

General Terms and Conditions



1. Scope of Conditions, Definitions

1.1 Scope of Conditions. The following General Terms and Conditions of Use ("GTC") govern the utilization of the Brainloop Dox service in the Corporate Edition provided by Brainloop Limited ("Brainloop").

1.2 These GTC shall apply to any use of the Service by Customer and to all individual orders made by or on behalf of Customer via the user agreement form with regard to the use of the Service. The GTC, together with the provisions of the user agreement, form and any appendices constitute the entire agreement for the use of the Service ("User Agreement" or "Agreement").

1.3 The Customer's general terms and conditions, such as those found in any purchase order, shall not apply, even if they are not expressly excluded.

2. Definitions

2.1 **"Administrator(s)":** individual person(s), who (i) are authorized by the Customer to order the Service and let the Service be delivered to himself, and/or (ii) who are named as administrator by the Customer or by the person placing the order, and/or (iii) one or more Authorized Users, who have administrative functions and administrative rights granted by the Customer after the initial delivery of the Service by Brainloop.

2.2 **"Authorized User(s)":** the Administrators, (ii) users named by an Administrator (individuals, generally employed at the respective Customer) and (iii) users named by an Authorized User, who have been granted rights (by way of a link, then no obligation of the user to register, or by way of a share, then obligation of the respective user or Collaboration User to register) in respect of files and functionalities of the Service. Each Authorized User, who is obliged to register, has its own account where he/she registers personally with an individual email address. The use of collective email addresses, where more than one user can have access to, is strictly prohibited. Authorized Users, who are obliged to register, must accept the terms of use for end users ("Terms of Use" or "ToU") before making use of the Service.

2.3 **"Brainloop Dox"** or as well **"Service(s)":** a server- and software-based solution offered in the Corporate Edition that enables collaboration and the simplified exchange of company-internal documents and information.

2.4 **"Brainloop Dox User":** an Authorized User, who has registered on the platform due to (i) being named by the Customer as an Administrator, (ii) an invitation by an Administrator or (iii) an invitation by an already registered Authorized User, and has his/hers own account. This includes the Collaboration Users as well.

2.5 **"Brainloop Secure Client":** a software solution installed on the individual user's hardware and software environment in order to enable access to Brainloop Dox without a browser.

2.6 **"Brainloop Dox Web":** a software solution through which Brainloop Dox may be accessed using a Web browser.

2.7 **"Collaboration User":** an individual person invited by an Authorized User to visit a folder who registers with a personal account that is free of charge and, in the process, confirms the ToU in order to use the Service. The Collaboration User has only limited rights inasmuch as the Collaboration User can only access contents made available to it through invitations to folders received from other Authorized Users and can only modify such folders in accordance with the rights granted to the Collaboration User by the Authorized Users; the Collaboration User has no space of its own where to store its own data.

2.8 **"Customer":** a company or organization or individual that makes use of the Service for its own internal purposes.

2.9 **"Software Applications":** Brainloop Dox and the related Brainloop Dox Web Client, Brainloop Secure Client, and all other clients provided by Brainloop to the Customer for the use of Brainloop Dox on different devices and operating systems.

3. Start of Contract / Duration

3.1 The User Agreement shall come into effect when Customer signs the User Agreement form and Brainloop thereafter signed and returns a fully signed version to Customer. Brainloop may also accept the User Agreement by providing the Service. This means that the date of provision of the Service is the effective date of the Agreement.

3.2 If Customer provides incorrect information necessary for delivering the Services or that information later becomes incorrect, Brainloop can suspend the Services and terminate the Agreement. Such information includes, but is not limited to, the company name, address, bank account information and any other information concerning the Customer or otherwise materially related to the User Agreement.

3.3 The period of validity and termination of the User Agreement are defined in the User Agreement. Brainloop may terminate the User Agreement by giving notice at least six (6) months prior to the end of the calendar year. Any such termination may not be effective sooner than one (1) year following the effective date of the User Agreement.

3.4 Customer files stored in Brainloop Dox may be deleted four (4) weeks after the end of the Agreement. As far as said deletion is partially or in whole not allowed by law, Brainloop shall secure and keep any customer data confidential. Brainloop will also not actively process said data.

4. Scope of Service

4.1 The scope of the Service is defined by the Agreement as well as by the then current respective product data sheet for the Service utilized, the latest effective version of which will be found on Brainloop's website.

4.2 Brainloop is continually developing and improving the Service. Accordingly, Brainloop reserves the right to modify the functionality of the Service from time to time and, at Brainloop's discretion, to adjust the product data sheet.

5. Right of Use, Grant of License

5.1 During, but not following the term of the Agreement, Brainloop grants Customer the non-exclusive, non-transferable, temporary right, limited according to the following provisions and the User Agreement, to use the Software Applications strictly in conformity with this Agreement. No ownership of the Software Applications is conferred hereby.

5.2 The license granted according to section 5.1 also includes Customer's right to enable its employees, suppliers, consultants, and third parties to gain access with appropriate authorization from Customer to the functionalities of Brainloop Dox within the scope provided by the Agreement, but only for Customer's internal business purposes. Customer shall determine which users receive access to the Software Applications and are thereby considered Brainloop Dox-Users.

5.3 Brainloop Dox may not be transferred by Customer or any of its authorized Brainloop Dox Users to third parties. In particular, Customer is not permitted to rent, sublicense or otherwise provide access to Brainloop Dox to third parties, except as authorized herein.

5.4 Customer is not entitled to use Brainloop Dox beyond the scope of usage rights as granted in the User Agreement. If Customer uses Brainloop Dox in excess of the scope as agreed in the User Agreement, without waiving any other rights or claims, Brainloop is authorized to invoice Customer the fee incurred by such excess use.

5.5 The grant and restriction of usage rights above also extends to all documents provided by Brainloop with or for Brainloop Dox.

6. Source Code, Copyright

6.1 Customer is not entitled to receive source code to the Software Applications and shall not reverse engineer the Software Applications..

6.2 All rights to Brainloop Dox remain with Brainloop. The grant of license according to section 5 remains unaffected thereby.

6.3 "Brainloop," "Brainloop Dox," products, services, as well as the respective logos that are displayed or mentioned in the User Agreement, the website, or in connection with the Service, are trademarks or registered trademarks of Brainloop AG (Germany) or third parties. No license or right of use for said trademarks is granted or transferred by the User Agreement. No rights shall be granted or transferred without written permission by Brainloop AG (Germany) or the third parties who may also possess rights to the trademarks. With the exception of the provisions in this section 6.3, commercial use by Customer or Authorized Users of the trademarks or any other website content, or content and trademarks in connection with the Service, is strictly prohibited.

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7. Program Changes

7.1 Customer is not authorized to change, develop, or otherwise modify Brainloop Dox or to produce derivative works based on, or incorporated with, Brainloop Dox.

7.2 Any violation of section 6.1 shall result in Customer no longer being entitled to any Brainloop support. Additional rights and legal claims of Brainloop remain unaffected by its withdrawal of support.

8. Copies

8.1 Brainloop Dox may only be copied to the extent that it is required for the permitted use by Customer. Upon request, Customer is obligated to inform Brainloop about the number of copies made, the type of storage media and storage location of each copy.

8.2 Copyright and other proprietary rights notices in Brainloop Dox, as well as registration numbers, may not be removed.

9. [Open]

10. Third Party Intellectual property Rights

10.1 Brainloop agrees to defend or, at its option, to settle any claim or action brought against Customer to the extent it is based on a claim that Customer's use of the Service in accordance with this Agreement, infringes any United Kingdom or European trademark or copyright of a third party. Customer agrees that Brainloop will have the foregoing obligation only if Customer provides Brainloop with: (i) prompt written notification of the claim or action; (ii) sole control and authority over the defense or settlement thereof; and (iii) all available information, assistance and authority to settle and/or defend any such claim or action.

10.2 If the Service becomes, or in the opinion of Brainloop is likely to become, the subject of an infringement claim or action, Brainloop may: (i) procure, at no cost to Customer, the right to continue using the Service; (ii) replace or modify the Service to render it non-infringing, provided there is no material loss of functionality; or (iii) if, in Brainloop's reasonable opinion, neither (i) nor (ii) above is commercially reasonable, terminate all or part of the Agreement and refund any prepaid but unexpired portion of the Service Fees paid to Brainloop for the Service. Except as provided in Section 8.1, the foregoing provisions of this Section 10.2 state Brainloop's sole obligation and Customer's exclusive remedy in the event of any ownership or infringement claim or action with regard to the Services or the Agreement is commenced or is likely to be commenced.

10.3 Brainloop will have no liability under this section 10 for any claim or action where: (a) such claim or action would have been avoided but for modifications of the Service, or portions thereof, made after delivery to Customer other than by Brainloop; (b) such claim or action would have been avoided but for the combination or use of the Service, or portions thereof, with any other products, processes or materials; (c) liability resulting, in whole or in part, fault or negligence of Customer, (d) causes external to the Service such as, (i) Customer continues allegedly infringing activities after being notified thereof, (ii) claims relate to an alleged infringement of any patent, copyright or trade secret in which the Customer or any affiliate thereof has an interest or license; or (iii) when use of the Service is not in accordance with the terms of this Agreement. Customer agrees to indemnify and hold Brainloop harmless from and against all losses, damages and expenses, including reasonable legal fees, in connection with any claims brought against Brainloop and its officers, employees, agents or subcontractors arising as a result of any breach of this Agreement by Customer, any of the conditions described in clauses (a) to (d) (inclusive) above or any warranties, guarantees, or representations made by Customer or Customer's employees or agents which differ from or are inconsistent with those made by Brainloop hereunder. If Customer is exporting the Service from the United Kingdom, Customer shall defend, indemnify, and hold Brainloop harmless from and against any related import and export duties or other claims. Brainloop will provide Customer with: (i) prompt written notification of the claim or action; (ii) sole control and authority over the defense or settlement thereof; and (iii) all commercially reasonable information, assistance and authority to settle and/or defend any such claim or action.

11. Return

11.1 At the end of the contractual relationship Customer must immediately, completely and finally delete the Brainloop Secure Client as well as all other clients provided by Brainloop and all copies thereof. All copies of the Brainloop Secure Client and all other clients provided by Brainloop possibly existing on portable data storage media must be returned to Brainloop without delay.

11.2 Any further use of the Software Applications after the end of the User Agreement is not permitted.

12. Service Level

12.1 Brainloop's goal is an average monthly data center availability of 99.0% of each calendar month. For the calculation of the availability, downtimes will be accounted for in full minutes.

The following causes for downtimes will not be accounted for:

- scheduled downtimes for maintenance and updates
- downtimes due to technical or other problems not caused by Brainloop (caused by third parties, etc.)
- suspension of Service by Brainloop if Brainloop has reason to assume that there was a legitimate cause for suspension in accordance with this Agreement.

12.2 Brainloop will inform Customer about scheduled downtimes as soon as possible, and attempt to do so at least three days in advance.

12.3 Should Brainloop fall short of the availability goal set forth in section 12.1, as its sole remedy, at mid-month, Customer shall have the right to reduce the remuneration to the extent that it is affected by this circumstance. Each full percentage point by which Brainloop falls short of the availability goal of 99.0% entitles Customer to a reduction of a half percentage point (0.5%) the respective monthly remuneration for the Service, to the extent that the shortcoming is the fault of Brainloop.

13. Customer Responsibilities

13.1 Providing the Internet connection required to access Brainloop Dox is the responsibility of Customer and is not part of the Service. The same applies to the operation of the hardware and software environments required to use the Service.

13.2 Any use of Brainloop Dox that exceeds the use contractually agreed upon is not permitted and must be reported to, and agreed by, Brainloop in advance.

13.3 Customer is obligated to accurately provide information necessary for the conclusion of the Agreement, to the best of his knowledge. Customer shall not give false or deceptive information. Customer must promptly inform Brainloop in writing of any changes to the company name, address, bank account information and any other information materially related to the User Agreement.

13.4 Customer shall treat user accounts and passwords as confidential information and will inform Brainloop if unauthorized disclosure of this information is suspected. In particular, user names and passwords must be kept secure in such a way that it is not possible for unauthorized parties to access them. Customer shall immediately change or allow Brainloop to disqualify user names and passwords if it suspects unauthorized disclosure of this information.

13.5 Customer shall not undertake to access third party data without authorization or to impair the availability of the system through improper use, such as use of the Service for a non-intended purpose.

13.6 Customer shall not store any content on the storage space associated with the Service, the existence, use, or publication of which infringes any laws, including without limitation criminal, export, trademark, copyright and/or patent law. Customer shall only use the Services within the scope set out in the User Agreement and in compliance with applicable laws.

13.7 Customer will inform its Authorized Users of the responsibilities set forth herein.

13.8 Customer shall be responsible for ensuring that all of its Authorized Users comply with the User Agreement.

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14. Payment Terms

14.1 All prices are exclusive of taxes, except those based on the net income of Brainloop. Customer shall pay, or reimburse Brainloop for the payment, of all such other taxes.

14.2 Without exception, Customer is responsible for the payment of the fees arising for all Brainloop Dox-Users.

14.3 Objections to the invoice amount and information specified or not provided in any invoice by Brainloop to Customer must be identified and fully described by Customer in a writing sent to Brainloop without delay and in no event beyond four (4) weeks of receipt of invoice to be valid. The lack of a timely objection shall be considered as approval. Brainloop shall inform Customer at the beginning of this period of four (4) weeks of this circumstance in a suitable manner.

14.4 Following the first anniversary of a User Agreement, Brainloop may from time to time increase the price for the Service after giving Customer written notice no later than six (6) months in advance. Customer may terminate the User Agreement so long as the written termination notice is received by Brainloop within six (6) weeks of receiving said notice and is effective immediately.

15. Overdue Payments and Suspension of Service

If Customer defaults on payments, Brainloop shall be entitled to suspend the Service, at Customer's expense until Customer's overdue fees have been paid in full. Suspension shall not relieve Customer of its obligations and especially of the obligation to pay. Brainloop reserves the right to suspend the Service for security reasons if Customer materially breaches the User Agreement. Brainloop is authorized to terminate the User Agreement without notice if Customer attempts to gain unauthorized access to the Service or to data contained therein or if Customer stores data in violation of section 13.

16. Termination for Cause

Brainloop may terminate this Agreement effective on notice to Customer if Customer fails to comply with the obligations set forth in section 11, defaults on two consecutive payment deadlines or is otherwise in default of its required performance of a material provision of this Agreement.

17. Disclaimer of Warranties

17.1 Although Brainloop has attempted to provide accurate information with regard to the Service, the Site and documentation relating to the Service and the Site, Brainloop assumes no responsibility for the accuracy or inaccuracy of that information. Mention of non-Brainloop products or services is for information purposes only and constitutes neither an endorsement nor a recommendation. Customer's access and use of the Service and the Site is at Customer's risk.

17.2 To the extent permitted by applicable laws and regulations, the Service, the Site and all related documentation are provided by Brainloop "as is" and Brainloop disclaims all warranties, conditions and other obligations of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose or non-infringement, or warranties arising from a course of dealing, usage, or trade practice.

18. Limitation of Liability

18.1 Nothing in this Agreement shall limit or exclude Brainloop's liability for (i) death or personal injury resulting from its negligence, (ii) fraud, or (iii) any other liability to the extent that it may not be limited or excluded by law.

18.2 Subject to Section 16.1, Brainloop and its suppliers shall not be liable to Customer, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, for (i) any indirect, special, consequential or incidental damages, or (ii) any loss of profits or revenues, costs of replacement products or service, loss or damage to data arising out of the use or inability to use the Site, the Service or any Brainloop product or service. Subject to Section 16.1, under no circumstance shall Brainloop be liable, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, for damages resulting from use of the Service or software, or reliance on the information present on the Site, even if Brainloop have been advised of the possibility of such damages.

18.3 Subject to Section 16.1, Brainloop's total liability to Customer, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, shall not exceed the lower of (i) the amount paid by Customer to Brainloop in the most recent 12 months of the term of this Agreement, and (ii) twenty-five thousand pounds (£25,000).

19. [Open]

20. Data Protection and Non-Disclosure of Confidential Information

20.1 Unless expressly authorized by law, Customer and Customer's employees, officers, directors or representatives shall not disclose to any third party any confidential information or materials of Brainloop, including without limitation material and pages on the Site, the Service, any other software, materials or documentation, this Agreement, and discussion and written communications between the parties, which materials and information are either marked or identified as confidential or proprietary, or which by their nature are proprietary and/or confidential (referred to in this Agreement as "Confidential Information"). This restriction does not apply to any information that is in the public domain, or in Customer's possession prior to disclosure by Brainloop, in each case other than by a breach of a duty of confidentiality.

20.2 In this Section 20, the expression "Data Protection Legislation" means the UK Data Protection Act 1998 and other applicable laws and regulations relating to data protection or privacy (as amended or replaced from time to time) and "Personal Data" and "process" (and its grammatical variants) shall have the meanings given to them in the Data Protection Legislation.

20.3 Neither party shall do, nor cause or permit to be done, anything which may result in a breach of the Data Protection Legislation by the other.

20.4 Brainloop shall, to the extent it processes any Personal Data on behalf of Customer (i) only process the relevant Personal Data in accordance with the written instructions of Customer and to the extent, and in such a manner, as is reasonably necessary to provide the Services in accordance with this Agreement or as is required by any applicable laws and regulations, and (ii) implement appropriate technical and organizational security measures to guard against unauthorized processing of the relevant Personal Data or accidental loss or destruction of the relevant Personal Data.

21. Professional Service

21.1 Professional service ordered by Customer shall be provided on a service contract basis and may include consulting and/or training in particular.

21.2 All trainings will be conducted via webinar. Customer must have Internet and telephone connections in order to participate and is responsible for any associated costs. Training shall be conducted with one participant. Additional participants may be allowed upon request. The time and date of the training will be agreed upon by Brainloop and Customer.

21.3 Customer may reschedule trainings up to two (2) business days before the training. Brainloop reserves the right to cancel or reschedule any training for any reason. In the event that Brainloop cancels or reschedules any training under this provision, Brainloop shall notify Customer no later than two (2) business days prior to the training. Customer will not be invoiced for cancelled or rescheduled trainings.

21.4 Customer shall facilitate Brainloop's performance of the professional service as far as it is reasonable, necessary, and appropriate. If Customer does not fulfill its contractual obligation to cooperate according to this section 21.4, Brainloop is not responsible for any non-performance of the professional service or partial performance if (i) Customer's breach of the obligation to cooperate was the cause and (ii) if Brainloop gave Customer a reasonable opportunity to cure his breach.

21.5 Customer is granted a non-exclusive and non-transferable license to use the deliverables of the professional services for his own internal purposes, as well as for test and evaluation purposes. Customer is not permitted to transfer, license, or sublicense these rights to third parties. All other rights remain with Brainloop.

22. Change of GTC / Transfers / Other Conditions

22.1 This Agreement represents the entire agreement concerning its subject matter, the Service, Customer's subscription to use the Service and the license granted hereunder, and it supersedes and extinguishes all prior and contemporaneous representations, statements, agreements and other communications between the parties, whether written, oral or implied. Each party acknowledges and agrees that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having negotiated and freely entered into this Agreement, agrees that it shall have no remedy in respect of any other representation or warranty, except in the case of fraud. Each party acknowledges that its legal advisers have explained to it the effect of this Section 20.1.

22.2 No waiver or amendment of any term or condition of this Agreement shall be valid or binding on any party unless agreed to in writing by Brainloop.

22.3 This Agreement and any non-contractual obligations arising from or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales. In relation to any legal action or proceedings arising out of or in connection with this Agreement or its subject matter or formation (whether arising out of or in connection with contractual or non-contractual obligations) ("Proceedings"), each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum. The parties specifically disclaim applicability of (i) the United Nations Convention on the Sale of Goods and (ii) any Incoterms.

22.4 Customer and Brainloop are independent contractors. Customer shall be solely responsible for managing its employees, officers, directors or representatives using the Service and for any and all compensation, taxes, benefits and liabilities of those individuals. Neither Customer nor its employees, officers, directors or representatives shall make any representations, warranties or guarantees with respect to Brainloop, the Service (including, without limitation, that Brainloop is a warrantor or co-seller of any of Customer's products or services) other than as expressly authorized by Brainloop.

22.5 If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severed from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

22.6 Customer may not assign its rights under this Agreement, or transfer or delegate any of its duties or obligations to Brainloop, whether by operation of law or otherwise, without the express prior written consent of Brainloop.

22.7 Each party and its signatory hereby represents and warrants to the other party that it and such signatory has all the necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any obligation or duty to any third party. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one instrument. A facsimile of an original signature transmitted to the other party is effective as if the original was sent to the other party.

22.8 Except for confidentiality obligations, acceptable access and use commitments, and payment obligations arising under this Agreement, any failure to perform, or delay in performance by a party of the obligations pursuant to this Agreement shall not constitute a breach or non-performance to the extent such failure or delay is caused by any condition outside of the reasonable control of the party so effected by such condition, but only to the extent that party has provided prompt notice of the occurrence of such condition.