

BRAINFISH SaaS AGREEMENT

This Software-as-a-Service Agreement (**Agreement**) is a binding contract between you (Customer, or you) and Brainfish Pty Ltd (ACN 655 960 482) (**Brainfish**). This Agreement governs the supply of services by Brainfish to the Customer.

This Agreement takes effect when Brainfish accepts an Order the Customer submits by clicking the "Accept" button. By submitting an Order:

- (a) you acknowledge that you have read and understand this Agreement;
- (b) you represent and warrant that the Customer has the right, power, and authority to enter into this Agreement and, if entering into this Agreement for an organisation, that you have the legal authority to bind that organisation; and
- (c) the Customer accepts this agreement and agrees that it is legally bound by its terms.

1. Term

- (a) This Agreement starts on the Commencement Date and continues in full force and effect for the Initial Term.
- (b) At least 60 days before the end of the Initial Term, or any subsequent renewal term, Brainfish will give the Customer notice of the impending expiry and of any increase to the Fees in accordance with clause 3.1(c). If the Customer gives at least 30 days' written notice, then this Agreement will expire at the end of the Term. Otherwise, this Agreement will automatically renew for a further 12 months.

2. Supply of Services

2.1 Brainfish obligations

Brainfish will use its reasonable endeavours to supply the Customer with the Services with due care and skill and in accordance with the Specifications.

2.2 Customer obligations

- (a) The Customer warrants that all information in the Order is accurate and correct as at the date the Order is submitted.
- (b) The Customer agrees to provide all reasonable assistance to Brainfish to facilitate the provision of the Services, including providing complete and accurate information as required by Brainfish for the performance of the Services.
- (c) Where participation by, or access by Brainfish to, the Customer's personnel is necessary for the performance of the Services, the Customer must ensure that those personnel are available at the times agreed by the parties and that they possess the appropriate skills and experience for the tasks assigned to them.

3. Fees and payment terms

3.1 Fee calculation

- (a) Subject to clause 3.1(c), the Service Fees are the Platform Fees and the Add-On Fees for the Add-Ons chosen by the Customer in the Order as at the time the Order is submitted. A copy of these fees will be sent to the Customer via its nominated contact details when Brainfish accepts the Order.
- (b) During the Term, the Customer may request additional Add-Ons by submitting a new Order. If Brainfish accepts the new Order, then on a prospective basis:
 - (i) Brainfish will provide the Add-Ons to the Customer as part of the Services for the remainder of the Term; and
 - (ii) the Services Fees will be increased by the price of the relevant Add-On Fee as at the time of the request. Where the Add-On is selected during the Term, and the Add-On Fee is an annual fee, the Add-On Fee will be calculated as a pro rata proportion of the remaining period until the anniversary of the Commencement Date.
- (c) If, in any given month during the Term, the total Queries submitted exceed the Query Limit the Customer will be deemed to have automatically acquired an additional Query Add-On and the relevant Add-On Fee will be due and payable within 10 Business Days of request by Brainfish.

3.2 Increase to the Service Fees

On each anniversary of this Agreement, Brainfish may, by notice to the Customer, increase the Service Fees by the annual consumer price index as most recently released by the Australian Bureau of Statistics.

3.3 Payment obligation

- (a) The Implementation Fee is payable in advance within 10 Business Days of the Commencement Date. Brainfish is not required to provide any Services until the Implementation Fee is paid in full.
- (b) Unless otherwise specified in the Order, the Fees are payable annually in advance in United States currency in the manner specified in the Order.

3.4 GST

The Fees are exclusive of applicable service tax, goods and services tax or other value added tax, which will be added to Brainfish's invoices at the appropriate rate.

3.5 Overdue payments

- (a) If the Customer fails to pay any undisputed amount due under this Agreement, Brainfish will issue a reminder notice. If the Customer fails to pay within 14 days of the reminder notice, Brainfish may:
 - (i) charge interest thereon from the original due date for payment until the date payment is made in full at the rate of one percent (1%) per month;
 - (ii) terminate this Agreement; and/or
 - (iii) suspend or restrict the Customer's use of the Cloud Services until such time as payment is made in full.
- (b) Brainfish may recover from the Customer, on an indemnity basis, all of Brainfish's costs incurred in recovering any overdue payments from the Customer.

3.6 Disputes

- (a) If the Customer disputes any invoice, the Customer must:
 - (i) pay the undisputed portion of the invoice; and
 - (ii) notify Brainfish in writing within 14 days of the invoice date, specifying the reasons for disputing the invoice.
- (b) Upon receipt of a notice from the Customer under clause 3.6(a)(ii), the parties must follow the dispute resolution process in clause 14.10 in relation to the resolution of such dispute.

4. Licence and restrictions

4.1 Use of Cloud Services

During the Term, and solely in connection with the support of the Supported Product, Brainfish grants to the Customer a non-exclusive, non-transferable, non-sublicensable right and licence, to:

- (a) access the Cloud Services up to the number of Seats;
- (b) use, and permit Users to use, the Cloud Services; and
- (c) install and use any associated offline components included with the Cloud Services.

4.2 Conditions of use

Except to the extent expressly permitted under this Agreement or applicable law, the Customer acknowledges and agrees that it must not, and that it must ensure that Users do not:

- (a) use the Services or provide any Customer Data in violation of any applicable law or regulation, or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, publicity, or intellectual property laws); or
- (b) use, or permit the use of, the Services:
 - (i) in a manner that would cause a material risk to the security or operations of Brainfish or any of its customers, or to the continued normal operation of other Brainfish customers;
 - (ii) in any manner except as expressly permitted by the Agreement, including in a manner that circumvents any contractual usage restrictions;
 - (iii) in a computer service business or third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;

- (c) copy, modify, create derivative works of, adapt, translate, reverse engineer (including monitoring or accessing the inputs and output flowing through a system or an application), decompile, disassemble, or otherwise attempt to discover within any Service, the source code, data representations, or underlying algorithms, processes and methods (except to make a reasonable number of copies for archival purposes and install and use the copies only when the primary copy has failed or is destroyed); or
- (d) remove, obscure, or alter any proprietary notices associated with the Services.

4.3 Customer obligations

The Customer:

- (a) must use commercially reasonable efforts to prevent unauthorised access to, or use of, the Services through its account;
- (b) must promptly notify Brainfish immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Services; and
- (c) has the sole responsibility for the adequate protection and backup of Customer Data inputted into, or otherwise used in connection with the Cloud Services.

4.4 Users

- (a) The Customer will be responsible for all Users' use of the Services and compliance with this Agreement and for any other activity (whether or not authorised by the Customer) occurring under the Customer's account.
- (b) The Customer acknowledges and agrees that:
 - (i) each Seat has the ability to view, modify and analyse the Customer's configuration of the Platform; and
 - (ii) the Customer is responsible for all such activities.

5. Customer Data

5.1 Ownership

As between the Customer and Brainfish, the Customer is and will remain the sole and exclusive owner of all right, title and interest to the Customer Data.

5.2 Provision of Training Data

- (a) The Customer must promptly provide the relevant Training Data in respect of the Supported Product to implement in the Cloud Services.
- (b) The Customer acknowledges and agrees that the Cloud Services:
 - (i) are based on, and rely on, the Training Data. To the extent the Training Data is incorrect, inaccurate or incomplete, the Cloud Services may result in Output that is not accurate, correct or complete; and
 - (ii) rely on artificial intelligence and machine learning, and given the probabilistic nature of machine learning, there is an inherent and unavoidable risk that Cloud Services may give Output that is not accurate, correct or complete and the Customer accepts this risk,and to the extent permitted by law, Brainfish excludes all liability arising out of, or in connection with, any incorrect, inaccurate or incomplete Training Data, or Output that is incorrect, inaccurate or incomplete due to the nature of artificial intelligence and machine learning.

5.3 Permitted use

The Customer grants Brainfish a non-exclusive, worldwide, sub-licensable royalty-free licence to use, host, process, store, display and transmit the Customer Data:

- (a) to the extent necessary to perform its obligations (including developing, modifying, improving, supporting, customising, and operating the Services) or enforce its rights under this Agreement; or
- (b) where required or authorised by law.

5.4 Location of processing

- (a) The Customer acknowledges and agrees that Customer Data will be stored and processed through one or more servers operated by, or on behalf of, Brainfish in the United States of America.
- (b) Brainfish will obtain the consent of the Customer before processing Customer Data in a jurisdiction other than as permitted in clause 5.4(a).

5.5 Usage analytics

The Customer acknowledges and agrees that Brainfish may:

- (a) develop, modify, improve, support, customise and operate its Services based on the Customer's and its Users' use of any Services and the Output;
 - (b) use the results of the Services and the Output for development, diagnostic and corrective purposes;
 - (c) use and disclose aggregate data from the Services in connection with its business.
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6. Security and privacy

6.1 Security acknowledgement

- (a) The Customer acknowledges and agrees that it is impossible to guarantee that technological and digital infrastructure is secure.
- (b) To the extent permitted by law, Brainfish excludes all liability to the Customer and any third party in respect of any Claim arising in connection with unauthorised third party access to, disclosure of, loss of, or amendment to data including the Customer Data.

6.2 Personal Information

In relation to all Customer Data that includes personal information, the Customer is responsible for complying with (including giving any notifications, obtaining any consents, and making any disclosures required under) all Data Protection Laws as necessary for Brainfish to lawfully receive the Customer Data for the purpose of processing that Customer Data in accordance with this Agreement.

7. Confidentiality

7.1 Protection of Confidential Information

Where a party receives or otherwise acquires Confidential Information of the other party, subject to clause 7.2, it must:

- (a) not directly or indirectly disclose or communicate that Confidential Information to any other person without the other party's prior written approval;
- (b) take all reasonable steps to keep such Confidential Information confidential and secure;
- (c) only use such Confidential Information to perform its obligations under this Agreement; and
- (d) not memorise, modify, reverse engineer or make copies, notes or records of such Confidential Information for any purpose other than (and to the extent required) for the performance of its obligations under this Agreement.

7.2 Exceptions

The obligations of confidentiality under clause 7.1 do not apply to any use or disclosure:

- (a) that is required to be made by any applicable law; or
- (b) to a party's legal and other professional advisor, where such advisor is bound by an obligation of confidentiality.

7.3 Public statements

Nothing in this clause 7 prevents a party from publicly disclosing the fact that Brainfish is providing Services to, or on behalf of, the Customer.

8. Intellectual property

8.1 Ownership

- (a) Subject to clause 8.1(b), all rights, title and interest (including Intellectual Property Rights) in and to the Services, and all modifications, extensions, customisations, scripts or other derivative works of the foregoing) and anything developed or delivered by or on behalf of Brainfish under this Agreement (excluding the Output) are owned exclusively by Brainfish or its licensors. Any rights not expressly granted herein by Brainfish are reserved by Brainfish.
- (b) The Customer will retain all rights, title and interest (including Intellectual Property Rights) in and to the Customer Data.

8.2 Licence

- (a) During the Term, the Customer grants Brainfish a royalty-free, worldwide licence to use the Customer Data for the performance of this Agreement.
- (b) The Customer grants Brainfish a royalty-free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by the Customer or any Users.

8.3 Trade mark

During the term of this Agreement, the Customer grants Brainfish a non-exclusive, royalty-free, worldwide licence to use the Customer's name and trade mark in connection with any public statement made by Brainfish under clause 7.3.

9. Insurance

9.1 Insurance Policies

During the Term, Brainfish will maintain public and products liability insurance with a limit of up to \$20m and professional liability insurance of up to \$2m in the aggregate.

9.2 Certificate

By notice in writing to Brainfish, the Customer may request a copy of Brainfish's certificate(s) of insurance for the policies listed in clause 9.1.

10. Termination

10.1 Termination for breach

A party may, by written notice to the other party, immediately terminate:

- (a) or suspend this Agreement if the other party breaches (or is alleged to have breached) a material term of this Agreement and the breach is not capable of remedy, or if the breach is capable of remedy, fails to remedy that breach within 30 days after being given notice by the other party to do so; or
- (b) this Agreement if the other party becomes (or likely to become) bankrupt or insolvent or an administrator, receiver or scheme administrator is appointed to manage the other party's business or assets.

10.2 Termination for convenience

A party may terminate this Agreement at any time by giving 30 days' notice after the end of the Initial Term by written notice to the other party.

10.3 Termination consequences

Upon termination or expiry of this Agreement:

- (a) all Fees for the remainder of the Term and all invoices issued by Brainfish will become immediately due and payable;
- (b) the rights granted under this Agreement will immediately terminate, provided that:
 - (i) where the Customer notifies Brainfish within five Business Days of the date of termination or expiry that it wants to export or download the Customer Data; and
 - (ii) where the Customer notifies Brainfish of the time period it needs to export or download the Customer Data (which cannot exceed 30 days); and
 - (iii) the Customer requires access to the Cloud Services to export or download the Customer Data; and
 - (iv) the Customer agrees to compensate Brainfish at the relevant Fee for the continued use of the Cloud Services,the Customer may retain access to the Services for the nominated period solely to export or download the Customer Data, after which the Customer must comply with this clause. The Customer is liable to Brainfish for applicable Fees in respect of its nominated period;
- (c) except as otherwise agreed under clause 10.3(b), Brainfish will permanently delete the Customer Data; and
- (d) this clause 10.3 and clauses 5, 6, 7, 8.1, 8.2(b), 11, 13 and 14 will survive and continue to apply.

11. Warranties

11.1 Mutual warranties

Each party warrants to the other party that it has the authority to enter into this Agreement.

11.2 Customer warranties

- (a) The Customer warrants that the Services are not intended to be primarily relied upon in or in connection with any environment where a defect, error, failure, use or non-use of the Service or any part thereof could directly or indirectly contribute to or result in any personal injury (including but not limited to death) or loss or damage to third party property or the environment.
- (b) The Customer acknowledges and accepts that it is the Customer's sole responsibility to ensure that:
 - (i) the Services meet the Customer's requirements;
 - (ii) the Services are appropriate for the specific circumstance of the Customer and are within the laws and regulations of the Customer's jurisdiction; and
 - (iii) Brainfish does not purport to provide any legal, taxation or accountancy advice by providing the Service under this Agreement.
- (c) The Customer warrants that the Customer Data:
 - (i) to the best of the Customer's knowledge, does not and will not contain any malware, spyware, or destructive or disabling code that would permit any third party to have unauthorised access to Brainfish's networks and systems; and
 - (ii) and its use by Brainfish under this Agreement, will not infringe any third party's Intellectual Property Rights or breach any law.

11.3 Brainfish warranties

Brainfish warrants that:

- (a) the Customer's use of the Services in accordance with this Agreement will not infringe any third party's Intellectual Property Rights;
- (b) to the best of Brainfish's knowledge, the Services do not and will not contain any malware, spyware, or destructive or disabling code that would permit any third party to have unauthorised access to Customer's networks and systems;
- (c) subject always to clause 5.2(b), the Services, as delivered to the Customer, will substantially conform to the Specifications;
- (d) where Services are temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Brainfish or by third-party providers, or due to other causes beyond Brainfish's reasonable control, Brainfish will use reasonable efforts to provide advance notice to the Customer in writing or by email of any scheduled service disruption; and
- (e) it will use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimises errors and interruptions in the Services and will perform the Professional Services in a competent and workmanlike manner consistent with generally accepted industry standards.

11.4 Remedies

To the extent permitted by law, Customer's sole and exclusive remedy and Brainfish's sole liability under or in connection with the warranties in clauses 11.3(b) to 11.3(e) (inclusive) are limited, in Brainfish's absolute discretion, to:

- (a) Brainfish, at its own expense, using all reasonable endeavours to rectify any non-conformance of the Services by redelivery of the Service or repair (by way of a patch, workaround, correction or otherwise) within a reasonable period of time; or
- (b) the termination of this Agreement and a refund of any pre-paid Fees for the unused portion of the Services (calculated at the date of termination) if, in Brainfish's reasonable opinion, it is unable to rectify such non-conformance within a reasonable timescale or at a reasonable economic cost.

11.5 Disclaimer of warranties

Except as expressly set out in this Agreement:

- (a) the Services are provided on an "as is" basis and Brainfish does not warrant that the Services will be uninterrupted, error-free, secure or without delay or free from defects, harmful components, viruses or malware, meet the Customer's requirements or expectations, be fit for a particular purpose or that

the Services will be compatible with any application, program or software not specifically identified as compatible by Brainfish;

- (b) Brainfish will not be liable for any failure of the Services to provide any function not set out in this Agreement or any failure attributable to:
 - (i) any modification to the Services other than by Brainfish;
 - (ii) accident, abuse or misapplication of Services by the Customer;
 - (iii) use of the Services with other software or equipment without Brainfish's written consent;
 - (iv) use of other than the latest, unaltered current release of the Services; or
 - (v) use other than in accordance with this Agreement; and
- (c) to the maximum extent permitted by law, Brainfish disclaims all implied warranties or conditions in relation to this Agreement, including warranties or conditions of merchantability and fitness for a particular purpose and any issues in connection with any Third Party Application or services provided by a third party in connection with any Third Party Application.

12. Limitation of liability

12.1 Maximum liability

To the extent permitted by law except in the case of death or personal injury caused by Brainfish's negligence, Brainfish's total aggregate liability under or in connection with this Agreement (whether arising in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) will not exceed the total Fees paid by the Customer to Brainfish in respect of the Service under this Agreement giving rise to the Claim in the 12 months prior to the act or event that gave rise to the Claim, in each case, whether or not Brainfish has been advised of the possibility of such damages; and

12.2 Consequential loss

To the extent permitted by law, neither party is liable for:

- (a) any loss (direct or indirect) of profit, revenue, anticipated profits or savings, business or goodwill;
- (b) any loss of or corruption of data;
- (c) any loss or damage to credit rating or increased financing costs; or
- (d) any indirect or consequential losses, regardless of whether they were contemplated by either of the parties when this Agreement was entered into.

12.3 Exclusion from limitation

Nothing in this Agreement excludes or limits liability to the other party for:

- (a) death, personal injury or damage to property resulting from negligence;
- (b) an obligation to pay the Fees;
- (c) fraud or fraudulent misrepresentation;
- (d) the deliberate default or wilful misconduct of it or its employees, agents or contractors;
- (e) the indemnities provided under clause 13; or
- (f) any non-excludable statutory liability.

13. Indemnities

13.1 Brainfish indemnification obligation

Subject to clause 13.3, Brainfish indemnifies the Customer and its officers, employees and agents from any Claims brought against the Customer by a third party for any injury, loss, damage or expense occasioned by or arising directly or arising indirectly from any allegation that the Services infringes such third party's Intellectual Property Rights where such Claim is:

- (a) admitted by Brainfish; or
- (b) confirmed in a court of competent jurisdiction.

13.2 Customer indemnification obligation

Subject to clause 13.3, the Customer indemnifies Brainfish and its officers, employees and agents from any Claims brought against Brainfish by a third party for any injury, loss, damage or expense occasioned by or arising directly or arising indirectly from:

- (a) a breach by the Customer of a material obligation under this Agreement;
- (b) any Training Data that is incorrect, inaccurate or incomplete;
- (c) any wilful, unlawful or negligent act or omission of the Customer;
- (d) a User's use of the Services; and
- (e) any allegation that any Customer Data infringes such third party's Intellectual Property Rights or any applicable privacy laws,

where such Claim is:

- (f) admitted by the Customer; or
- (g) confirmed in a court of competent jurisdiction.

13.3 Indemnity requirements

A party will have no liability for any Claim where the party seeking indemnity under this clause 13 fails to give the indemnifying party:

- (a) prompt written notice of any Claim for which it intends to seek indemnity;
- (b) all cooperation and assistance reasonably requested by the indemnifying party in the defence of the Claim; and
- (c) sole control over the defence and settlement of the Claim, provided that the indemnified party may participate in the defence of the Claim at its sole expense.

14. General

14.1 Subcontractors

The Customer agrees that Brainfish may use subcontractors in the performance of this Agreement, in which case Brainfish will be liable for the acts and inactions of the subcontractor.

14.2 Entire agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Services.

14.3 Notices

- (a) All notices under this Agreement must be in writing and must be sent to the address of the recipient set out in the Order (in the case of the Customer) or at the following address for Brainfish:
hello@brainfi.sh
or such other address as the recipient may designate by written notice.
- (b) Any notice may be delivered by hand, prepaid post or email.
- (c) Any notice given in accordance with clause 14.3(b) is taken to be given and made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (domestic) or seven Business Days after the date of posting (international); and
 - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the notice has been delivered,

provided that where a notice is given after 5pm on a Business Day, it is deemed to have been given at 9am on the next Business Day.

14.4 Assignment

The Customer must not assign, whether in whole or part, the benefit of this Agreement or any rights or obligations under this Agreement, without the prior written consent of Brainfish (such consent not to be unreasonably withheld).

14.5 Force majeure

If a Force Majeure Event gives rise to a failure or delay in a party performing any obligation under this Agreement (other than a payment obligation), that obligation will be suspended for the duration of the Force Majeure Event, provided that the party whose performance of its obligations is affected by a Force Majeure Event:

- (a) promptly notifies the other party in writing;

- (b) informs the other party of the period for which it is estimated that such failure or delay will continue; and
- (c) takes reasonable steps to mitigate the effects of the Force Majeure Event.

14.6 **Governing law**

This Agreement is governed by and construed in accordance with the laws from time to time being in force in New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts and tribunals of New South Wales and all courts of appeal therefrom.

14.7 **Waiver**

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach.

14.8 **Variation**

No variation of this Agreement will be effective unless in writing and signed by both parties.

14.9 **Severability**

Should any part of this Agreement be or become invalid, that part will be severed from that document and such invalidity will not affect the validity of the remaining provisions of it.

14.10 **Dispute resolution**

- (a) If a dispute arises between the parties under this Agreement, the parties will negotiate in good faith to resolve the dispute and refer the resolution of the dispute to the chief executive officer of each party, or their nominees.
- (b) If, within 45 days of referral of a dispute under clause 14.10(a) (or such other period as may be agreed), the dispute is not resolved, then either party may refer the dispute to arbitration in accordance with the Resolution Institution Arbitration Rules 2023, in which case:
 - (i) the seat of arbitration shall be Sydney, New South Wales, Australia;
 - (ii) the language of the arbitration shall be English; and
 - (iii) the arbitration award shall be final and binding on the parties to the maximum extent provided for by the Arbitration Rules and applicable arbitration legislation.

15. **Definitions and interpretation**

15.1 **Definitions**

Action means any discrete, intent-based operation configured within an Platform for the Customer in response to a recognised user intent or system trigger as agreed by the parties in the Order. Such Actions may include, but are not limited to, a defined frontend callback; a request to an API, model control protocol server or other service endpoint; dynamically routing a user; or other intent-driven operations within the scope of the Platform.

Add-On means each set of Actions, Integrations, Seats, Queries and/or Localisation and any other optional extra selected in an Order.

Add-On Fee means the relevant fee for each Add-On as applicable at the time the Add-On is acquired.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales excluding Saturdays and Sundays.

Claim means any claim, loss, liability, damage, action, order, judgment, demand, cost and expense.

Cloud Services means the provision of the Platform during the Term:

- (a) with the Actions and Integrations (if any);
- (b) for the number of Seats; and
- (c) to respond to Queries up to the Query Limits each month;.

Commencement Date means the date Brainfish accepts the Customer's Order.

Confidential Information means:

- (a) the content of this Agreement, or any other instruments entered into under this Agreement;
- (b) in the case of Brainfish and the Services;
- (c) all information regarding a party's business or affairs, including business concepts, processes, methods, trade secrets, systems, data, proprietary software, code, inventions, algorithms, technical

information, know-how, devices, formulas, product specifications, marketing methods, prices, distributor lists, supplier lists, methods of operation, or other information, whether in oral, written, or electronic form;

(d) information obtained by a party in connection with this Agreement that, by its nature or the circumstances surrounding its disclosure, could reasonably be expected to be regarded as confidential to the other party or any third party; and

(e) information developed or created by a party which is based on, derived from, which includes or refers to, any of the other party's confidential information,

whether or not provided, obtained, developed or created before or after the date of this Agreement, but does not include any information:

(f) that becomes generally available to the public (other than through breach of this Agreement);

(g) that was already known to that party at the time of disclosure by the other party; or

(h) information that that party acquires from a source other than the other party (if such source is entitled to disclose it on a non-confidential basis).

Customer Data means all Output from the use of the Cloud Services and all data submitted or provided to Brainfish by or on behalf of the Customer in connection with this Agreement, including but not limited to all Training Data.

Data Protection Laws means any law applicable to the processing of personal information by a party in connection with this Agreement, including (as relevant) but not limited to the Australian *Privacy Act 1988* (Cth).

Fees means the Service Fees and the Implementation Fee.

Force Majeure Event means an event, or series of related events, that is outside the reasonable control of the party affected and which was not in existence as at the date of this Agreement, including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, disasters, explosions, fires floods, riots, terrorist attacks, wars, epidemics and pandemics.

Implementation Fee means the one-off fee, if applicable, as specified in the Order .

Initial Term means the initial term of this Agreement as specified in the Order.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Integrations means the integration of a third party service into the Platform for the Customer as specified in the Order. Such third party services may include knowledge sources, distribution channels such as ticketing or email services, or provision of insights.

Localisation means the ability for the Platform to translate answers using artificial intelligence into available languages, a list of which can be found here [<https://brainfishai.com/language-support>], as specified in the Order.

Order means the Customer's request for the Services, including all details provided by the Customer at the time of placing the request.

Output means the output received by Users in response to their use of the Cloud Services.

Platform means the Brainfish artificial intelligence-powered help centre platform:

(a) which is hosted by or on behalf of Brainfish; and

(b) which can respond to User Queries in respect of the Supported Product using the Training Data.

Platform Fee means the monthly fee for the use of the Platform with the initial Seats and Query Limit as specified in the Order.

Query means each request submitted to the Platform by a User.

Query Limit means the monthly limit of Queries as specified in the Order.

Seat means each member or administration-level seat to access the Services as specified in the Order.

Service Fees means the recurring monthly Platform Fee and the Add-On Fees for any Add-Ons as specified at the date the Order is submitted, subject to clauses 3.1(b) and 3.1(c).

Services means the Cloud Services and Support Services.

Specifications means the applicable technical specifications, support operation policy and service level documentation for the Services, as attached to this Agreement.

Support Services means the support services provided by Brainfish as set out in the Specifications.

Supported Product means the Customer's product supported by the Services, as set out in the Order.

Term means the Initial Term and any extension under clause 1.

Training Data means all data provided by the Customer in respect of the Supported Product, which will be used by the Cloud Services to provide Output in response to User Queries.

User means each individual who access or uses the Customer's instance of the Cloud Services.

15.2 Interpretation

In this Agreement, unless otherwise stated:

- (a) a reference to a document includes any document which varies, supplements, replaces, assigns or novates that document;
- (b) a reference to a party includes that party's representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (c) 'including' and 'includes' are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (d) a word that is derived from a defined word has a corresponding meaning;
- (e) neither this document nor any part of it is to be construed against a party on the basis that the party was responsible for its drafting;
- (f) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (g) an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (h) a reference to a body (including an institute, association or authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions; and
- (i) a reference to **dollars** or **\$** is to United States currency unless otherwise noted.

Schedule 1 Specifications

1. Functional Specifications

1.1 General Specifications

- (a) Brainfish AI is an artificial intelligence-powered Customer Experience (CX) platform.
- (b) The platform uses advanced machine learning and generative AI to provide robust in-depth AI agents to support and assist users in understanding and using your product.
- (c) The platform also contains a built-in content management system for organizing and managing digital content effectively.

1.2 Search Functionality

- (a) Brainfish AI provides near-instant responses to User queries, improving User customer experience significantly.
- (b) The platform uses advanced algorithms to understand the User's intent behind their queries in real-time.
- (c) The platform displays the most relevant results based on previous interactions and User behaviour, improving search accuracy.

1.3 Content Management

- (a) Brainfish AI's content management platform ensures ease of use for administrators, allowing them to connect, sync, upload, categorize, and manage digital content.
- (b) The platform has operative functionalities such as version control, auditing, and roll-back, providing security and stability.

1.4 User Interface

Brainfish AI offers a user-friendly interface that ensures easy navigation, interactive user experience, and seamless access to various features for both Users and administrators.

1.5 Customer Experience

The platform offers advanced User customer experience features such as real-time customer insights, etc.

1.6 Machine Learning Capabilities

Brainfish AI continually learns and improves its search algorithms based on data and User interactions, enhancing its capabilities over time.

1.7 Integration Capabilities

Brainfish AI supports integration with various third-party applications and software for extending functionalities like data analytics, customer relationship management, and more.

1.8 Security

Brainfish AI leverages state-of-the-art security protocols and practices to help ensure the data privacy and security of its users.

1.9 Reporting

Brainfish AI generates comprehensive reports based on user behaviour, search trends, content performance, and more, providing valuable insights to the administrators.

2. Technical Specifications

2.1 Architecture

Brainfish AI's underlying platform is built on a microservices-based architecture which improves modularity and makes the application easier to develop, scale, and maintain.

2.2 AI Technologies

The platform utilizes Natural Language Processing (NLP) and Machine Learning (ML) technologies to understand an individual's intent behind their queries and provide accurate search results.

2.3 Security

Brainfish complies with ISO27001 standards, ensuring best practices in maintaining information security management system. It includes encryption during data transit and at rest, secure user authentication mechanisms, access controls, and regular vulnerability assessments.

2.4 Content Management

There is a built-in Content Management System (CMS) that supports different file types including but not limited to .md, .docx, .html, etc. It supports file versioning and rollback features.

2.5 Database

The platform uses a mix of SQL and NoSQL databases to handle structured and unstructured data. It offers capabilities for real-time data replication and automatic backups, ensuring data reliability and integrity.

2.6 Scalability

Brainfish AI can handle increased workload without impacting the system's performance. It can be scaled up or down based on the needs of your business.

2.7 Performance

The predictive abilities of the platform ensure a high-speed response to User queries. This prevents delays in displaying search results, thus enhancing the customer experience of Users.

2.8 Integration

Brainfish provides APIs that allow integration with various third-party applications, such as CRM tools, data analytics software, and other business tools.

2.9 Compliance

The Brainfish AI platform complies with GDPR, CCPA and other applicable data protection regulations. It also has built-in mechanisms to handle User consent, data erasure, and subject access requests.

2.10 Reporting and Analytics

The platform supports data visualisation tools, and can generate automated reports for User behaviour, search results, and content performance.

2.11 Disaster Recovery

Brainfish has a disaster recovery plan in place. In the event of any unintended disruptions, it ensures the smooth transition of services and quick restoration of data.

3. Support Service Specifications

3.1 Support Services

Technical support in respect of use of the Cloud Services provided via both telephone and email

The Customer may initiate a helpdesk ticket during Support Hours (as defined below) by emailing hello@brainfi.sh, by Slack, or via self-service help.brainfi.sh

3.2 Support Hours

The Support Services are provided on weekdays during the hours of 9:00 am through 5:00 pm Australian Eastern Standard Time, with the exclusion of Australian Public Holidays

3.3 Response times

The Company will use commercially reasonable efforts to respond to all helpdesk tickets within one to three business days.