



# Free Trial Subscription Agreement

Last Updated: March 2020

This Free Trial Subscription Agreement ("Agreement") is a contract between Brainshark, Inc., a Delaware corporation with a principal place of business at 130 Turner Street, Bldg 1, Suite 100, Waltham, MA 02453 ("Brainshark") and you and the entity or organization that you represent ("Customer") and contains terms and conditions that govern Customer's acquisition of subscriptions to, and use of the subscription services that Brainshark, in its discretion, makes available to Customer free of charge as part of the free trial offered by Brainshark ("Services"). Brainshark and Customer are each referred to individually as a "Party" or collectively as the "Parties" in this Agreement.

If you are using the Services on behalf of an entity or organization that you represent, you represent and warrant that you have the right, power, and authority to enter into this Agreement on behalf of that entity or organization.

**This Agreement becomes binding and effective upon the earlier of: (i) when you access or use the Services; or (ii) when you submit a sign-up form or click an "I Accept," "Sign Up," or similar button or check box referencing this Agreement.**

This Agreement will automatically terminate on the date that Brainshark, in its discretion, ceases to make the Services available to Customer ("Term").

## 1. Brainshark Services.

1.1 During the Term, Brainshark hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to access and use Brainshark's proprietary software (in object code format only) via the Services, all electronic data embodied therein, any upgrades thereto, as well as any user documentation provided by Brainshark to Customer (the "Software"), solely for Customer's internal business use. This license to Customer grants Customer the right to allow non-employees of Customer to access the Services for reading or viewing purposes only; no license is granted to Customer to allow third parties to create or guest author or create content for third parties or to use Customer's license as if the Customer were a host provider at Customer's site without a reseller license.

1.2 Customer shall not (and shall not allow any third party to): (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software or Services, (b) modify or create derivative works based on the Software or Services, (c) copy, rent, lease, distribute, time-share, or otherwise use the Software or Services for the benefit of a third party except as expressly permitted in this Agreement, (d) remove or alter proprietary notices from the Software or Services, (e) use the Software or Services to create any other product or service, (f) breach or circumvent any security or authentication measures of the Software or Services, (g) interfere with or disrupt any part of the Software or Services, or (h) use a robot or other automated means to access the Software or Services.

1.3 Brainshark is furnishing access to the Software and Services during the Term for authorized use by Customer solely for the purposes of creating, editing, viewing and/or publishing a series of pages on a web site (each a "Presentation") with content provided by Customer ("Customer Content"). The Customer Content may include information, data, text, music, sound, photographs, graphics, video, messages and/or other materials provided to Brainshark by Customer.

1.4 Subject to the terms and conditions of this Agreement, Customer hereby grants to Brainshark a non-exclusive, non-transferable, royalty-free, worldwide, fully paid-up right and license to copy, modify (including, the right to make derivative works of), distribute, display, and use Customer Content solely in connection with performing the Services.

1.5 As used in this Agreement, "Customer Data" means: (i) information about Customer's configuration and use of the Services; (ii) data submitted by Customer and its users for processing by the Services; and (iii) information about Customer that Customer provides to Brainshark in connection with the creation or administration of its Brainshark account such as first and last name, user name, and email address of a user.

1.6 Brainshark may process Customer Data: (i) to manage Customer's account; (ii) to provide and improve the Services; (iii) to address requests for support and troubleshoot other issues, to the extent that support services may be provided in Brainshark's discretion; and (iv) to provide Customer and its users with insights, services, feature announcements and other reporting.

1.7 Brainshark may also process Customer Data that has been aggregated and/or anonymized (including, for clarity, that does not allow a third party to identify Customer as the source of the information): (i) to develop new services and features; and (ii) to promote Brainshark's services, including, for example, through analyses of patterns and trends.

1.8 Brainshark's personnel may log in to, or otherwise access, Customer's Brainshark account for the purposes of troubleshooting support issues.



## 2. Ownership and Intellectual Property.

2.1 Brainshark or Brainshark's licensors retain all ownership and intellectual property rights to the Software and Services. Except for the license granted to Customer in Section 1, Customer shall have no right, title or interest in the Software or Services. All rights not expressly granted herein are reserved to Brainshark.

2.2 Customer agrees that Customer is solely responsible for all Customer Content (public or private) incorporated into Presentations which are posted, emailed or transmitted via the Services provided by Brainshark, including obtaining prior written consent for the use of any third party materials contained in the Customer Content, and any associated payments. Customer agrees not to knowingly use the Services to upload, post, email or otherwise transmit any Customer Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise offensive or objectionable. Customer acknowledges that Brainshark does not pre-screen Customer Content, but that Brainshark and Brainshark's designees shall have the right (but not the obligation) in their sole discretion to refuse or remove any Customer Content that does not comply with the terms contained in this Agreement.

2.3 Non-public personal information is prohibited from Customer Content.

2.4 Customer is responsible for all activity occurring under Customer's Brainshark account and shall abide by all applicable local, state, national, and foreign laws, treaties, and regulations in connection with Customer's use of the Services, including those related to data privacy, international communications, and the transmission of technical or personal data. Customer shall: (i) notify Brainshark within a reasonable amount of time of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Brainshark within a reasonable amount of time and use reasonable efforts to stop any copying or distribution of Presentations that is known or suspected by Customer or Customer's users; and (iii) not impersonate another Brainshark user or provide false identity information to gain access to or use the Services.

2.5 Brainshark may suspend or terminate use of the Services at any time in its sole discretion.

2.6 Customer agrees and acknowledges that Brainshark has no obligation to retain Customer Content following any termination or suspension and that such Customer Content may be irretrievably deleted.

## 3. Indemnity.

Customer will indemnify, defend, and hold harmless Brainshark, Brainshark's subsidiaries, affiliates, officers, employees, agents, co-branders, licensors, or other partners (the "Brainshark Entities") from and against any claim, demand, or judgment, made by any third party, due to or arising out of (i) Customer Content, or (ii) Customer's use of the Software or Services.

## 4. Disclaimer of Warranties.

THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND. WITHOUT LIMITING THE FOREGOING, BRAINSHARK MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICES OR ANY PRESENTATIONS. BRAINSHARK DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (B) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; OR (E) ERRORS OR DEFECTS WILL BE CORRECTED. THE SERVICES AND ALL PRESENTATIONS ARE PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY BRAINSHARK AND ITS LICENSORS.

## 5. Limitation of Liability.

5.1 IN NO EVENT WILL THE BRAINSHARK ENTITIES BE LIABLE, WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT, TORT, OR BASED ON A WARRANTY OR OTHER LEGAL THEORY, IN ANY WAY TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, AND ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE, IN THE CONTENT.



5.2 IN NO EVENT WILL THE BRAINSHARK ENTITIES' CUMULATIVE AND AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTIES EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00 USD).

## **6. Termination.**

6.1 Upon termination of this Agreement, Customer must immediately cease all use of the Software and Services.

6.2 Notwithstanding anything to the contrary in this Agreement, Sections 1.2, 1.4-1.7, and 2-7 shall survive expiration or earlier termination of this Agreement.

## **7. General Provisions.**

7.1 This Agreement may not be assigned or otherwise transferred by either Party without the prior written consent of the other Party except if such assignment or transfer is to an entity acquiring all or substantially all (51% or more) of a Party's assets by merger or purchase. This Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

7.2 Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties.

7.3 The Parties agree that the subject matter of this Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the courts located in the Commonwealth of Massachusetts.

7.4 No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.

7.5 This Agreement may be executed in any number of counterparts, all of which taken together will constitute a single instrument.

7.6 This Agreement is the complete and exclusive Agreement between the Parties with respect to the Agreement's subject matter.

7.7 Brainshark may modify this Agreement from time to time by posting a revised version of this Agreement to Brainshark's website. Except as described in the prior sentence, this Agreement may only be modified by a written document executed by both Parties. Any such modification will become part of this Agreement and will be governed by the terms and conditions of this Agreement.