

Brain Corporation
EULA Data Protection Addendum

This EULA Data Protection Addendum (the “**Addendum**”) is incorporated into and subject to the terms and conditions of the End User License Agreement between you (the “**End User**”) and Brain Corporation (“**Brain**”) (the “**EULA**”; together the EULA and the Addendum shall be referred to herein as the “**Agreement**”).

1. **Defined Terms.** Capitalized terms used in this Addendum that are not otherwise defined herein will have the same meaning ascribed to them as set forth in the EULA.
 - a. “**Affiliate**” means any entity that directly or indirectly Controls, is controlled by, or is under common Control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
 - b. “**BrainOS-enabled Robots**” means any robot containing the Software and provided under an active subscription under the EULA.
 - c. “**End User Personal Data**” means the personal data provided to Brain by the End User employees, contractors, or other designated agents when utilizing Software of BrainOS-enabled Robots.
 - d. “**Controller**” means the entity which determines the purposes and means of the Processing of Personal Data.
 - e. “**Data Laws**” means data protection and privacy laws and regulations applicable to the processing of Personal Data in any relevant jurisdiction.
 - f. “**Data Subject**” means the identified or identifiable person to whom End User Personal Data relates.
 - g. “**EEA**” means the European Economic Area.
 - h. “**European Data Laws**” means all applicable data protection and privacy laws and regulations in European jurisdictions, including, for EEA territories, the General Data Protection Regulation (EU) 2016/679 and any successor legislation and associated national implementations thereto (the “GDPR”) and, for the United Kingdom, the United Kingdom Data Protection Act 2018.
 - i. “**Non-European Data Laws**” means all applicable data protection and privacy laws and regulations outside of European jurisdictions as described in Appendix IV.
 - j. “**Process, Processed, and Processing**” means any operation or set of operations which is performed on End User Personal Data or on sets of End User Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
 - k. “**Security Incident**” means, in connection with the Services: (i) the loss or misuse (by any means) of End User Personal Data; (ii) the inadvertent, unauthorized, and/or unlawful disclosure, Processing, alteration, corruption, sale, rental, or destruction of End User Personal Data or other breach with respect to End User Personal Data; (iii) any compromise or exploit of a vulnerability of End User Personal Data within the Services; or (iv) any confirmed exposure or exploit of a vulnerability of the End User Personal Data (which may stem from an act or omission to act) that would result in any of the events described in this clause (1.k.i) or (1.k.iii).
 - l. “**Services**” means services provided by Brain to the End User pursuant to the EULA.
 - m. “**Standard Contractual Clauses**” or “**SCC**” means the agreement executed by and between the End User and Brain, and attached hereto as Appendix V pursuant to the European Commission’s draft implementing decision published 12 November 2020 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection pursuant to Regulation (EU) 2016/679.

- n. **“Sub-processor”** means any third party that Brain engages in accordance with Appendix III of this Addendum in order to perform the Processing.
- o. **“Term”** means the duration of the active subscription under the EULA.

2. Processing of Data.

- a. **Roles of the Parties.** The Parties acknowledge that with regard to the Processing of End User Personal Data in accordance with the Services, the End User is the Controller and Brain is the processor.
- b. **Brain’s Processing of Personal Data.** Brain and its Affiliates shall process End User Personal Data in accordance with the End User’s documented written instructions. Brain and the End User agree that Brain and its Affiliates shall process End User Personal Data for the purposes, duration and other details set forth in Appendix I.
- c. **End User Compliance Obligations.** Without limiting the generality of this Section 2, (Processing of Data) the End User warrants that:
 - i. the End User shall have sole responsibility for the accuracy, quality, and legality of End User Personal Data and the means by which the End User acquired End User Personal Data;
 - ii. the End User specifically acknowledges that its use of the Services will not violate the rights of any data subject that has opted-out from sales or other disclosures of End User Personal Data, to the extent applicable under Data Laws; and
 - iii. the End User has taken and further undertakes that throughout the Term it shall take all necessary steps (having regard to the nature of the circumstances in which End User Personal Data will be collected) to provide affected Data Subjects with an accurate, comprehensible, concise, conspicuous and easily accessible description of all processing of End User Personal Data carried out under and in connection with the Addendum, which are sufficient to meet the standards and requirements of Article 13/14 of the GDPR.

3. Data Security.

- a. **Brain’s Security Measures.** Taking into account the state of the art, the costs off implementation and the nature, scope, context and purposes of processing (as set forth in Appendix I) as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Brain has implemented and maintains technical and organizational measures designed to protect End User Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access, to End User Personal Data as further described in Appendix II. Brain may update or modify its security program from time to time, provided that such updates and modifications do not materially decrease the overall security of the End User Personal Data.
- b. **Security Compliance by Brain Staff.** Brain will grant access to End User Personal Data only to employees, contractors, and Sub-processors who need such access for the scope of their performance and are subject to appropriate confidentiality arrangements.
- c. **Brain’s Security Assistance.** Taking into account the nature of the processing of End User Personal Data and the information available to Brain, Brain will provide the End User with reasonable assistance necessary for the End User to comply with its obligations in respect of End User Personal Data under European Data Protection Legislation, including Articles 32 to 34 (inclusive) of the GDPR, by:

- i. ensuring Brain's Sub-processors are implementing and maintaining the security measures in accordance with Section 3(a) (Security Measures);
- ii. complying with the terms of Section 4 (Security Incidents); and
- iii. providing the End User with the materials in accordance with Section 5 (Audit) and the Agreement, including this Addendum.

4. Security Incidents.

- a. **Brain's Obligations.** Brain shall notify the End User by email and/or phone of any actual Security Incident without undue delay after Brain becoming aware. Brain shall take reasonable steps to investigate the cause of such Security Incident, minimize harm to the End User, and prevent a recurrence of such Security Incident. Brain will investigate any such Security Incident and take necessary steps to eliminate or contain the exposures that led to such Security Incident in accordance with Brain's security program and applicable law. The Parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected Data Subjects and/or notices to the relevant data protection authorities.
- b. **End User's Obligations.** Other than agreeing on the content of related public statements or required notices, the End User is solely responsible for complying with incident notification laws applicable to the End User and fulfilling any third-party notification obligations related to any Security Incident(s). Brain's notification of or response to a Security Incident will not be construed as an acknowledgement by Brain of any fault or liability with respect to the Security Incident.

The End User agrees that, without prejudice to Brain's obligations under Section 4, (Security Incidents) the End User is solely responsible for its use of the Services, including:

- i. making appropriate use of the Services to ensure a level of security appropriate to the risk in respect of the End User Personal Data;
- ii. securing the account authentication credentials, systems, and devices the End User uses to access the Services;
- iii. securing the End User's systems and devices that Brain uses to provide the Services; and
- iv. backing up End User Personal Data.

5. **Audits.** Brain evaluates, tests, and monitors the effectiveness of the Brain security program and adjusts and/or updates the Brain security program as reasonably warranted by the results of such evaluation, testing, and monitoring. Brain, from time to time, may conduct an assessment of the implementation and maintenance of Brain's End User Personal Data protection program and its related compliance with Data Laws ("**Audit Report**"). Upon the End User's reasonable request, Brain shall provide its then-current Audit Report; provided, however, that the End User agrees that any such Audit Report is the Confidential Information of Brain.

6. **Legally Required Disclosures.** Brain may disclose End User Personal Data and any other information about the End User to government or law enforcement officials or private parties if, in Brain's reasonable discretion, Brain believes it is necessary or appropriate in order to respond to legal requests, demands, and orders, including subpoena, judicial, administrative, or arbitral order of an executive or administrative agency, regulatory agency, or other governmental authority, to protect the safety, property, or rights of Brain or of any third party, to prevent or stop any illegal, unethical, or legally actionable activity, or to comply with applicable law. Except as otherwise required by applicable law, Brain will notify the End User of any

legal requests, demands, and orders that Brain receives, and that relate to the processing of End User Personal Data.

7. Data Subject Rights.

- a. **End User's Responsibility for Requests.** If Brain receives a request from a data subject in relation to End User Personal Data, Brain will advise the data subject to submit its request to the End User and the End User will be responsible for responding to any such request.
- b. **Brain's Data Subject Request Assistance.** Taking into account the nature of the processing of End User Personal Data, Brain will require its Sub-processors to provide the End User with reasonable assistance as necessary for the End User to fulfil its obligation under applicable law to respond to requests by data subjects, including if applicable, the End User's obligation to respond to requests for exercising a data subject's rights set out in Chapter III of the GDPR. The End User shall reimburse Brain for any such assistance beyond providing self-service features included as part of the Services at Brain's then-current professional services rates, which shall be made available to the End User upon request.

8. Data Transfers Out of the EEA. If the storage and/or processing of End User Personal Data occurs within the EEA, involves transfers of End User Personal Data out of the EEA or Switzerland, and the European Data Protection Legislation applies to the transfers of such data, Brain and its Sub-processors will make such transfers in accordance with the SCCs, and make information available to the End User about such transfers upon request.

9. Sub-processors. The End User acknowledges and agrees that Brain may engage Sub-processors to process End User Personal Data on the End User's behalf. A list of approved Sub-processors is set forth in Appendix III. The End User agrees that all such approved Sub-processors are permitted to Process End User Personal Data for the nature and purposes set forth herein. Brain will maintain a list of Sub-processors as described in Appendix III. Brain will update its website to reflect new Sub-processors within ten (10) calendar days prior to a Sub-processor beginning to process End User Personal Data. The End User shall have ten (10) calendar days to reasonably object to the addition of any new Sub-processor.

10. Record Retention and Destruction. Brain shall maintain records related to its Processing activities performed on behalf of the End User relating to End User Personal Data for at least the Term. Upon termination of this Agreement, Brain shall delete any End User Personal Data in its possession, provided, however, that Brain may retain a copy of any such End User Personal Data to the extent required by applicable law.

11. Notices. Notices required or permitted to be given to the End User hereunder may be provided to the End User's primary point of contact with Brain. Notices required or permitted to be given to Brain hereunder may be provided by sending an email to privacy@braincorp.com. The End User is solely responsible for ensuring that such email address is valid.

12. Jurisdiction Specific Terms. To the extent Brain Processes End User Personal Data originating from and protected by Non-European Data Laws, then the terms specified in Appendix IV with respect to those applicable jurisdictions further apply in addition to the terms set forth herein. In the event of any conflict between such jurisdiction-specific terms and this Addendum, such jurisdiction-specific terms shall control.

13. Effect of These Terms. Except as otherwise set forth herein, the terms and conditions of this Addendum, including the Appendices, are part of and incorporated into the Agreement, and the terms and conditions of this Addendum constitute the entire and exclusive agreement between the Parties with respect to its subject matter. To the extent of any conflict or inconsistency between this Addendum and the terms of the EULA, this Addendum will govern.

Appendix I – Processing Details

Subject Matter	The End User’s deployment on certain premises of the BrainOS-enabled Robots in connection with the general provision of the Services to the End User under and in accordance with the Agreement.
Duration of the Processing	The overall duration of Brain’s processing of End User Personal Data under the Agreement is the Term plus the period from the expiry of the Term until deletion of all End User Personal Data by Brain in accordance with the Agreement.
Nature and Purpose of the Processing	Brain will process any such End User Personal Data for the following purposes: <ul style="list-style-type: none"><li data-bbox="613 615 1424 709">i. Processing for supporting the Services, including provisioning, support, and maintenance of the Services, including other processing as set forth in the EULA.<li data-bbox="613 741 1424 898">ii. Processing to comply with the End User’s instructions that are consistent with the Agreement, including, without limitation, communicating with the End User, handling support tickets and requests, and generally supporting the business relationship between Brain and the End User.<li data-bbox="613 930 1424 961">iii. Processing as set forth in and/or required by the EULA.<li data-bbox="613 993 1424 1119">iv. Creating and deriving anonymized and/or aggregated data related to use of the Services that does not identify the End User or any natural person, and use, publicize, or share such data with third parties to improve Brain’s products and services.
Categories of Data and Data Subjects	The categories of data include the contact information of the End User employees, contractors, or other designated agents who use the Services which may include first name, last name, username, password, and mobile phone number. The Data Subjects are the End User employees, contractors, or other designated agents who have access to the Services.

Appendix II – Security Measures

Brain safeguards include appropriate technical, physical, and organizational measures, standards, requirements, specifications, or obligations designed to ensure a level of security appropriate to the risks presented by the Processing and the nature of the Personal Data to be protected, taking into account the state of the art; costs of implementation; the nature, scope, context, and purposes of Processing; and the risk of varying likelihood and severity for the rights and freedoms of natural persons. Further technical and organizational security measures implemented by the data importer are as described in the Addendum.

Appendix III – Approved Sub-processors

The End User may find the list of approved Brain Sub-processors available at:
<https://www.braincorp.com/brain-corp-data-sub-processors/>.

Appendix IV – Jurisdiction Specific Terms

California:

- (1) The following additional terms apply related to the Processing of Personal Data of California residents:
 - a. Each of the Parties will comply with the California Consumer Privacy Act (CCPA).
 - b. To the extent that Brain receives from the End User any personal information (as defined in the CCPA) of any “consumer” (as defined in the CCPA) for processing (as defined in the CCPA) on behalf of the End User pursuant to the Agreement, Brain shall:
 - i. be a “service provider” to the End User under the CCPA;
 - ii. not retain, use or disclose the personal information for any purpose other than for the specific purpose of the Services or as otherwise permitted by the CCPA, including for any “business purpose” (as defined in the CCPA);
 - iii. not retain, use or disclose the personal information for a “commercial purpose” (as defined in the CCPA) other than providing the Services;
 - iv. not “sell” the personal information (as “sell” is defined in the CCPA); and
 - v. promptly (and, in any case within seven days of receipt) comply with the End User’s written instructions associated with responding to an individual’s request to exercise their privacy rights with respect to their personal information.
- (2) If Brain authorizes any subcontractor, service provider or third party to Process personal information of the End User, Brain shall enter into contractual provisions so that such subcontractor, service provider or third party is a “service provider” as defined in the CCPA and not a “third party” as defined in the CCPA.

Canada:

- (1) The following additional terms apply related to the Processing of Personal Data of Canadian residents:
 - a. To the extent any Sub-processor processes End User Personal Data associated with Canadian residents, such Sub-processor is a third party under the Personal Information Protection and Electronic Documents Act, with whom Brain has entered into a written contract with substantially similar protections as set forth in this Addendum. Further, Brain conducts appropriate due diligence on any such Sub-processor.

Appendix V Standard Contractual Clauses

STANDARD CONTRACTUAL CLAUSES

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to Processors established in third countries which do not ensure an adequate level of data protection.

End User (as defined in the EULA)

The data exporting organization identified in the table above (the “**data exporter**”)

- And –

Brain Corporation

(the “**data importer**”)
each a “party”; together “the parties”,

HAVE AGREED on the Contractual Clauses for the transfer of personal data to third countries from a data controller in the European Economic Area to a data processor in the United States pursuant to Regulation (EU) 2016/679 as shall be adopted by the European Commission pursuant to the November 12, 2020 draft implementing decision (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

The Clauses are attached hereto by reference with the options and optional modules selected as follows:

- All Sections: Module TWO
- Section II, Clause 1.5: OPTION 1
- Section II, Clause 4(a): OPTION 1, 10 days
- Section II, Clause 6(a): OPTION Not Included
- Section III, Clause 1(e): OPTION 1, location of the data importer.
- Section III, Clause 3(b): the jurisdiction associated with the data importer.

Annex I, II, and III are attached to the Clauses hereto.

ANNEX I TO APPENDIX V

A. LIST OF PARTIES

Data exporter(s): End User (as defined in the EULA)

Data importer(s): Brain Corporation

B. DESCRIPTION OF THE TRANSFER

The parties agree that the details of Brain's processing activities are set forth in Appendix I to the Addendum.

ANNEX II TO APPENDIX V

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA.

The parties agree that the technical and organization measures are set forth in Appendix II to the Addendum.

ANNEX III TO APPENDIX V

LIST OF SUB-PROCESSORS

The parties agree that the list of approved sub-processors is set forth in Appendix III to the Addendum.