

BRAINWAVE END-USER LICENSE AGREEMENT

WARNING: PLEASE READ CAREFULLY THE FOLLOWING GENERAL TERMS AND CONDITIONS BEFORE CLICKING ON « I ACCEPT ».

THIS AGREEMENT IS A LICENSE AGREEMENT BETWEEN YOU, AS THE END USER, AND BRAINWAVE, A SAS COMPANY WITH SHARE CAPITAL OF 90 000 EUROS, WHOSE REGISTERED OFFICES ARE LOCATED AT 38 RUE GALLIÉNI, 92600 ASNIERES SUR SEINE, FRANCE, REGISTERED AT THE NANTERRE REGISTER OF BUSINESSES AND COMPANIES UNDER THE NUMBER 519 847 362 (HEREINAFTER « BRAINWAVE »).

Unless expressly stated otherwise herein, the offer made by Brainwave to grant you a license for the Brainwave Identity GRC software (the "Software") is governed by the terms and conditions of the License Agreement (the "Agreement").

BY CLICKING ON « I ACCEPT » AT THE END OF THIS AGREEMENT, YOU EXPRESSLY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE PURCHASING THIS SOFTWARE ON BEHALF OF YOUR COMPANY OR YOUR ORGANIZATION, BY CLICKING ON "I ACCEPT", YOU HEREBY GUARANTEE THAT (A) YOU ARE DULY AUTHORIZED TO BIND YOUR COMPANY OR YOUR ORGANIZATION, AND (B) YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT IN THE NAME OF AND ON BEHALF OF YOUR COMPANY OR YOUR ORGANIZATION. IN SUCH CASE AN AGREEMENT IS CONCLUDED BETWEEN BRAINWAVE AND YOUR COMPANY OR YOUR ORGANIZATION. IF YOU OR THE COMPANY OR THE ORGANIZATION THAT YOU REPRESENT (COLLECTIVELY "YOU") DO NOT ACCEPT THE TERMS AND CONDITIONS GOVERNING THIS AGREEMENT, YOU MUST REFUSE THIS LICENSING OFFER BY CLICKING ON « I REFUSE ».

IN VIEW OF THE FOREGOING, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1 – Subject Matter

- 1.1. The purpose of this Agreement is to define the terms and conditions under which Brainwave undertakes to grant you a license to use the Software, including the associated Documentation.

Article 2 - Definitions

- 2.1. **«Agreement»**: means all of the provisions of this software license agreement, including its preamble that is an integral part thereof, and any amendment that may complete, modify or replace such provisions.
- 2.2. **«Authorized Identities»**: refers to the number of unique physical persons loaded and analyzed in the

Software. This metric can be directly measured as a built-in functionality of the Software.

- 2.3. **«Certified Operating Environment »**: means all equipment, operating systems, middleware, databases and other software compatible with the Software whose potential purchase remains at your sole discretion and at your own cost.
- 2.4. **«Documentation »**: means all documents relating to the installation, settings and use of the Software that has been provided to you by Brainwave, in paper or electronic format.
- 2.5. **«Equipment»**: means all computer hardware and software equipment that belongs to you, and on which you want to have the Software installed or with which you want to use the Software.
- 2.6. **«Server»**: means the server that you owned and that you operate and on which the Software will be deployed.
- 2.7. **«Software»**: means the Brainwave Identity GRC software in the form of an executable code, as developed and edited by Brainwave, together with its Documentation.

Article 3 – Scope of the License

- 3.1. Brainwave grants you a personal, non-transferable, non-exclusive license for the duration of the Agreement, authorizing You to install the Software on one or more Servers, and to use it by the number of Authorized Identities, under the conditions specified in this Agreement.
- 3.2. You (or third parties previously authorized in writing by Brainwave) undertake to use the Software only for your own needs, excluding any use for profit or any use for the benefit of any third party whatsoever.
- 3.3. You (or third parties previously authorized in writing by Brainwave) undertake not to copy all or part of the Software, with the exception of one (1) inactive copy for the sole purpose of back-up or archiving.
- 3.4. You (or third parties previously authorized in writing by Brainwave) undertake to use the Software only in object code form and you undertake not, to the full extent permitted by applicable laws, and in any way whatsoever, decompile, disassemble, or perform any kind of reverse engineering on the Software or attempt to discover or reconstitute the source code, the ideas at the origin thereof, the algorithms, file formats or programming or interoperability interfaces of the Software.
- 3.5. You also undertake not to:
 - (i) remove the Software identification, or any reference to Brainwave's ownership of intellectual property rights or any other ownership rights held by Brainwave appearing on the Software or the Documentation;
 - (ii) distribute or publish the Software installation keys;

- (iii) activate or use any functions or modules in the Software for which you do not already hold the corresponding license;
- (iv) distribute or publish the Software in any form whatsoever;
- (v) unless otherwise agreed between the parties, supply, make available, lend, use as part of a time-share or service bureau, make any other use or allow other persons to use the Software for the benefit of third parties or supply any ASP, SaaS, outsourcing, application management ("tierce maintenance applicative"), marketing, training, audit or consulting services, or any other business services corresponding to the use of the Software for the benefit of a third party;
- (vi) pledge, lend, assign, sub-license or distribute the Software in any manner whatsoever;
- (vii) translate, adapt, arrange or modify the Software in any manner whatsoever;
- (viii) integrate or combine with other software any part of the Software or create compositions or derivatives works with such an element;
- (ix) process solely, or with the help of a third party, to the correction of any errors in the Software so that it complies with any final use whatsoever, Brainwave hereby reserving this right in accordance with article L.122-6-1-I of the French Intellectual Property Code. You understand and agree that Brainwave can only correct any error in the Software if you have notified Brainwave of such errors, if you have sufficiently recorded them and if such errors can be reproduced by Brainwave.

Article 4 - Duration

- 4.1. The Agreement is concluded for the term of protection of Software by intellectual property rights under French law.
- 4.2. The provisions of Articles 7, 12, 13, 14, 15 and 25 of the Agreement shall survive the expiration or termination of this Agreement, whatever the reason may be.

Article 5 Client Obligations

- 5.1. You undertake to work closely with Brainwave in the performance of this Agreement, which includes preparing and supplying Brainwave with all necessary information concerning the Equipment, the technical environment and, where applicable, the installation and configuration of the Software.
- 5.2. It is hereby stated that, as part of this duty to cooperate, it is your responsibility to:
 - (i) ensure that all of the Equipment is included in the Certified Operating Environment and meets the minimum

configuration requirements specified by Brainwave;

- (ii) verify the suitability of the Software and the Equipment for your needs;
- (iii) take all appropriate precautionary measures to deal with any Software malfunction resulting from its use, and in particular by putting into place measures to deal with emergencies, data security, incident analysis, and regular result checking.

- 5.3. You are solely responsible for choosing, using and verifying the results obtained from the Software and all other software and equipment used with or connected to the Software, including the Equipment.
- 5.4. The Software is a software package and has not been developed to meet your specific needs. So it is your responsibility to ensure that the Software meets your needs before purchasing it.

Article 6 - Delivery

- 6.1. The installation, configuration and use of the Software on the Equipment in accordance with the instructions contained in the Documentation shall, unless expressly stated otherwise, be performed under your guidance, control and sole responsibility.
- 6.2. Brainwave shall under no circumstances be held liable for any failure, error or negligence whatsoever, made by you or any third party, in the installation, configuration or use of the Software.

Article 7 - Intellectual Property Rights

- 7.1. You agree that no property rights shall be transferred to you as part of the granting of the right to use the Software under the terms and conditions of this Agreement.
- 7.2. You undertake not to breach the rights of Brainwave, either directly or indirectly. You acknowledge that all copyright, trademarks, trading names, business names, patents and other intellectual property rights attached to or associated with the Software are and shall remain the property of Brainwave or of any third party that has granted a licensing right to Brainwave.
- 7.3. You are and you shall remain owner of all rights or interests relating to any software, interface or equipment developed by you for the purpose of being used in conjunction with the Software.

Article 8 - Non-infringement warranty

- 8.1. Brainwave warrants you against all third party claims alleging that your use of the Software in accordance with the provisions of this Agreement infringes an intellectual property right belonging to said third party (hereinafter, the «**Third Party**»), provided that you informed Brainwave of such claim without delay and collaborate in good faith with Brainwave in seeking a solution to the dispute.
- 8.2. You shall not settle the claim with the Third Party by yourself. Brainwave shall, at its own discretion and under its own control and management, seek to reach a potential settlement with the Third Party

within the meaning of article 2044 of the Civil Code. In the event of the conclusion of a settlement which amount will be agreed upon between the Third and Brainwave, Brainwave shall pay the full amount to the Third Party, which may be at your charge as part of the settlement.

- 8.3.** If Brainwave fails to reach a settlement, Brainwave shall, under its own control and management and with your assistance, organize a legal defense against the claim brought by the Third Party. You undertake not to conduct on your own the legal defense of the claim brought by the Third Party against Brainwave, and, you undertake to call Brainwave into warranty without delay.
- 8.4.** In the event that the claim of the Third Party would conclude with a final decision of the courts with *res judicata* imposing a financial penalty against you, Brainwave will indemnify you for the amount of such penalty and any interest that may arise, provided that you can provide evidence of payment of such sums to the Third Party.
- 8.5.** The warranty hereof provided by Brainwave shall not apply if:
- (i) the Software is combined with other software, hardware or third party equipment, should the alleged infringement result from such a combination;
 - (ii) you keep the infringing activity despite of the signing of a settlement concluded with the Third Party or having been informed of the *res judicata* of a final court decision;
 - (iii) you have not implemented the modifications recommended by Brainwave that would have prevented the qualification of infringement;
 - (iv) infringement results from your failure to strictly comply with the Documentation and the provisions of the Agreement.
- 8.6.** In the event of such claim from a Third Party against you and/or against Brainwave, Brainwave may, at its sole discretion, and subject to the conditions referred to above, choose (i) to attempt to obtain the right for you to continue to use the disputed part of the Software; or (ii) to provide you, at its expense, a software or a component with substantially similar functionalities or performances.

Article 9 - Other warranties

- 9.1.** Brainwave warrants that the Software will perform in a manner that substantially complies with the specifications defined in the Documentation for a period of thirty (30) days after the delivery thereof under the terms and conditions of Article 6.
- 9.2.** Within the scope of this warranty, Brainwave may choose, at its sole discretion (i) to repair the Software or (ii) to replace the Software.
- 9.3.** The warranties specified under the terms of Article 8 above and this Article 9 are exclusive of all other warranties and, unless expressly stated otherwise, constitute the only warranties given by Brainwave in relation to the Software and the only remedies available to you under the terms of this Agreement.
- 9.4.** Brainwave does not, in any way, warrant that the Software will operate error-free or without interruption.

Article 10 – Libraries subject to open source licenses

- 10.1.** You understand and you agree that several of the libraries supplied with the Software are subject to open source licenses, the text of which is supplied with the Software support or in a file inside the downloadable archive containing the Software (hereinafter the «**Open Source Libraries**»).
- 10.2.** You understand and you agree that (i) the provisions of this Agreement do not apply to Open Source Libraries and (ii) Brainwave would, in no way, be held liable for any damages suffered by you or a third party arising directly or indirectly from the use of the Open Source Libraries.

Article 11 – Complementary Services

- 11.1.** You understand and you agree that the provision of any Software consulting, training, installation, configuration or maintenance services shall be made under the terms of separate specific agreements that are distinct from the present Agreement, Brainwave providing no such services under this Agreement.

Article 12 - Liability

- 12.1.** The parties expressly agree that, unless expressly stated otherwise, the obligations of Brainwave under the terms of this Agreement are obligations of means and Brainwave liability should be initiated by you only in case of proven misconduct.
- 12.2.** The Software is a standard software, which has not been specifically designed for the purposes of meeting any of your needs whatsoever. As a consequence you are solely responsible for verifying the suitability of the Software to your needs.
- 12.3.** Brainwave cannot be held liable in any way whatsoever because of the results of data analysis, their quality, their relevance, their completeness or their use by you. The use of such data analysis is made by you, under your sole responsibility and at your sole exclusive risk.
- 12.4.** Brainwave shall not be held liable under any circumstances whatsoever for any indirect and/or unforeseeable damages resulting, on any grounds whatsoever, from this Agreement, from the Software or its use, including but not limited to, any alteration or corruption of data, damage to the image, and any loss of data, of business, turnover, profit, orders, customer or opportunity.
- 12.5.** The global liability of Brainwave, regardless of the reason, for all damages, shall in no case exceed the price you paid for the Software exclusive of value added tax.
- 12.6.** You acknowledge and agree that the present limitation of liability provision constitutes an essential condition for the undertakings given by Brainwave.

Article 13 - Audit

- 13.1. You undertake to provide Brainwave with an inventory of your license park by completing the provided survey form within fifteen (15) days after notice of such request from Brainwave. If such inventory reveals an excessive deployment compared to the rights of use actually acquired, you undertake to correct the situation as quickly as possible at the current applicable rate.
- 13.2. Brainwave reserves the right to verify that your deployment and use of the Software comply with the provisions of the present Agreement. To this end, Brainwave may, at any time, conduct an audit of a maximum of five (5) days on your premises, either by its own means or through a non-competitor auditor appointed by Brainwave, provided that Brainwave informs you at least seven (7) days before the start date of such audit (hereinafter «**Audit**»).
- 13.3. As part of this Audit, Brainwave or the auditor shall have access to all the elements necessary and/or useful for the proper performance of its mission. You undertake to cooperate in good faith with this audit, by facilitating access and by supplying all relevant information to Brainwave or to the auditor.
- 13.4. In the event that your deployment or use of the Software appears to comply with the Agreement, the costs of the implementation of the Audit will be borne exclusively by Brainwave.
- 13.5. In the event of your deployment or use of the Software does not appear to comply with the Agreement:
- (i) the costs of performing the Audit will be borne exclusively by you;
 - (ii) you must comply with the Agreement, at your expense, without prejudice to any damages that Brainwave reserve the right to seek and to any other claims that may be brought by Brainwave.

Article 14 - Termination

14.1. Case of Termination

Either party may terminate the Agreement, automatically and *ipso jure*, if the other party fails to remedy a material breach of any of its essential obligations under the terms of the Agreement, within a period of thirty (30) days after receipt by the defaulting party of a notice delivered by registered letter with acknowledgement of receipt, requiring such breach to be remedied.

14.2. Effect of Termination

This license and any other of your rights under this Agreement shall be terminated, with the exception of those Articles referred to in Article **Erreur ! Source du renvoi introuvable.**

Termination of the Agreement shall give you no right to reimbursement, credit or rebate on the amounts due or paid by you.

At the date on which termination takes effect, you undertake:

- (i) to immediately cease all use of the Software in any manner whatsoever;
- (ii) to return or destroy all copies of Confidential Information and all other documents from

Brainwave in your possession or under your control;

- (iii) to promptly confirm in writing to Brainwave that you have complied with the obligations listed above.

Article 15 - Confidentiality

- 15.1. Shall be deemed to be confidential all information relating to the Agreement and, more generally, but not limited to, any information relating to the pricing conditions applied, the business project of the parties, their current or future business activities, their employees or their know-how, whether such information was obtained directly or indirectly from the other party, its employees, sub-contractors, agents or service providers (hereinafter the «**Confidential Information**»). Any information communicated in writing by one party and expressly featuring the wording «*Confidential*» constitutes Confidential Information, as does any information communicated orally, provided that such information and its confidential nature be confirmed in writing within ten (10) days after its initial communication.
- 15.2. Confidential Information is supplied with no warranty concerning its accuracy or integrity.
- 15.3. The following does not constitute Confidential Information:
- (iv) information currently available or that become available to the public without breach of the terms of the Agreement from a party;
 - (v) information lawfully held by a party prior to disclosure by the other party;
 - (vi) information not resulting directly or indirectly from the use of all or part of the Confidential Information;
 - (vii) information validly obtained from a third party authorized to transfer or disclose such information.
- 15.4. Each party undertakes:
- (viii) not to use the Confidential Information, for any reason whatsoever, except for the purposes of performing its rights and obligations under the Agreement;
 - (ix) not to disclose the Confidential Information to anyone whatsoever, by any means whatsoever, except to those of its employees, service providers or sub-contractors for whom such information is necessary for the performance of the services and business discussions between the parties.
- 15.5. Each party undertakes to protect the Confidential Information of the other party with the same care as it does for its own Confidential Information.
- 15.6. The parties understand and agree that neither party shall be held liable for disclosure of Confidential Information when such disclosure is the result of a binding decision of a competent administrative body or a court with jurisdiction.
- 15.7. Each party ensures that its employees, service providers and subcontractors having access to the Confidential Information have signed a confidentiality agreement ensuring a level of

protection at least equivalent to the one provided by the provisions of this Article, prior to any disclosure to them of the Confidential Information.

Article 16 - Force majeure

- 16.1. Neither party shall be held liable for any failure or delay in performing any of its obligations under the present Agreement, other than the obligation to pay, when such failure or delay is the exclusive result of the occurrence of a case of force majeure.
- 16.2. Are considered to be cases of force majeure, in particular but not limited to, internal or outside social disputes, shortages, protests, insurrection, fire, flood, storm, explosion, natural disaster, earthquake, war (declared or not), government acts, inability to obtain delivery of parts, supplies, workforce, act of state, invasion, revolution, blockades, sabotage, vandalism, total or partial strikes, civil disorder, bad weather, natural disaster, epidemic, blocking of means of transport or supplies such as energy, breakdown of electrical supply, heating and air conditioning, telecommunications networks, data transport, satellite failure.
- 16.3. In the event of a case of force majeure, performance of its obligations by the party affected shall be suspended. If the case of force majeure lasts more than three (3) months the Agreement may be terminated at the request of the most diligent of the parties, without giving rise to liability on either side.
- 16.4. Each of the parties shall bear their own costs that arise as a result of the case of force majeure.

Article 17 - Communication

- 17.1. Brainwave is authorized to inform any third party that you have obtained a license to use the Software and to mention your business name, your trademark and your logo as business references in its marketing, promotional and advertising documents.

Article 18 - Notices

- 18.1. Unless expressly stated otherwise, information or notices required or possible under the terms of the Agreement shall have no effect only if they are sent by registered letter with acknowledgement of receipt to the address of the receiving party as indicated on the first page of this Agreement or as notified to the sending party under the conditions of this present article.
- 18.2. Unless expressly stated otherwise, time limits shall be calculated in calendar days from the date of the first attempt to deliver a notice to the addressee, as attested by the postmark date.

Article 19 - Non-solicitation

- 19.1. Each party undertakes not to solicit the recruitment of any employee of the other party for the duration of the Agreement and for a period of twelve (12) months following its expiration or termination, unless the other party gives its prior written consent.
- 19.2. The party that breaches the provisions of this Article shall be required to pay immediately to the other party, as a penalty, liquidated damages in an amount equal to one hundred and fifty percent (150%) of the annual gross salary of the person recruited or solicited.

Article 20 - Independence of the parties

- 20.1. The parties act as independent partners in the performance of their respective obligations under the terms of this Agreement.
- 20.2. This Agreement does not create any relationship of subordination, or commercial agency or solidarity between the parties.
- 20.3. Consequently, neither party shall make any commitment or incur expenses on behalf of the other party.

Article 21 - Assignment

- 21.1. Brainwave is authorized to assign to any third party any of its rights and obligations whatsoever under the terms of this Agreement, subject to give you a prior notice.
- 21.2. You may not assign any of your rights or obligations whatsoever under this Agreement, unless you have obtained the prior written consent of Brainwave.
- 21.3. If more than half of your share capital came to belong directly or indirectly to a competitor of Brainwave, the latter shall have the right to terminate the Agreement automatically and without notice. In any case, you undertake to immediately notify Brainwave of any significant modifications to the structure of your share capital.

Article 22 - Entirety

- 22.1. This Agreement represents the entire agreement between the parties and shall prevail over any and all written or oral statements, covenants, promises, agreements, letters or any other form of expression of the will of the parties concerning the subject matter of the Agreement.
- 22.2. The Agreement shall only be modified by written amendment signed by duly authorized representatives of the two parties.

Article 23 - Severability

- 23.1. If a competent court rules any of the clauses in this Agreement to be illegal or unenforceable, the validity, legality and enforceability of all other clauses shall not be affected and the parties shall negotiate in good faith a lawful and enforceable replacement clause that best reflects their mutual intent.

Article 24 - Non-waiver

- 24.1. The fact that one of the parties does not exercise any of its rights against the other party under the terms of this Agreement, shall not be deemed to be a waiver of such right at a later date.

Article 25 - Applicable Law and Jurisdiction

- 25.1. This Agreement is governed by French law.
- 25.2. Any dispute relating to the conclusion, interpretation, performance or termination of the Agreement shall be subject to the exclusive jurisdiction of the Tribunal de Commerce of Nanterre and any dispute relating to the Agreement on a question of intellectual property shall be subject to the exclusive jurisdiction of the Tribunal de Grande Instance of Nanterre.

I ACCEPT

I REFUSE