

Brainome Terms of Service

Effective Date: September 14, 2020

Thank you for using Brainome Daimensions™ machine learning platform!

Brainome Daimensions™ is a cloud-based, software-as-a-service platform that analyzes user-inputted datasets ("User Data") to develop and return certain information ("Models") to the user, including, but not limited to, measurement results, recommendations, predictors, and computer programmable code that the user may run on their own computer to perform predictive analysis on additional like datasets (the "Service"). The Service also includes access to certain content featured or displayed through the Website, including, but not limited to, text, data, articles, images, photographs, graphics, software, applications, packages, designs, features, and other materials that are available on the Website or otherwise available through the Service and the look and feel and arrangement thereof (collectively, the "Content"). Unless explicitly stated otherwise, any new features that augment or enhance the Service, including the release of new tools, Content and resources, shall be subject to this Agreement.

These Terms of Service are entered into by and between Brainome and you and apply to your access to and use of our Service and Website. You may signify your acceptance and agreement to these Terms of Service, including the disclaimers of warranty of Section I and liability limitations of Section J, by checking the "I Accept" box. This Agreement is effective as of the date you check the "I Accept" box. If you do not agree to these Terms, do not check the "I Accept" box. Please read these Terms of Service carefully before accessing or using our Service or Website.

A. Definitions

1. An "Account" represents your legal relationship with Brainome. A "User Account" represents an individual User's authorization to log in to and use the Service and serves as a User's identity on the Service.
2. The "Agreement" refers, collectively, to all the terms, conditions, notices contained or referenced in this document (the "Terms of Service" or the "Terms") and all other operating rules, policies (including the Brainome Privacy Policy) and procedures that we may publish from time to time on the Website.
3. "Brainome," "we," and "us" refer to Brainome, Inc., a Delaware corporation, as well as our affiliates, directors, subsidiaries, contractors, officers, agents, and employees.
4. "The User," "you," and "your" refer to the individual person, company, or organization that has visited or is using the Website or Service; that accesses or uses any part of the Account; or that directs the use of the Account in the performance of its functions.

5. The "Website" refers to Brainome's websites located at brainome.ai and brainome.net, and all Content provided by Brainome at or through the Website. It also refers to Brainome-owned subdomains of brainome.ai and brainome.net.

B. Account Terms

1. Account Controls

- Users. Subject to these Terms, you retain ultimate administrative control over your User Account and the Content within it.

2. Required Information

A valid email address and your first and last name are required to complete the signup process. If you opt for a paid Account, additional information will be necessary for billing purposes.

3. Account Requirements

User Accounts on Brainome's Service are subject to the following rules:

- You must be a human to create an Account. Accounts registered by "bots" or other automated methods are not permitted. One person may not maintain more than one free Account.
- You must be age 13 or older. Per United States law, Brainome does not target our Service to children under 13, and we do not permit any Users under 13 on our Service. If we learn of any User under the age of 13, we will terminate that User's Account immediately.
- Your login may only be used by one person — i.e., a single login may not be shared by multiple people. A paid organization may only provide access to as many User Accounts as its subscription allows.
- You may not use the Service in violation of export control or sanctions laws of the United States or any other applicable jurisdiction. You may not use the Service if you are or are working on behalf of a Specially Designated National (SDN) or a person subject to similar blocking or denied party prohibitions administered by a U.S. government agency.

4. User Account Security

You are responsible for keeping your Account secure while you use our Service.

- You are responsible for maintaining the security of your Account and password. Brainome cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.

- You will promptly notify Brainome by emailing support@brainome.ai if you become aware of any unauthorized use of, or access to, our Service through your Account, including any unauthorized use of your password or Account.

5. Additional Terms

If you have signed up for a Brainome Enterprise Account, additional Terms and Conditions per contract apply and you agree to its provisions.

C. Acceptable Use

You agree that, in connection with your use of the Service, you will not commit any tort nor violate any law, court order, contract, intellectual property or other third-party right. You are responsible for making sure that your use of the Service is in compliance with all laws and any applicable regulations. Further, you agree that you will not, in connection with your use of the Service or access of the Website:

- probe, scan, or test the vulnerability of the Service or Website;
- breach or otherwise circumvent any content-filtering techniques we employ or attempt to access any feature or area of the Service or Website you are not authorized to access;
- interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Service or Website;
- use the Service in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Service or that could damage, disable, overburden or impair the functioning of the Services in any manner;
- access, search, or create accounts for the Service by any means other than those that are provided by Brainome;
- impersonate any other person, including, but not limited to, a registered user of the Service or an employee of Brainome;
- circumvent the scope of your paid subscription, if applicable;
- develop any third-party applications that interact with the Service without our prior written consent;
- repackage, white label or otherwise sell the Service without express written permission from Brainome;
- build a competitive product or service, or copy any features or functions of the Service;
- remove, alter or obscure any proprietary notices in or on the Service or Website including copyright notices;
- modify, disclose, alter, translate or create derivative works of the Service or Website (or any components thereof) or cause or permit any person to do any of the foregoing;
- duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from Brainome; or
- otherwise take any action that Brainome deems to be inconsistent with acceptable business practices or other standards of behavior, in each case as determined by Brainome in our sole discretion.

The Service's bandwidth and computation limitations vary based on the features you have subscribed to. If we determine your bandwidth and/or your compute resources usage to be significantly excessive in relation to other users of similar features, we reserve the right to suspend your Account or otherwise limit your activity until you can reduce your bandwidth and/or compute consumption.

Recognizing the global nature of the Internet and the Service, you agree to comply with all local rules regarding online conduct and acceptable User Data. Specifically, you agree to comply with all applicable laws regarding the transmission of certain technical data exported from the United States or the country in which you reside.

D. User Data

1. User Responsibility for User Data

You may create or upload User Data while using the Service. You are solely responsible for the content of, and for any harm resulting from, any User Data.

2. Access

Brainome personnel may only access your User Data in the following situations:

- With your consent and knowledge, for support reasons.
- When access is required for security reasons, including to maintain ongoing confidentiality, integrity, availability and resilience of Brainome's systems and Service.

3. Restrictions on Certain User Data

You may not store, transmit or otherwise process any information via the Service that falls within the definition of "Protected Health Information" under the HIPAA Privacy Rule (45 C.F.R. Section 164.051), unless you enter into Brainome's Business Associate Agreement ("BAA"). The BAA will govern any Brainome access to Customer Protected Health Information (as defined in the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320(d)). To enter into a BAA, contact Brainome at support@brainome.ai.

You will not store, transmit or otherwise process via the Service any personal data of European Union subjects as defined by the General Data Protection Regulation (GDPR) unless you and Brainome separately enter into a Data Processing Agreement (DPA).

4. Liability for User Data

As between you and Brainome, you are solely responsible for all liabilities ("Your Liabilities") associated with your compliance with Section C above and the use, retention, deletion, display, and sharing of your User Data, including, but not limited to, liabilities associated with (i) User Data that infringes any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party, (ii) User Data that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party or otherwise create liability or violate any local, state, national or international law, (iii) User Data that contains any private or personal information of a third party without such third party's consent, (iv) User Data that is libelous, defamatory, harassing, threatening, objectionable, misleading, invasive of privacy or publicity rights, fraudulent or otherwise unlawful, (v) User Data that, due to its classification (e.g., personal data under the EU General Data Protection Regulation, protected health information under HIPAA Privacy Rule, or personal information of a child under the U.S. Children's Online Privacy Protection Act) under any law, regulation or court order must meet certain requirements or be retained, deleted, protected or maintained in a certain manner in accordance with such law, regulation or court order, and (vi) any obligations for retention of User Data, including, but not limited to, the need to download and retain User Data that would be deleted upon a termination of your access to the Service.

E. Ownership and License

1. Your 'Ownership and License

As between you and Brainome, you retain ownership of all intellectual property rights in and to your User Data. You grant Brainome a non-exclusive, royalty-free, worldwide, perpetual, sub-licensable right and limited license to access, use, copy, reproduce, process, adapt, store and transmit your User Data solely for the limited purpose of providing, analyzing, and improving the Service and providing you with requested support.

2. Our Ownership and License

The Service and Website (including all associated Content) are developed, owned, and operated by Brainome and are protected by United States patent and copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws. To improve and develop our products and services, we use various forms of machine learning within the Service and monitor the use and performance of the Service ("Diagnostic Information"). Through our analysis of the Diagnostic Information, we develop higher levels of understanding of how users interact with the Service, how various data sets interrelate and/or perform in statistical calculations, and how to develop

and improve our algorithms, calculations, and processes (collectively, "Learnings"). As between you and Brainome, we own all intellectual property rights in and to the Service, Website, Content, Feedback (as defined below), Diagnostic Information, and Learnings. We also own all intellectual property rights, including, but not limited to, all copyrights thereto, in and to the Models produced through the input of your User Data. We grant you a non-exclusive, worldwide, non-sublicensable, and non-transferable limited license to access and use the Services and Website solely for your own internal purposes. We also grant you an exclusive (subject to our continuing rights to use and modify such Models), worldwide, non-sublicensable, and non-transferable limited license to use and modify Models produced through the input of your User Data (i) for Users accessing the Service through a free, personal use Account, solely for your own non-commercial purposes, including for the purpose of evaluating the Service, and (ii) for Users accessing the Service through a paid, commercial use Account, for your own internal and commercial purposes.

3. Feedback

You may submit to us any questions, comments, suggestions, ideas, original or creative materials and other information (collectively, "Feedback") about Brainome, the Service, our Website, and any of our products and services. Feedback is non-confidential and shall become the sole property of Brainome. Brainome shall own exclusive rights, including, without limitation, all intellectual property rights, in and to such Feedback and shall be entitled to the unrestricted use and dissemination of such Feedback for any purpose.

F. Payment

1. Pricing

Our pricing and payment terms are available at brainome.ai. If you agree to a subscription price, that will remain your price for the duration of the payment term; however, prices are subject to change at the end of a payment term.

2. Upgrades, Downgrades, and Changes

- We will immediately bill you when you upgrade from the free plan to any paying plan.
- If you upgrade to a higher level of service, we will bill you for the upgraded plan immediately.
- You may change your level of service at any time by choosing a plan option or by going into your Billing settings. If you choose to downgrade your Account, you may lose access to Content, features, or capacity of your Account.

3. Billing Schedule; No Refunds

Payment Based on Plan. The Service is billed in advance and is non-refundable. There will be no refunds or credits for partial months of service, downgrade refunds, or refunds for months unused with an open Account; however, the Service will remain active for the length of the paid billing period. In order to treat everyone equally, no exceptions will be made.

Invoicing. For invoiced Users, User agrees to pay the fees in full, up front without deduction or setoff of any kind, in U.S. Dollars. User must pay the fees within thirty (30) days of the Brainome invoice date. Amounts payable under this Agreement are non-refundable, except as otherwise provided in this Agreement. If User fails to pay any fees on time, Brainome reserves the right, in addition to taking any other action at law or equity, to (i) charge interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is less, and to charge all expenses of recovery, and (ii) terminate the applicable order form. User is solely responsible for all taxes, fees, duties and governmental assessments (except for taxes based on Brainome's net income) that are imposed or become due in connection with this Agreement.

4. Authorization

Free Accounts are not required to provide payment information. For paid accounts, you must provide us with current, complete, accurate and authorized payment information (e.g. credit card). You represent and warrant that you are authorized to use the designated payment method. You authorize us to (i) charge your payment method for the total amount of your fees (including any applicable taxes and other charges) on a periodic recurring basis in accordance with the terms of your subscription plan, (ii) use a third party to process such payments, and (iii) disclose your payment information to such third party. You acknowledge that the amount charged may vary due to the subscription plan you have selected, changes in applicable taxes or other charges, and you authorize us (or our third-party payment processor) to charge your payment method for the corresponding amount. To the extent we have not received your payment, in order to bring your account up to date, you authorize us to charge you simultaneously for both past due and current amounts. In the event we are unable to process payment for any amounts owed, we may, subject to applicable law, suspend or terminate your Account at any time following such payment failure.

5. Responsibility for Payment

You are responsible for all fees, including taxes, associated with your use of the Service. By using the Service, you agree to pay Brainome any charge incurred in connection with your use of the Service. If you dispute the matter, contact Brainome Support at support@brainome.ai.

G. Cancellation and Termination

1. Account Cancellation

It is your responsibility to properly cancel your Account with Brainome. You can cancel your Account at any time by going into your Settings in the global navigation bar at the top of the screen. The Account screen provides a simple, no questions asked cancellation link. We are not able to cancel Accounts in response to an email or phone request.

2. Upon Cancellation

We will retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements, but barring legal requirements, we will delete your full profile and the Content of your repositories within 90 days of cancellation or termination (though some information may remain in encrypted backups). This information cannot be recovered once your Account is cancelled.

3. Brainome May Suspend or Terminate

Brainome has the right to suspend or terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately. Brainome reserves the right to refuse service to anyone for any reason at any time.

4. Survival

All provisions of this Agreement which, by their nature, should survive termination *will* survive termination — including, without limitation: ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

H. Communications with Brainome

1. Electronic Communication Required

For contractual purposes, you (1) consent to receive communications from us in an electronic form via the email address you have submitted or via the Service; and (2) agree that all Terms of Service, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that those communications would satisfy if they were on paper. This section does not affect your non-waivable rights.

2. Legal Notice to Brainome Must Be in Writing

Communications made through email or Brainome Support's messaging system will not constitute legal notice to Brainome or any of its officers, employees, agents or representatives in any situation where notice to Brainome is required by contract or any law or regulation. Legal notice to Brainome must be in writing and served to Brainome's legal agent:

Brainome, Inc.
Attention: Legal
2120 University Avenue
Berkeley, CA 94704

3. No Phone Support

Brainome only offers support via email, in-Service communications, and electronic messages. We do not offer telephone support.

I. Disclaimer of Warranties

Brainome makes no warranties, express or implied, guarantees or conditions with respect to your use of the Service. We provide the Website and the Service on an "as is" basis "with all faults" and "as available," without warranty of any kind. Without limiting this, to the extent permitted under local law, we expressly disclaim all warranties, whether express, implied or statutory, regarding the Website and the Service including without limitation any warranty of merchantability, fitness for a particular purpose, title, security, accuracy and non-infringement.

Brainome does not warrant that the Service will meet your requirements; that the Service will be uninterrupted, timely, secure, or error-free; that the information provided through the Service, including, but not limited to, the Models, is accurate, reliable or correct; that any defects or errors will be corrected; that the Service will be available at any particular time or location; or that the Service is free of viruses or other harmful components. You assume full responsibility and risk of loss resulting from your use of the Service, including, but not limited to, any losses resulting from inaccuracies of any Model obtained through the Service.

J. Limitation of Liability

You understand and agree that, to the extent not limited by law, in no event with Brainome be liable to you or any third party for any loss of profits, use, goodwill, or data, or for any incidental, indirect, special, punitive, consequential or exemplary damages,

however arising, under any theory of liability, including, without limitation, contract, tort, warranty, negligence or otherwise that result from:

- your use or inability to use the Service;
- any modification, price change, suspension or discontinuance of the Service;
- the Service generally or the software or systems that make the Service available;
- unauthorized access to or alterations of your transmissions or data;
- any other matter relating to the Service.

Our liability is limited whether or not we have been informed of the possibility of such damages, and even if a remedy set forth in this Agreement is found to have failed of its essential purpose. We will have no liability for any failure or delay due to matters beyond our reasonable control.

The maximum aggregate liability of Brainome, and your exclusive remedy for any claims arising out of or related to the Agreement, will be limited to the greater of: (a) the amount you actually paid to Brainome for the services in the past three (3) months; or (b) one hundred dollars (\$100.00). Multiple claims will not expand these limitations. This Section J will be given full effect even if any remedy specified in the Agreement is deemed to have failed its essential purpose. You agree to the allocation of liability set forth in this section and acknowledge that without your agreement to these limitations, the fees charged to you for the Service would be higher. You agree that this section represents a reasonable allocation of risk.

K. Confidentiality

During your use of the Service, you or Brainome (the "Disclosing Party") may share information with the other party (the "Receiving Party") that is confidential, sensitive or should be kept secret ("Confidential Information"). Our Confidential Information includes, but is not limited to, our product roadmaps, product designs and architecture, technology and technical information, security audit reviews, business and marketing plans, financials, and business processes. Your Confidential Information includes, but is not limited to, your login credentials, User Data, and credit card information. A Disclosing Party's Confidential Information also includes any documents that are labeled "confidential" (or something similar), or other information (either in writing or verbal) that is of a type that a reasonable person should understand it to be confidential. Confidential Information does not include information that (a) the Receiving Party already knew at the time it was disclosed to them; (b) was told to the Receiving Party by a third party who had the right to tell them such information; (c) is generally available to the public; or (d) was independently developed by the Receiving Party without using any of the Disclosing Party's Confidential Information. The Receiving Party will maintain in confidence and not disclose to any third-party the Disclosing Party's Confidential Information during the term of this Agreement and for a ten-year period commencing upon the effective date of

termination of this Agreement and will not use such Confidential Information except as expressly permitted in this Agreement. Further, the Receiving Party will treat the Disclosing Party's Confidential Information with the same degree of care that the Receiving Party treats its own Confidential Information.

L. Indemnification.

You will, at your sole expense, defend Brainome from and against any and all third-party claims, suits, actions or proceedings, and indemnify Brainome from any related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees, costs, penalties, interest, disbursements and amounts that are awarded by a court of competent jurisdiction or included in a settlement approved, in advance and in writing), resulting from or arising in connection with Your Liabilities.

M. Changes to These Terms

We reserve the right, at our sole discretion, to amend these Terms of Service at any time and will update these Terms of Service in the event of any such amendments. We will notify our Users of material changes to this Agreement, such as price changes, at least 30 days prior to the change taking effect by posting a notice on our Website. For non-material modifications, your continued use of the Website constitutes agreement to our revisions of these Terms of Service.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Website (or any part of it) with or without notice.

N. Miscellaneous

1. Governing Law

Except to the extent applicable law provides otherwise, this Agreement between you and Brainome and any access to or use of the Website or the Service are governed by the federal laws of the United States of America and the laws of the State of California, without regard to conflict of law provisions. You and Brainome agree to submit to the exclusive jurisdiction and venue of the courts located in the City and County of Alameda, California.

2. Non-Assignability

Brainome may assign or delegate these Terms of Service and/or the Brainome Privacy Statement, in whole or in part, to any person or entity at any time with or without your consent. You may not assign or delegate any rights or obligations under the Terms of

Service or Privacy Statement without our prior written consent, and any unauthorized assignment and delegation by you is void.

3. Severability, No Waiver, and Survival

If any part of this Agreement is held invalid or unenforceable, that portion of the Agreement will be construed to reflect the parties' original intent. The remaining portions will remain in full force and effect. Any failure on the part of Brainome to enforce any provision of this Agreement will not be considered a waiver of our right to enforce such provision. Our rights under this Agreement will survive any termination of this Agreement.

4. Amendments; Complete Agreement

This Agreement may only be modified by a written amendment signed by an authorized representative of Brainome, or by the posting by Brainome of a revised version in accordance with Section M. Changes to These Terms. This Agreement represents the complete and exclusive statement of the agreement between you and us. This Agreement supersedes any proposal or prior agreement oral or written, and any other communications between you and Brainome relating to the subject matter of these terms including any confidentiality or nondisclosure agreements.

5. Questions

Questions about the Terms of Service? Contact us at support@brainome.ai.