

# Account

## **BrainYoo Terms and Conditions for Account Setup and Management of Learning Content and Related Ancillary Services in the Cloud**

- 1 Subject of the Contract
- 2 Description
- 3 How to Set Up and Register An Account
- 4 Using the Account
  - 4.1 Access Authorization
  - 4.2 Confidentiality of Access Data, Misuse, Liability
  - 4.3 Uses
- 5 Creating Your Own Learning Content
  - 5.1 Description
  - 5.2 Rights of Use
  - 5.3 Customer's Responsibility for Contents
  - 5.4 Provision to Block or Delete
  - 5.5 Lack of Viruses in Transmitted Data and Backup Copies
- 6 Transferring Learning Content To The Cloud
  - 6.1 Saving to the Cloud
  - 6.2 Rights of Use
  - 6.3 Customer's Responsibility for Contents

- 6.4 Provision to Block or Delete
- 6.5 Lack of Viruses in Transmitted Data and Backup Copies
- 7 Synchronization of Learning Content with Workplaces
- 8 Purchase of New Learning Content
- 9 Transferring Learning Content To The Cloud
- 10 General Terms and Conditions for All Services
  - 10.1 Right of Withdrawal
  - 10.2 Availability of Services
  - 10.3 Duties of the User
  - 10.4 Duty to Protect Access Authorization
- 11 Liability of User, Indemnification
- 12 Liability of BrainYoo
  - 12.1 Free Version
  - 12.2 Premium Version
- 13 Payment of Fees With a Premium Account
- 14 Privacy Policy
- 15 Duration of Contract/Termination
- 16 Final Provisions
  - 16.1 Server Data and General Information
  - 16.2 Support/Hotline
  - 16.3 Miscellaneous

The legal relationship between the parties shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the UN Sales Convention (CISG) and the following provisions.

Any deviating terms and conditions of the user are not valid.

## **1 Subject of the Contract**

1.1 BrainYoo is a proprietary product of:

BrainYoo Mobile Learning GmbH,

Sonnenberger Straße 14,

65193 Wiesbaden,

Directors: Filip Lyncker, Patrick Schmidt

District Court Wiesbaden; Commercial Register: HRB 29162 Wiesbaden

Tax Number: 04022971539

US Tax ID No.: DE307872640

Tel.: (0049) 0611 - 447544 20

Fax: (0049) 0611 - 447544 11

E-Mail: [support@brainyoo.com](mailto:support@brainyoo.com)

Any complaints or questions can be addressed at this contact data. We will answer immediately.

1.2 As referred to in this agreement, BrainYoo shall be understood to mean BrainYoo Mobile Learning GmbH.

1.3 The subject of the contract is the setup of an account and use of the module to use, purchase, manage, and synchronize pre-existing (BrainYoo 1), purchased, to be newly acquired, or individually created learning products and ancillary services (hereinafter called "Content") via the website [www.brainyoo.de](http://www.brainyoo.de), as well as the related ancillary services.

1.4 BrainYoo concludes contracts worldwide. Contract language is German solely.

1.5 Should a user from another country submit an order which is erroneously accepted or processed, and should a legal relationship between these parties arise, then "Brainyoo" is entitled to immediately terminate or rescind the contract.

e) "Brainyoo" follows applicable law and is not subject to any other privately created codes of conduct or out-of-court complaint and redress procedures.

## **2 Description**

2.1 BrainYoo provides the user with an account module developed by BrainYoo either for free (Free Version) or paid (Premium Version) on a rental basis for the duration of the contract. The Free Version is for private use only. Users can upgrade to the paid Premium Version with extended features at any time by purchasing the corresponding product from the shop.

2.2 The account module consists of software and a database developed by BrainYoo and is available on their servers to distribute and manage learning content (content). It allows users to manage content "online", i.e. accessible through an Internet connection, in the cloud. With the account, the user receives a defined memory location in the cloud. In this way, the user can load and manage pre-existing content (Brainyoo1) or user-generated content onto the account in the cloud, order new free or paid content, and synchronize and manage content in the

cloud with the allowable number of workplaces/mobile devices. In addition, user-created content can be shared with certain other users; that is, the users can access this content in the cloud.

2.3 The account is available in two versions:

a) Free Version: Registration and setup of an account in the Free Version and use of that account are completely free of charge. The Free Version is for private use only. This version is supported by advertising, meaning that commercials for BrainYoo partners appear regularly during account usage. In setting up the Free Version, the user agrees to the insertion of advertising during usage of the software and the account. The user receives 100 MB of storage for user-created content in the cloud, allowing him to store up to 5,000 flashcards.

b) Premium Version: The Premium Version is available to lease for a monthly charge. The user receives access to use the premium features that are constantly evolving, the details of which can be found in the separate performance description (<http://www.brainyoo.de/features/>). In addition, the user can set account preferences to turn off the advertising insertion. Furthermore, the user receives an expanded amount of 2 GB of storage in the cloud for user-created content, where he can create any number of flashcards.

### **3 How to Set Up and Register an Account**

Setup and registration to activate a user account is handled on the website at "www.brainyoo.de" or on the appropriate screen after the Brainyoo 2.0 program is installed. The user fills out the appropriate data forms and enters his personal data. The user must acknowledge the terms and conditions and the privacy policy by clicking on the buttons labelled "Terms" and "Privacy Policy". It is up to the user to save and/or print the terms and conditions and the privacy policy after opening and reading them. By clicking on the check box, the user confirms that he has read and agrees to the terms and conditions and that he can legally consent under the data protection laws.

Furthermore, the user can instruct BrainYoo to start the execution of the contract before expiry of the withdrawal period.

After confirming the entries by clicking on the "Continue" button, the user sees another page which displays all of the data that he entered, including the version he selected. The user can click on the "Correct" button to return to the input screen and correct any incorrect information. With clicking the "Create Account" button, the data is transmitted to BrainYoo, where the data is verified and saved. In doing so, the user gives his legally binding agreement to set up the account on Brainyoo. The user immediately receives a confirmation email about data access at the email address that he supplied. Acceptance of the agreement is declared in a separate e-mail from Brainyoo to the specified email address within two days. With this email, the user receives a summary of the agreement, the login and password, including also these contract provisions, the privacy statement, and the withdrawal policy. After leaving the registration process, the contract details can no longer be accessed online. Registration data and Terms and Conditions can be requested for call up individually from BrainYoo.

## **4 Using the Account**

Subject to the following agreement, the user is authorized to access the account:

4.1 Access Rights. Access to the account is password-protected and may only be given to the user himself. The user is expressly prohibited from granting or providing third parties access to the access data or to the account itself.

The user will receive a login and a password free of charge, with which he can access the account.

4.2 Confidentiality of Access Data, Misuse of Third Parties, Liability. The user agrees to treat his login and password confidentially, not to disclose it to third parties, and to protect it adequately against access by third parties. The user agrees to notify BrainYoo immediately if unauthorized persons are suspected of having gained knowledge of these access codes. BrainYoo will then temporarily block access and issue new access codes to the user. The user is responsible for damages arising from breach of this agreement, especially through improper use, unless the user is not at fault. In particular, any use of the access codes by persons other than the user himself is improper.

4.3 Uses. The user is entitled to use the opportunities offered through the account; the account in particular enables access through the Internet to virtual storage space on the BrainYoo Server.

Through the account, the user is entitled -- if offered -- to:

- create his own learning content (see 5 below)
- load previously existing learning content and content that he created into the cloud (see 6 below)
- synchronize user-associated learning content in the cloud with his workplace, i.e. to make it available for all of his registered devices (see 7 below)
- purchase new learning content (paid, if necessary) from BrainYoo or third-party providers and load it into the cloud (see 8 below)
- "share" his own learning content with other users, i.e. to give other users access to his freely available content (see 9 below)

For the effective use of the account, the user must install the BRAINYOO 2.0 software and/or BRAINYOO 2.0 mobile, which can be downloaded and installed for free under a separate license agreement. Any relevant legal relationships are governed separately and are not subject to the terms of this contract.

## **5 Creating Your Own Learning Content**

5.1 The user can use his device to create his own learning content with the BrainYoo software. He can create texts on his device and import and edit pre-existing texts, images, and audio and video files.

5.2 Before creating his own learning content, the user shall ensure that the elements/content are free from conflicting rights of third parties, in particular, the

necessary rights for editing, copying, distribution, online transmission (§19a of the German Copyright Act), sublicensing, and granting and/or transferring the equivalent rights, especially to load any learning content that has been created into the cloud, to synchronize, to share, and to allow access to third parties to the extent that the learning content is expected to be further used. If the usage of user-created learning content is expanded at a later date, this applies to the point in time when then the usage is expanded.

5.3 The following provisions relating to the responsibility of the user under 6.3 - 6.5 apply when creating your own learning content.

## **6 Transferring Learning Content to the Cloud**

6.1.1 In the Premium Version, BrainYoo provides the user with temporary storage, free of charge, to transfer and store pre-existing content or user-created or acquired content and to store learning objects and learning statistics. Storage of other files is not permitted.

6.1.2 The parties agree that no specific spatial memory area is provided for the storage of data. However, under this agreement, BrainYoo commits for the duration of this agreement to provide storage capacity to the user for the scope of services described, depending on the version of the account chosen.

6.1.3 The data will be stored and adequately protected against access by third parties. The directory assigned to the user can only be accessed by entering the login, password, and user ID. Access rights are granted by "Parts of the Content" in accordance with section 9.

6.1.4 BrainYoo provides access to the BrainYoo server to retrieve the user's files through the Internet interface. BrainYoo provides for the connection of the server to an Internet interface by means of the specification described in section 17.1.

6.1.5 BrainYoo will always strive to provide the user with the ability to access files that he has saved at any time under the contract for storage, addition, modification, or deletion of files.

### **6.2 Rights of Use**

With the transfer and storage of user-created or pre-existing content and learning objects on the server, the user grants BrainYoo the non-exclusive right, unlimited by time or space, to store and duplicate the file or its contents in any form. A fee shall not be paid for this purpose.

### **6.3 Customer's Responsibility for Contents**

6.3.1 The user shall bear full responsibility for any files or contents that are transferred to or stored on the BrainYoo server. In transferring and storing data and content on the BrainYoo server, the user agrees not to violate the law of the Federal Republic of German and not to infringe on the rights of third parties. In particular, the transfer, storage, distribution or transmission over the Internet of files or their contents or their other contractual use by BrainYoo may not violate any copyright, art copyright, trademark, patent, design right, or other intellectual property rights of third parties or the German criminal law. In particular, the user undertakes not to transfer, enter, or store content that is offensive or defamatory,

Nazi or otherwise subversive, racist, or pornographic.

6.3.2 Before uploading content, the user shall ensure that he holds all of the rights necessary for the reproduction and transmission of content over the Internet and that he can grant BrainYoo the necessary privileges to perform this contract.

6.3.3 By transferring the content from his computer over the Internet to the Brainyoo server, the user confirms that he is holds all of the rights necessary to reproduce and transmit this content over the Internet and that it is free from conflicting rights of third parties.

#### 6.4 Provision to Block or Delete

6.4.1 BrainYoo is entitled and required by law to block individual data or information, or where this is not possible, to block all data immediately, after taking note of illegal data or content that has been stored, or of facts or circumstances from which the illegal activity or information is apparent. This blocking is effected by temporarily interrupting the connection of said data or information to the Internet.

6.4.2 BrainYoo will immediately inform the user that the data or information has been blocked. The user shall immediately remove the illegal data or information or supply proof of legality to BrainYoo; in addition, BrainYoo is entitled to immediately and irrevocably delete the data or information, if possession is improper or actionable.

#### 6.5 Lack of Viruses in Transmitted Data and Backup Copies

6.5.1 The user bears the full responsibility for ensuring that files which he transmits and saves on the server are free of viruses, worms, Trojan horses, and other malicious programs.

6.3.2 The user shall, prior to uploading graphics and pictures, check these files using appropriate, up-to-date virus checking programs.

6.5.3 The user is responsible for ensuring that any data transmitted or stored by the user is regularly protected through a step such as a system backup. In particular, BrainYoo shall not be liable for the loss of data stored by the user; liability for intent shall remain unaffected.

## **7 Synchronization of Learning Content with Workplaces**

7.1 The user can synchronize learning content that has been stored in the cloud, i.e. make the content available for download to all of his devices. However, this only applies for paid learning content in which the order stipulates workplace limitations.

7.2 Insofar as the right of use terminates the learning content, the right of use also terminates the synchronized learning content on other devices; the termination of use is provided by BrainYoo technically by linking the content and all copies with an expiration date.

## **8 Purchase of New Learning Content**

8.1 The user can purchase new content, permanently or temporarily, for a fee from the BrainYoo online shop or from BrainYoo's partner firms. The details of the order are determined by the separate order conditions which are included with the order (<http://brainyoo.de/legal/agb/>)

The learning content to be acquired is legally protected, sometimes in accordance with the Trademark Act, the Design Act, or the Patents Act, and sometimes by international protection laws. Therefore, the learning content may only be used by the user within the timeframe allowed by the conditions of the order. Use beyond those conditions is unlawful and prohibited and can result in injunctive relief and damages of the rights holder against the user. In addition, violations of copyrights or other intellectual property rights regularly represent offenses that are introduced by the rights holder to the prosecution.

8.3 With every order, BrainYoo uses encryption software to encrypt every individual flashcard set with a BrainYoo license that has been individualized for the user. This license allows the user to install the learning content on up to 2 desktop computers and 2 mobile devices in the Free Version or up to 3 desktop computers and 3 mobile devices in the Premium Version. The file is also linked with the personal user ID and, in the case of time-limited usage rights, with an expiration date. In this way, multiple installations and sharing of digital flashcard sets with unauthorized third parties are prohibited; acts of infringement are ascribed to the specific user.

8.4 The user is not to manipulate the encryption or the file link with characteristics.

## **9 Transferring Learning Content to the Cloud**

9.1 The user can "share" learning content that he has created with other users. For this purpose, the user can allow other users to access the learning content via a software interface so that the other users can download the content themselves. "Sharing" of paid learning content is not allowed.

9.2 Prior to "sharing" learning content with other users, the user shall ensure that transmitting this content, storing it in the cloud, granting access to a third party, downloading by the third party, or other acts of utilization through sharing with third parties do not infringe upon any rights of third parties, including copyrights, trademarks, patents or other intellectual property rights.

9.3 By "sharing" under section 9.1, the user grants BrainYoo the simple, non-exclusive, transferable and sublicensable right, unlimited by time or space, to reproduce, store, process, distribute, and make available the learning content (§19a of the German Copyright Act).

9.4 The user also grants to other users with whom he shares the learning content the simple, non-exclusive, transferable and sub-licensable right, unlimited by time or space, to reproduce, store, process, distribute, and make available the learning content (§19a of the German Copyright Act), so that the learning content may continue to be shared with other users.



## **10 General Terms and Conditions for All Services**

For all services offered under this contract for which the above terms do not provide specific regulation, the following additional conditions apply.

10.1 Right of Withdrawal. If the user is also the consumer, then he has a statutory right of withdrawal. He can cancel his contractual declaration within fourteen days without giving reasons in a clear statement. In the case of an effective withdrawal, the mutually received benefits are to be returned. Details are given in the separate withdrawal policy. (

### **10.2 Duties of the User**

10.3.1 If disruptions occur during the usage of BrainYoo offerings, the user shall notify BrainYoo immediately so that BrainYoo can correct the disruption.

10.3.2 The user is obliged to inform BrainYoo of any changes to his contract relevant data immediately.

### **10.3 Duty to Protect Access Authorization**

10.4.1 The user shall endeavour to treat confidential information or access codes (including his login and password) confidentially, not to disclose it to third parties, and to protect it adequately against access by third parties.

10.4.2 The user agrees to notify BrainYoo as soon as he suspects that unauthorized persons may have gained knowledge of these access codes. BrainYoo will then temporarily block access and issue new access codes to the user.

## **11 Liability of User, Indemnification**

11.1 The user shall be liable for costs incurred by BrainYoo arising from violations of this agreement, unless the user proves that he is not at fault.

11.2 The user agrees to release BrainYoo in the case of a third-party claim for user violations of the aforementioned contractual obligations, in particular violations of copyright, art copyright, trademark, design patent, competition, criminal or other civil law, due to the actions of the user for which BrainYoo is legally liable or which can be attributed to BrainYoo.

11.3 The user, if he is not a consumer, agrees to give BrainYoo a reasonable advance on the costs arising from a necessary legal action. In return, the user is entitled to issue instructions to influence the legal dispute. Any further claims by BrainYoo remain unaffected.

## **12 Liability of BrainYoo**

12.1 Free Version. In the course of using the account in the Free Version, Brainyoo has a liability as follows: The claims of the user to damages or compensation for needless expenditure are determined by the following statements, regardless of the legal nature of the claim:

- For damages arising from injury to life, body, or health, based on a negligent violation of duty by BrainYoo or an intentional or negligent violation of duty by a legal representative or vicarious agent of BrainYoo, BrainYoo is liable without limitation.
- For property and other damages, BrainYoo is only liable for intent and gross negligence.
- Liability for loss of data is limited to the typical recovery effort which would have occurred during regular backup copies, appropriate for the risk level.
- The statements above also apply to Brainyoo employees.
- Liability according to the product liability law is not affected (§14 Product Liability Law).
- Liability for defects shall be governed by §600 of the German Civil Code with the proviso that liability for grossly negligent behaviour is excluded.

12.2 Premium Version. In the course of using the account in the Premium Version, Brainyoo has the following liability:

12.2.1 The liability of BrainYoo with regard to the free loan provision of storage space is limited to deliberate acts, as long as BrainYoo is not to blame in violation of duty to protect or legal duty to maintain safety. This does not apply to liability for fraudulent concealment of defects under the law or errors.

12.2.2 The strict liability of BrainYoo according to §536a I of the German Civil Code with regards to errors that already existed at the time of the conclusion of the contract is excluded.

12.2.3 Insofar as the liability of BrainYoo is not separately governed as detailed above, BrainYoo is only liable for user damage, for whatever legal reason, if BrainYoo or its vicarious agent culpably violates a cardinal or other primary obligation in a way that endangers the purpose of the contract or if damages are due to gross negligence or intent by BrainYoo or its agents. Liability for guarantees or personal injury as well as the provisions of the Product Liability Law shall remain unaffected by the foregoing.

12.2.4 The claim for damages arising from the breach of primary contractual obligations is limited to the amount of foreseeable damages typical for the contract, provided that there is no wilful misconduct or gross negligence, or liability for injury of life, body, or health, or that BrainYoo fraudulently concealed a defect, or an express guarantee is assumed.

12.2.5 The liability for damages to other user property caused by the performance of BrainYoo, such as in other things, is excluded, provided that there is no willful misconduct or gross negligence, or liability for injury of life, body or health, or that BrainYoo fraudulently concealed a defect, or an express guarantee is assumed.

12.2.6 If liability is effectively excluded or limited, this also applies to the personal liability of employees, other staff, members, representatives and agents.

12.2.7 The above provisions also extend to claims for damages in addition to the performance and damages in lieu of performance, for whatever legal reason (e.g.

due to defects, breach of contractual obligations, tort) and the claim for reimbursement of expenses.

12.2.8 BrainYoo assumes no liability for non-availability of data or the content of users if the cause of the non-availability falls outside of the Internet interface, unless BrainYoo is responsible for the cause.

### **13 Payment of Fees With a Premium Account**

13.1 If the user establishes a paid premium account, he can choose from several payment options (e.g. PayPal, credit card or advance payment) when placing his order. Regardless of the method of payment chosen, the payments are considered to have been made only when "Brainyoo" has unlimited access to the full amount. With credit card payment, the withdrawal from the account is made with the conclusion of the order.

13.2 Fees are due and payable immediately without deduction; the user is obliged to perform for the billing period stated for the order.

13.3 Despite contractual implementation, if the method of payment selected by the user on behalf of "Brainyoo" is not feasible, in particular because it is not possible to debit from the user's account due to lack of funds in the account or due to incorrect information, the user shall pay the settlement as well as any additional costs incurred by "Brainyoo" or a third party acting on the part of "Brainyoo".

13.4 "Brainyoo" is entitled to employ trustworthy third parties for the processing of payments for services provided. To this end, "Brainyoo" may assign claims against the user to third parties and transfer the personal data required for the handling of payments to said third parties. In the case that a third party is employed for the payment process, the payment process shall only be considered completed in relation to "Brainyoo" when the payment is made to the third party as stipulated by the contract, so that the third party has full access to the payment.

13.4 To the extent that, and as long as, the account is distributed as Premium Version in connection with the order of paid content ("bundle"), remuneration for the duration of the agreement is not necessary. If a premium account has already been established before the bundle is purchased and payment is made, the agreed-upon duration of the previously established premium account shall be extended by the duration of the bundle.

### **14 Privacy Policy**

"Brainyoo" collects, processes, and uses personal data from the user for completion of the contract within the framework of the separately issued Statement of Privacy (<http://brainyoo.de/legal/datenschutz/>) and in accordance with legal provisions.

### **15 Duration of Contract/Termination**

15.1 The contract is entered for an indefinite period, unless a specific contract

period has been agreed. If no special period has been agreed, the contract can be terminated by the user at any time, or by BrainYoo after a notice of one month. If, at the time of the cancellation, previously acquired paid content has a longer usage life, the termination shall be effective at the end of this life. Otherwise, the Premium Version can be terminated by the end of the month with one month's notice.

15.2 At the end of the premium contract, the account reverts into a free account, i.e. the free account continues unless the full termination of the entire contract has been agreed or was indicated as part of the cancellation. At the termination of the free account, all stored data is deleted at the end of the retention period.

15.3 The right of both parties to immediately terminate individual services or the entire contract for cause remains unaffected. Important reasons that BrainYoo may terminate the contract without notice include:

- usage of the program by the user in breach of the terms of the contract, especially allowing unauthorized access of the program to a third party
- violations by the user of the copyright of BrainYoo or its contract partners (e.g. content providers)

15.4 Termination for valid cause, in case of doubt, extends to the entire contract.

15.5 The user shall delete any stored data from the BrainYoo server within two weeks after the termination of the contract. At the end of the period, BrainYoo will set an additional period of two weeks to delete the data, together with a warning that BrainYoo will delete the data at the end of the period. After this time, BrainYoo is entitled to delete the data from the server. Further claims for surrender of compensation by the user then do not exist.

## **16 Final Provisions**

### 16.1 Server Data and General Information

16.1.1 The user is advised that BrainYoo, on its part, has rented storage space from a third party, where the full collection of data is stored (server housing).

16.1.2 The server is located in the Federal Republic of Germany.

### 16.2 Support/Hotline

In case of any questions or problems related to the contracts or their processing, the user can contact the hotline by telephone at (0049) 0611 - 4475 4422 or by e-mail at [support@brainyoo.com](mailto:support@brainyoo.com).

### 16.3 Miscellaneous

16.3.1 This agreement represents the entire arrangement of the object of the contract. Additional agreements are not affected. Changes or additions to this agreement must be in writing or in text form. This also applies to an arrangement in which this form is waived.

c) If one or more of the aforementioned provisions of this agreement should be

deemed invalid, the remaining provisions shall remain unaffected.

It is the duty of the user to save and/or print these terms and conditions.

Effective Date: 01.11.2016

Signed Patrick Schmidt, Chief Executive, BrainYoo Mobile Learning GmbH, Wiesbaden