

## Terms of Use for mBrainTrain Products

### 1. General

**1.1.** mBrainTrain LLC Belgrade (in further text: mBrainTrain) is an innovative technology developer and producer of specialized mobile, wearable devices that measure physiological activity of human brain (in further text: Products), with support for mobile phones, tablets and PCs.

**1.2.** mBrainTrain Products are available for use only by authorized Users in accordance with the terms and conditions set forth in this TOU. By using Products or any of its parts, User agrees to be bound by the following terms and conditions and that these TOU are enforceable like any signed written contract.

### 2. Personal Data

**2.1.** In using mBrainTrain Products (including, but not limited to Support) User may be required to provide mBrainTrain with certain personally identifiable information, retention and use of which are subject to the mBrainTrain's Privacy Policy, incorporated herein by reference. Use of mBrainTrain Products or any of its parts signifies that User has read, understood and agreed with the terms of the Privacy Policy.

### 3. Intellectual Property / Limited use license

**3.1** mBrainTrain Products are protected by the laws of Republic of Serbia and other international intellectual property regulation. mBrainTrain reserves all rights in connection with the mBrainTrain Products, including, without limitation, the exclusive right to create derivative works there from, and User agrees that it will not create any work of authorship, inventions or other IP based on the mBrainTrain Products except as expressly permitted by mBrainTrain.

**3.2.** Subject to the terms and conditions of this License Agreement and your agreement therewith, mBrainTrain hereby grants to you and you hereby accept a limited, non-exclusive, non-transferable license (unless otherwise expressly stipulated in a separate agreement) to use mBrainTrain Products or certain parts of it and accompanying services (if any), as the case may be.

**3.3.** The limited license granted to you is subject to the additional limitations set forth below. Any use of the mBrainTrain Products in violation of the license limitations set forth below represents unauthorized use of the mBrainTrain Products outside of the license granted to you and will be regarded as an infringement of the IP rights mBrainTrain holds in and to the mBrainTrain Products. You agree that you will not, under any circumstances:

A. Copy, photocopy, reproduce, translate, reverse engineer, decompile, derive source code from, or disassemble, in whole or in part, the mBrainTrain Products, or create derivative works based on the mBrainTrain Products;

B. Modify or cause to be modified any parts and/or files that are part of the mBrainTrain Products in any way not expressly authorized by mBrainTrain;

C. Use any unauthorized third-party software or hardware that interact with the mBrainTrain Products in any way, or automation programs, or any third-party programs that intercept, emulate or redirect any communication within the mBrainTrain Products, or that collect information about the mBrainTrain Products by reading areas of memory used by the mBrainTrain Products to store information about the mBrainTrain Products.

**3.4.** All rights and title in and to the mBrainTrain Products are owned by mBrainTrain.

#### **4. Hardware / Connection requirements**

**4.1.** In order to use mBrainTrain Products, User must meet the hardware and connection requirements, that are set forth in the User Manual and which may change over time.

#### **5. User Account**

**5.1.** mBrainTrain and its distributors and representatives are solely authorized to deliver and grant User credentials for registering and using account at the mBrainTrain website (in further text: Account). Credentials are delivered with the Product or separately in other appropriate manner. Account is to be used for the purposes of obtaining latest updates and patches for Product software, receiving information regarding Product and other uses that mBrainTrain may determine from time to time.

**5.2.** User must be a natural person or a legal entity (e.g., corporations, limited liability companies, and/or partnerships), to register an Account. Accounts registered by "bots" or other automated methods are not permitted. By entering into this agreement and creating an Account, User represents that it has the legal capacity to enter into a contract in the jurisdiction where it resides/has seat.

**5.3.** User agrees to comply with this TOU on behalf of itself and any third persons whom it has authorized to access and use its Account. User further agrees that it is entirely liable for all activities conducted through its Account, and is responsible for ensuring that it and/or authorized third parties are aware of, understand, and comply with this TOU and any and all other mBrainTrain's rules, policies, notices and/or agreements.

**5.4.** User obliges to supply to mBrainTrain accurate and complete information requested in order to complete the signup process to open an Account and to update that information promptly after it changes. All of the information provided to mBrainTrain will be governed by the terms and conditions of this TOU and the Privacy Policy. The information will be used by mBrainTrain for a variety of internal purposes, including without limitation, to maintain the Account, to ensure that User's Account is unique, to deal with security, debugging and technical support issues, and for possible payment-related issues.

**5.5.** User acknowledges that, if any information provided is untrue, inaccurate, not current or incomplete, mBrainTrain reserves the right to terminate User's Account, and/or User's access to and use of mBrainTrain Products or any of its parts.

**5.6.** User is responsible for maintaining the security of its Account. mBrainTrain cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.

#### **6. User Content**

**6.1.** "Content" means any communications, sounds, text, data, graphics and all the material and information that User creates, uploads or transmits through mBrainTrain Products and any information sourced and/or made available by User via Product, all activity that occurs under Account, even when posted by others who have access rights to Account or Product.

**6.2.** mBrainTrain does not, and cannot, pre-screen or monitor all Content. However, its representatives may monitor and/or record User's communications when using mBrainTrain Products and Account, and User hereby provides its consent to such monitoring and recording. Furthermore, mBrainTrain also reserves the right to disclose any Content in order to (i) to satisfy any applicable law, regulation, legal process or governmental request; (ii) to enforce the terms of this TOU or any other agreement; (iii) to protect its legal rights and remedies; (iv) where someone's health or safety may be threatened; or (v) to report a crime or other offensive behavior.

**6.3.** mBrainTrain hereby acknowledges and agrees that User remains fully responsible for and is the owner of any and all Content. However, User grants mBrainTrain from the time of uploading or transmission of the Content, non-exclusively, all now known or hereafter existing copyrights and all other intellectual property rights to all Content of every kind and nature, in perpetuity (or for the maximum duration of protection afforded by applicable law), to the extent owned by User. In the event that any of the Content is not licensable, User hereby grants to mBrainTrain and its respective successors and assigns, a perpetual,

irrevocable, sub-licensable, transferable, worldwide right to reproduce, fix, adapt, modify, translate, reformat, transmit, or provide access to electronically, broadcast, communicate to the public by telecommunication, display, perform, enter into computer memory, and use and practice such Content as well as all modified and derivative works thereof, without compensation to User. To the extent necessary, User agrees to undertake to execute and deliver any and all documents and perform any and all actions necessary or desirable to ensure that the rights to use the Content granted to mBrainTrain as specified above are valid, effective and enforceable.

**6.4.** User represents, warrants and agrees that none of the Content will be subject to any obligation, whether of confidentiality, attribution or otherwise, on the part of mBrainTrain and mBrainTrain will not be liable for any use or disclosure of any Content. User further acknowledge and agrees that it will not upload or otherwise transmit on or through mBrainTrain Products or Account, any Content that is subject to any third-party rights.

## **7. Modifications to mBrainTrain Products**

**7.1.** mBrainTrain reserves the right at any time and from time to time to modify, update or suspend temporarily or permanently, or restrict access to any software features or parts of mBrainTrain Products or any part thereof, with or without prior notice or liability to User or any third party.

**7.2.** User also understands and agrees that any such changes or updates might change the system specifications necessary to access and/or use mBrainTrain Products and in such case User is solely responsible for purchasing any necessary additional software and/or hardware.

**7.3.** Any new features that augment or enhance the current mBrainTrain Products including the release of new tools and resources, shall be subject to the TOU.

## **8. General Conditions**

**8.1.** User agrees that it will not post, upload, publish, submit or transmit any Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances.

**8.2.** User acknowledges that mBrainTrain has no obligation to monitor its access to or use of the mBrainTrain Products, but has the right to do so for the purpose of operating mBrainTrain Products, to ensure compliance with these TOU, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. mBrainTrain reserves the right, at any time and without prior notice, to remove or disable access to any Content and Accounts it determines in its sole discretion to be in violation of these TOU or otherwise harmful to mBrainTrain Products.

**8.3.** User understands that mBrainTrain uses third party vendors and partners to provide the necessary hardware, software, networking, storage, and related technology required to run the mBrainTrain Products.

**8.4.** User understands that the technical processing and transmission of the mBrainTrain Products software, including Content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

## **9. Indemnification**

**9.1.** User agrees to defend, indemnify, and hold mBrainTrain, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, costs and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (i) access to, use or misuse of mBrainTrain Products; (ii) violation of these TOU or Privacy Policy; or (iii) violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right by User.

## **10. Limitation of Liability**

**10.1** User expressly understands and agrees that mBrainTrain will not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if it has been advised of the possibility of such damages or should have known of the possibility of such damages), resulting from: (i) the use or the inability to access or use mBrainTrain Products; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from mBrainTrain Products; (iii) unauthorized access to or alteration of User's transmissions or data; (iv) statements or conduct of any third party on mBrainTrain Products; (v) or any other matter relating to mBrainTrain Products.

**10.2.** In no event shall mBrainTrain be liable for any damages in excess of any amount User has paid to mBrainTrain for related transactions, if any, during the six (6) months immediately prior to the time User's cause of action arose.

## **11. Agreement Modifications**

**11.1.** mBrainTrain reserves the right in its sole and absolute discretion, to revise, update, change, modify, add to, supplement, or delete certain terms of TOU, from time to time and without advance notice. If mBrainTrain modifies TOU, it will post the modification on its website or provide User with notice of the modification. User is responsible for checking TOU periodically for changes.

**11.2.** If any future changes to this TOU are unacceptable to User or cause it to no longer be in agreement or compliance with this TOU, User must terminate its Account(s) and immediately stop using mBrainTrain Products. Continued use of mBrainTrain Products or any of its parts following any revision to this TOU without delivering notification of termination to mBrainTrain, constitutes User's complete and irrevocable acceptance of any and all such changes.

## **12. Miscellaneous**

**12.1.** This agreement represents the complete agreement between User and mBrainTrain concerning its subject matter, and supersedes any prior or contemporaneous agreements between User and mBrainTrain, provided however that this agreement shall coexist with Privacy Policy.

**12.2.** mBrainTrain shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, without limitation, any failure to perform hereunder due to unforeseen circumstances or cause beyond its control such as acts of god, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

**12.3.** User agrees that no joint venture, partnership, employment, or agency relationship exists between it and mBrainTrain as a result of this TOU or use of mBrainTrain Products.

**12.4.** mBrainTrain's failure to enforce any provision of this TOU shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by mBrainTrain of any provision, condition or

requirement of this TOU shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**12.5.** If any provision of this TOU is held to be invalid or unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this TOU shall continue in full force and effect. If, however, it is determined that such provision cannot be reformed, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions.