

# BRAIN RESOURCE SERVICES AGREEMENT

This Services Agreement between Brain Resource, Inc., a California corporation (“BRC”), and

\_\_\_\_\_ (“Customer”) shall become effective on the date specified on the Signature Page.

## GENERAL TERMS

### 1. DEFINITIONS

In this Agreement:

- “**Agreement**” means this agreement and all of the attached Exhibits;
- “**Brain Resource**” means BRC and its affiliates;
- “**Brain Resource Services**” means Brain Resource Brain Health & Wellness products and services including Brain Resource Cognition Assessment Services consisting of a series of tests designed to reflect an individualised cognitive performance profile using BRC Resources, MyBrainSolutions, MyCalmBeat and training products;
- “**BRC Resources**” means information, systems, software, hardware and training owned or developed by Brain Resource;
- “**Client**” means a person who is the subject of a Brain Resource Service;
- “**Computer**” means a BRC approved computer and a BRC approved connection to the Internet including any Brain Resource software downloaded to that computer;
- “**Confidential Information**” means all information of Brain Resource which is provided to the Customer by any of Brain Resource employees, affiliates or agents that is confidential or proprietary in nature, including, without limitation (a) the existence and terms of this Agreement, (b) information about Brain Resource business, technology, trade secrets, products, employees, customers, marketing plans, financial information, services and business affairs and (c) any oral, written or computer-based information, any knowledge gained through observation of or access to the facilities, computer systems and/or books and records of Brain Resource, any materials derived from or based upon the Confidential Information and any third-party information that Brain Resource is obligated to keep confidential;
- “**Exhibits**” means the exhibits to this Agreement which have been signed by authorised representatives of the parties and attached hereto;
- “**Fees**” means the report fees listed in the Exhibits of this Agreement which are in \$US unless otherwise indicated;
- “**Intellectual Property Rights**” means trademarks (registered and unregistered), patents, copyright, rights to confidential information and trade secrets and other intellectual property rights;
- “**Location**” means the location/s listed in the Exhibits; and
- “**Term**” means the period from the date of this Agreement until its termination in accordance with this Agreement.

### 2. BRAIN RESOURCE SERVICES RIGHTS

BRC grants the Customer the right to provide, and the Customer agrees to provide, those Brain Resource Services listed in the Exhibits, which shall be subject to, and incorporated as terms of this Agreement.

### **3. NON EXCLUSIVE**

All rights granted in this Agreement are granted on a non exclusive basis.

### **4. INTELLECTUAL PROPERTY**

The Intellectual Property Rights in the BRC Resources and Brain Resource Services belong to Brain Resource. The Brain Resource and BRC names and other trademarks of Brain Resource must not be used by the Customer without the prior written approval of BRC.

BRC grants the Customer the right to use Brain Resource owned Intellectual Property Rights for the sole purpose of providing those Brain Resource Services listed in the Exhibits, which are subject to the terms of this Agreement.

### **5. PROCEDURES**

Both parties must act faithfully, honestly and diligently in performing obligations in this Agreement.

The Customer must not download, use, copy or modify any BRC Resources except in accordance with the directions or prior approval of BRC.

Both parties must comply with applicable laws and regulations and maintain records required by any applicable laws and regulations (including applicable privacy laws) and obtain any required licenses or approvals to provide those Brain Resource Services listed in the Exhibits.

Both parties must ensure that all reasonable precautions are taken to prevent any unauthorised use or disclosure of Client confidential information.

### **6. PAYMENT**

The Customer must pay BRC Fees in accordance with the attached Exhibits. Either party agrees to provide the other with any information to enable the calculation of said Fees.

The Customer must pay BRC Fees within Thirty (30) days following the date of each BRC invoice.

The Fees may be reviewed and changed by BRC with effect from each 1 January by providing at least Ninety (90) days prior written notice to the Customer.

The amounts payable under this Agreement do not include sales tax, goods and services tax or customs duties or any similar taxes including US State taxes (if applicable). If any such tax or duty is applicable to the Fees payable to BRC, the payment due from Customer to BRC will be grossed up such that BRC will receive the Fees payable as if no such tax or duty had been applied.

### **7. LIABILITY**

BRC does not provide any warranties other than to assign to Customer any assignable warranties provided by the original suppliers of any equipment supplied by BRC (other than to the extent required by law). ALL SERVICES ARE PERFORMED AND ALL DELIVERABLES PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW, BRC EXCLUDES ALL EXPRESS AND IMPLIED TERMS, CONDITIONS, WARRANTIES OR REPRESENTATIONS REGARDING SUCH SERVICES AND DELIVERABLES ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, REASONABLE SKILL AND CARE AND FITNESS FOR A PARTICULAR PURPOSE.

BRC does not guarantee the success or continuation of any BRC product or service and BRC will not be liable for any loss arising from any breach or termination of any agreement with any other parties or from the failure or

discontinuation of any BRC product or service. BRC will not be liable for any indirect, incidental, special, punitive, consequential damages or damages for loss of profits, revenue, data or data use, incurred by the Customer or any third party.

Without limiting any other clause of this Agreement, if BRC is found liable to Customer for any claims or matters arising under or in connection with this Agreement including, but not limited to breach, negligence or under any indemnity then BRC's aggregate and maximum liability for all such matters shall not exceed the Fees paid by Customer to BRC under this Agreement.

## **8. TERMINATION**

This Agreement may be terminated by either party providing the other party at least Thirty (30) days prior written notice.

This Agreement may be terminated immediately by either party where the other party commits a material breach.

On termination, (a) Customer shall pay BRC Fees for services provided through the date of termination and (b) except for invoicing for and payment of such Fees, both parties shall immediately cease exercising all the rights granted under this Agreement.

## **9. ASSIGNMENT**

Either party may assign this Agreement by obtaining prior written consent of the other party (such consent not to be unreasonably withheld).

## **10. CONFIDENTIAL INFORMATION**

Customer agrees, both during the Term and thereafter, to (a) keep confidential all Confidential Information, (b) not use the Confidential Information other than exclusively for the purposes contemplated by this Agreement and (c) not disclose any Confidential Information to any third party except with the prior written consent of BRC or as required by applicable law.

Customer acknowledges that its employees, affiliates or agents are bound by the terms of this Agreement. Customer shall prevent and be responsible for any unauthorised disclosure of Confidential Information by its employees, affiliates and agents.

## **11. DISPUTE RESOLUTION**

The parties will work together in good faith to resolve any disputes about their business relationship. If the parties are unable to resolve the dispute within Thirty (30) days following the date one party sent written notice of the dispute to the other party, it shall be submitted to binding arbitration in accordance with the Rules of the American Arbitration Association (AAA). In no event may arbitration be initiated more than one year following the sending of written notice of the dispute. Any arbitration proceeding under this agreement shall be conducted in a location agreed upon by the parties or as selected by the AAA if the parties cannot agree on a location.

## **12. GENERAL**

Each party must take all steps as may be reasonably required by the other party to give effect to the terms and transactions contemplated by this Agreement.

This Agreement, along with the attached Exhibits, constitutes the entire agreement between the parties with respect to its subject matter.

This Agreement is governed by the laws of California and the parties submit to the non-exclusive jurisdiction of the courts of that State.

**13. AMENDMENT**

This Agreement shall not be amended without the prior written approval of both parties.

**14. NOTICES**

All notices pertaining to changes, modifications, deletions, or any other matter regarding the rights and responsibilities of either Party in reference to any and all clauses in the Agreement and/or BRC policies and procedures shall be addressed to the below listed representative.

This Agreement shall become effective on: \_\_\_\_\_

**SIGNED by Brain Resource, Inc.**

**Name**  
**Title**  
**Address**

**SIGNED by CUSTOMER**

**Name**  
**Title**  
**Address**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**EXHIBIT A**

**MYBRAINSOLUTIONS SERVICES and CONDITIONS OF USE**

**PRICING**

**MyBrainSolutions** \$7.00 per month per Registered User.

**MyCalmBeat** \$50.00 per unit excluding tax and shipping.

**PRODUCT SPECIFIC TERMS**

1. BRC agrees to provide full access to the MyBrainSolutions website services ("Site") to individual end users authorised by the Customer during the Term. The Customer will authorize individuals (each a "Registered User") by providing them with a sponsorship code supplied by BRC which will allow them to register and obtain a login for the Site.
2. BRC will provide the Customer with a monthly report which shows the number of Registered Users at the end of the month in a standard BRC format.
3. Access to the Site does not include the supply of any hardware or any additional reports and services.
4. The Customer is responsible for invoicing and managing its customers.
5. BRC retains control over the Site, its branding and content. BRC may refuse access to the Site to any person.
6. If Customer or a Registered User is a clinician or researcher that requires access to the Site for its patients or subjects, BRC will provide the Customer with an applicable sponsorship code for the purpose of providing information that may assist the Customer with clinical assessment of the patient or for providing information for a research study. Prior to providing such patients or subjects with the applicable sponsorship code the Customer must obtain their informed consent.

**SIGNED by BRC**

\_\_\_\_\_

**SIGNED by CUSTOMER**

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**EXHIBIT B**

**BRAIN RESOURCE WEBNEURO & BRISC ASSESSMENT SERVICES**

Customer name:	
Contact name:	
Address:	
Accounts payable contact name:	
Accounts payable email:	
Fax number:	
Clinic Locations/s:	Contact Name, email address for reports, phone number

BRC has agreed to grant the right to the Customer to provide Brain Resource Cognition Assessment Services at the above Location/s, for the Report Fees and on the following Terms and Conditions.

**PRICING**

**Report Fees** (per report exclusive of any relevant taxes):

- WebNeuro \$25 each report
- WebNeuro (500 Reports) \$10,500 paid in advance \$21 each report

**PRODUCT SPECIFIC TERMS**

1. In order to provide web delivered tests the Customer will need a Computer and the minimum of a 56K connection to the Internet. The Computer must be operated in accordance with any specifications provided by BRC.
2. The Customer must ensure that its employees or contractors are trained, qualified and competent to efficiently and properly operate the Computer and provide the Brain Resource Cognition Assessment Services.
3. BRC will promptly provide Client reports to the Customer subject to the receipt of complete and accurate data from the Customer. The Client reports will be in standard BRC format.
4. It is acknowledged by all parties that BRC and its affiliates act as a resources company providing information only via reports, to users. Reports show indications of brain function and cognition as compared to a normative database with the only purpose being to act as a screening tool for possible dysfunction or response to treatment. Reports must not be used as a basis for action without consideration by a competent relevant professional. Reports are not intended to diagnose, treat, prevent or cure a health problem.
5. The Customer must provide BRC proof of general liability insurance as of the effective date and upon request from BRC and Customer must maintain this insurance at all times during the Term.

**SIGNED by BRC**

**SIGNED by CUSTOMER**

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