperformance of any part of the Services by the Braingineers is permanently impossible, Braingineers shall only be liable as a result of an attributable failure to perform or reperform Services if the Client gives the Supplier immediate notice in accordance with clause 4.3 of the GTC.
- 10.4 The right to issue a claim for any damages or loss against Braingineers in connection to the Agreement shall automatically expire (*verjaren*) by either the mere passage of twenty four (24) months from the date on which the claim arose or by the mere passage of six (6) months from the date on which the Client became aware of such damage or loss, without serving Braingineers with a formal written claim notice, whichever term expires first.

11. Force Majeure

- 11.1 Neither Client nor Braingineers or Partner shall be obliged to meet any obligations in connection to the Agreement if Client or Braingineers is prevented from doing so as a result of force majeure.
- 11.2 Force majeure shall include: (i) a situation of force majeure encountered by any supplier of Braingineers whose goods or services are needed for the Services, (ii) the defectiveness of items, hardware, software or materials provided by third parties that Braingineers has been instructed to use by the Client, (iii) power failures, (iv) interferences and malfunctions affecting the local telecommunication network through no fault of Braingineers, (v) war, riots and invasion, (vi) floods, earthquakes, fires or explosions or any eminent immediate danger thereof (vii) strike actions or labour disputes on a regional or national level, (viii) the possibility of exposure to ionizing or radioactive radiation or to dangerous chemical substances or gasses (ix) any change in legislation that would make the unchanged execution of the Services illegal.
- 11.3 If a situation of force majeure lasts for longer than thirty days, either of the parties shall be entitled to terminate the Agreement in writing as per the day on which the force majeure started.

12. Processing of personal data

- 12.1 As far as capitalized terms are not separately defined in this GTC, terms as defined in the GDPR, such as but not limited to "process", "personal data", "controller" and "processor" shall hereinafter have the meaning given to them in the GDPR.
- 12.2 For the proper and timely executing of the Services Braingineers does not require to process any personal data and therefore it will abstain from processing personal data as a controller. Braingineers will only consider processing personal data when Client, acting as a controller, explicitly

request Braingineers to process such personal data as a processor. Consent for such processing is only given subject to the provisions of article 12.3 and 12.4 of this GTC.

- 12.3 Where Client uploads or stores any Data that contains personal data, Client herewith represents and warrants that it has in all events obtained the explicit written informed consent from any data subject whose personal data is included in such Data prior to the involvement of Braingineers as a processor of such personal data.
- 12.4 Client herewith indemnifies Braingineers against all claims, fines imposed by any authority in connection with the GDPR and will hold Braingineers harmless against all costs and damages that may occur due to a breach of aforementioned warranty by Client.

13. Termination

- 13.1 Each party to an Agreement may terminate such Agreement when the other party fails to cure any material breach of its obligations thereunder within thirty (30) days after written notice of such breach.
- 13.2 Braingineers and Client are both entitled to terminate the agreement in part or in full, with immediate effect, in writing without notice of default if the other party is granted a moratorium of payments, provisionally or otherwise, if a winding-up petition is filed in respect of the other party or if the other party's company is wound up or terminated for reasons other than reconstruction or the merger of companies.
- 13.3 Braingineers or Partner, depending on who entered into the Agreement with Client, shall under all circumstances retain full entitlement to all reimbursement for that part of the Services that has been executed in accordance with the Agreement prior to termination thereof. Any amounts that have been invoiced before receipt of aforementioned termination notice, shall remain due in full and shall become immediately due and payable from the date of termination notice.
- 13.4 If the Client becomes bankrupt or is liquidated, any access rights granted to Client under Module A of the GTC shall terminate immediately by operation of law.
- 13.5 Upon any termination or expiration of the Agreement, Client shall immediately cease any and all use of Confidential Information and destroy any such Confidential Information in its possession or return it to Braingineers at a specific request thereto.
- 13.6 The following clauses of the GTC shall survive any expiration or termination of every Agreement: Clause 1.1, 2.2, 2.3, 3.4, 6.6, 8.4, 9, 10, 12.3, 12.4, 14.2, 14.3, 14.5, 14.6 and 15 and, when applicable, 16.1 and 18.

14. Miscellaneous

- 14.1 Each Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Braingineers may not assign or transfer this Agreement, in whole or in part, without the prior written consent of Client, except it may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Braingineers' assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Braingineers' written consent except that you may assign this Agreement, in whole but not in part, without Braingineers' written consent in connection with any merger, consolidation, sale of all or substantially all of your assets, or

any similar transaction provided that: (i) the assignee must not be a direct competitor of Braingineers; (ii) you provide prompt written notice of such assignment to Braingineers; and (iii) the assignee is capable of fully performing your obligations under this Agreement. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

- 14.2 Should any provision of this GTC, or any addition or deviation thereof which is agreed upon in accordance with clause 2.2 of this GTC, become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of the GTC. In such event Client and Braingineers shall seek to agree on a legally valid and practicable provision which fulfils the purpose of the original provision.
- 14.3 Client agrees that Braingineers may disclose it as a customer of Braingineers and use its name and logo on Braingineers' web site and in Braingineers' promotional materials. However, Braingineers will not disclose Client as a customer of Braingineers nor will Braingineers use its name or logo on Braingineers' website and in Braingineers' promotional materials when an express written request to such extent has been received from Client.
- 14.4 Any notice or communication required or permitted under the Agreement shall be in writing. If to Braingineers, such notice or report shall be sent to Braingineers at Johan Huizingalaan 763A VH Amsterdam, the Netherlands. If to Client, such notice or report shall be sent to the address indicated by Client in the Agreement. When a Partner is involved in the Agreement, a copy of every such notice or report shall be sent to the address indicated by Partner in the Agreement. Notices and reports shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.
- 14.5 Regardless of any language into which an Agreement or this GTC may be translated, the official, controlling and governing version of this GTC shall be exclusively the English language version.
- 14.6 No waiver will be implied from conduct or failure to enforce or exercise rights under an Agreement, nor will any waiver be effective unless such is given in writing signed by a duly

authorized representative on behalf of the party claimed to have waived.

- 14.7 Braingineers is an independent contractor. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between Braingineers and Client. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

15. Applicable law and dispute resolution

- 15.1 Excluding conflict of laws rules, any Agreement shall be governed by and construed in accordance with (a) the laws of the Netherlands if Client is located outside of North- or South America, or (b) the laws of the State of New York, U.S. if Client is located in either North- or South America.
- 15.2 A dispute is present between Client and Braingineers if one of them issues a written notice to the other which explicitly states this being the case.
- 15.3 Client and Braingineers will actively seek to resolve every dispute between them in an amicable manner within 30 days from receipt of aforementioned written notice. Where both parties are not capable to find an amicable solution within this time period that is satisfactory to both, each one of them may initiate proceedings in accordance with clause 12.4 hereafter.
- 15.4 When New York State Law governs the Agreement, all disputes arising out of or in relation to the Agreement shall be exclusively submitted to arbitration in accordance with the rules and regulations of the International Chamber of Commerce. The Arbitration shall take place in the city of New York. When the laws of the Netherlands govern the Agreement, all disputes arising out of or in relation to this Agreement shall be exclusively submitted to the court of Rotterdam, the Netherlands.

**Braingineers: General Terms and Conditions for Services/
Module A - Consultancy Services**

16. Additional Definitions

16.1 In this Module A of the General Terms and Conditions, in any Quotation and in any Agreement the following words shall have the meaning as set out hereunder, irrespective if used in the singular or plural form:

Results means any direct outcome of the Consultancy Services, whether or not such outcome is eligible for protection through intellectual property rights and including any tangible media on which such outcome is provided to Client, such as but not limited to reports, usb-sticks or presentations.

17. Execution of Consultancy Services

- 17.1 Braingineers shall make every reasonable effort to ensure that the Services are provided with due care and in accordance with any arrangement and procedure as specified in the Agreement.
- 17.2 The time period within which Consultancy Services may be executed by Braingineers shall depend on a number of factors and circumstances, such as the cooperation Braingineers receives from the Client and from relevant third parties. Therefore, unless explicitly stated otherwise in the Agreement, Braingineers shall not commit to a fixed time schedule for execution of the Consultancy Services or any specific part thereof. Furthermore, it is expected from Client that any information or materials which may be relevant to the execution of the Consultancy Services, are provided to Braingineers without undue delay and in compliance with article 14.5 hereafter.
- 17.3 Braingineers shall act as an independent consultant when executing Consultancy Services for Client. Thus Braingineers shall only be obliged to follow instructions issued by the Client in relation to the Consultancy Services, when such are timely provided, well-founded and in compliance with the specific arrangements that have explicitly been agreed upon with Braingineers.
- 17.4 The personnel to be deployed by Braingineers for the Consultancy Services shall hold all required qualifications.
- 17.5 To the extent that Braingineers is providing Consultancy Services on the basis of information and materials which are to be provided by the Client, this information and these materials shall be prepared by the Client in accordance with the conditions to be imposed by the Braingineers and provided at the risk and expense of the Client.

17.6 The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to Braingineers in connection with the Agreement is accurate and complete.

17.7 Braingineers shall periodically inform the Client with regard to its progress in executing the Consultancy Services. The Client shall be responsible for the further distribution and examination of the information provided by Braingineers within the Client's organisation subject to the obligations of clause 9 of the GTC.

18. Intellectual property Rights

- 18.1 Braingineers shall treat all information that specifically relates to Client and its business which it has gathered in the execution of the Consultancy Services as confidential information of Client.
- 18.2 All Results are owned by Client.
- 18.3 Client herewith provides Braingineers with an exclusive, fully paid-up, royalty-free, worldwide and perpetual license to use the Results for the improvement of Braingineers' services such as but not limited to improvement of its database or of algorithms.
- 18.4 Client shall not provide any access to the Results to any third party that provides similar services as are offered by Braingineers.
- 18.5 Braingineers may retain the delivery of any Results until such time as the Client has paid all (intermediary) amounts due to Braingineers in connection to the Agreement.

19. No Poaching

- 19.1 For the term of this Agreement and for the period of twelve (12) months thereafter, without the prior written consent of the other party, neither party shall either directly or indirectly solicit or entice away (or seek or attempt to entice away) from the employment of the other party any person employed (or any person who has been so employed in the preceding six (6) months) by such other party in the provision or receipt of the Services. For the avoidance of doubt, this Clause shall not apply to unsolicited responses by employees to general recruitment advertising.