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Issue Paper

DATE:

7/21/2022

AGENDA ITEM (ACTION ITEM):

Consider/Approve the software license agreement with Brain Corporation to use their autonomous navigation software for the life of the floor scrubber.

APPLICABLE BOARD POLICY:

01.1 – Legal Status of the Board

HISTORY/BACKGROUND:

The Board approved the purchase of an autonomous floor scrubber in February 2022. The floor scrubber uses software and autonomy services to operate effectively. The autonomy services use autonomous navigation that allow the scrubber to clean along pre-configured routes. The software allows for cloud-connectivity for remote diagnosis of problems and updates for safety-critical or new software features. The software also allows for summary data on the usage and operation of the scrubber.

FISCAL/BUDGETARY IMPACT:

None

RECOMMENDATION:

Approval to enter into a software license agreement with Brain Corporation to use their autonomous navigation software for the life of the floor scrubber.

CONTACT PERSON:

Jenny Weis-Smith


Principal/Administrator


District Administrator


Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda. Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent’s mailbox.

END USER LICENSE AGREEMENT FOR BRAIN CORPORATION'S AUTONOMOUS NAVIGATION SOFTWARE

We take agreements with our customers seriously. This End User License Agreement (this "agreement") explains the use of our software and autonomy services, and the terms and conditions of your license with Brain Corporation. Please note that for those scrubber machines that you have agreed to a separate "End User License Agreement for Brain Corporation's Autonomous Mobile Robot Navigation Software" with an authorized seller (the "covered scrubbers"), such agreement shall control and supersede this agreement.

Please read the details contained in this agreement to ensure that you are fully informed. By using our products and services, you are agreeing to the terms and conditions contained in this agreement. If you have any questions or concerns, please contact us using the details provided in the "Contact Us" section.

Introduction

This agreement covers the terms and conditions for the use of any Brain Corporation autonomous navigation software ("software") contained on any BrainOS powered RoboScrub 20 robotic scrubber sold or distributed under the "Brain" or "BrainOS" trademark (each a "robotic scrubber"). This agreement forms a legally binding contract between you and us, Brain Corporation, a California corporation ("Brain") for the use of the software and robotic scrubber(s).

1. Accepting this Agreement

By (a) using the software or the autonomy features, (b) clicking a box indicating your acceptance, (c) executing an order form that references this agreement, or (d) signing at the end of this agreement, you agree to be bound by the terms and conditions of this agreement, including its limitations on access, use, transferability, warranty and liability. In addition, you are agreeing that you have the authority to bind yourself (or your employer or other entity on whose behalf you are agreeing) to the terms and conditions of this agreement. You agree that this agreement is enforceable like any written negotiated agreement signed by you. If you do not agree to these terms and conditions, you may not use the software or the autonomy features or exercise any of the rights granted by this agreement.

2. Autonomy Services

During the initial period specified in the purchase order or other agreement for your purchase or use of the robotic scrubber and any additional purchase of an extension of access to the autonomy features between you and Brain or an authorized manufacturer, reseller or distributor (an "authorized seller"), we agree to provide the following services (the "autonomy services") to you:

- 2.1 **Autonomy Features.** With the autonomous navigation and other features of the software (the "autonomy features") enabled for a robotic scrubber, the robotic scrubber can clean along routes that you pre-configure. You are solely responsible for the design of all pre-configured routes. Without the autonomy features enabled, the robotic scrubber will not be able to operate autonomously but can be used in manual operation.
- 2.2 **Support Services.** Brain will provide you software support services from the robot operations center ("ROC"), which provide the following, as applicable: (a) cloud-connectivity for remote diagnosis of problems and

support relating to the autonomy features; (b) software updates for safety-critical or new software features; and (c) summary data on the usage and operation of each robotic scrubber.

3. Use of the Software and Autonomy Features by You

You must comply with the usage rules established below that apply to all robotic scrubbers:

- 3.1 You agree that you are responsible for the operation and use of the autonomy features by you and your employees, agents, and contractors and any transferee or other entity that you permit to use the robotic scrubber ("**permitee**"). Use of the autonomy services and the autonomy features carry the following restrictions and limitations on use as provided in this Section 3 (the "**restrictions on use**").
- 3.2 You agree to use the software, autonomy services, or the autonomy features only for purposes that are permitted by (a) this agreement, and (b) any applicable law, regulation, or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States, or such other country in which you purchase or use the robotic scrubber).
- 3.3 **Approved Uses.** The autonomy features allow the robotic scrubber to learn actions performed by an operator and later autonomously perform similar actions based on that learning. Notwithstanding the restrictions on use in this Section 3, you, your employees, agents, contractors, and other permittees, shall only use the robotic scrubber and autonomy services to clean areas and surfaces reasonably cleaned by a manual scrubber of comparable build and design to the base scrubbing unit of the robotic scrubber in "**approved environments.**" Specifically, these approved environments are physical spaces that are monitored and designated for cleaning using industry standard practices for machinery and wet floors, including caution signage and barriers. While a robotic scrubber is in autonomous mode, all drops, stairs, escalators, moving platforms, or cliffs near to the robotic scrubber during its operation must be guarded by a physical barrier. You, as well as your employees, agents, contractors, and other permittees, shall use the autonomy services in accordance with the training and the robotic scrubber's user manuals. These manuals may be updated, revised or otherwise modified by Brain or an authorized seller.
- 3.4 **Training.** Brain or an authorized seller shall provide training to you for the operation and use of the robotic scrubber and associated autonomy services. This training includes operation subject to the restrictions on use described in this Section 3. After you have completed the training for the robotic scrubber, you will be responsible for instructing all operators of the robotic scrubber how to use the robotic scrubber and autonomy services in accordance with the training. Brain and the authorized sellers reserve the right to charge for additional on-site training requests.
- 3.5 **Cellular Connection.** During operation, if access to cellular data is not available for a robotic scrubber, Brain may not be able to provide that robotic scrubber the applicable support services from the ROC described in paragraph 2.2. Text alert communications require you to provide a cellular phone with cellular service.
- 3.6 **Proper Maintenance and Inspections.** You, as well as your employees, agents, contractors, and other permittees, shall only use the software and the autonomy features so long as the robotic scrubber is maintained and operated in accordance with the training and the robotic scrubber's user manuals. This maintenance and operation shall include, but not be limited to, (a) inspection of the robotic scrubber prior to operation to ensure, among other things, squeegees are properly positioned and cleaned, liquids are filled, and there is no obvious damage to the robotic scrubber, and (b) maintenance and routine service at least in

accordance with industry standards for manual scrubbers. All robotic scrubbers are to be stored in a reasonably secure location away from public access.

- 3.7 **Conduct Restrictions.** You, as well as your employees, agents, contractors, and other permittees, shall not engage in any of the following conduct or activities: (a) operating a robotic scrubber in any manner that constitutes a prohibited use under the robotic scrubber's user manuals or periodic updates; (b) intentionally tampering with, modifying, or damaging the robotic scrubber or any hardware or sensors containing or associated with the software or the autonomy services; (c) installing or modifying, or attempting to install or modify, any software other than the software on the robotic scrubber (except solely as otherwise permitted under pursuant to any open source licenses, if any, provided to you by Brain, in connection with the software licensed hereunder); (d) installing or attempting to install the software on any hardware or device other than the robotic scrubber; (e) using the software or the autonomy services to conduct any operation of the robotic scrubber beyond routine cleaning functions within an approved environment; or (f) attempting to deliberately damage or undermine the legitimate operation of the autonomy services or the software. The robotic scrubbers, software, and autonomy services are not designed or intended for use in environments requiring fail-safe performance, including any application in which the failure of the robotic scrubbers, software, and autonomy services would reasonably likely lead directly to death, personal injury, or severe physical or property damage.

4. License from Brain

- 4.1 Subject to the terms of this agreement, we are granting you a royalty-free, non-sublicensable, and non-exclusive license solely during the period when you have access to the autonomy services as provided in Section 2 and solely for your use (or your use on behalf of your employer or entity on whose behalf you are agreeing) of the software in the country in which Brain or an authorized seller delivered the robotic scrubber to you in conjunction with (a) the robotic scrubber pre-loaded with the software that you acquired and (b) the autonomy services. "Use" as used in this paragraph shall mean the ability to run or execute the software through an interface on the robotic scrubber as necessary to navigate and operate the robotic scrubber autonomously in an approved environment in accordance with Section 3.
- 4.2 All rights not specifically granted under this agreement are reserved by us and, as applicable, our licensors. THE SOFTWARE IS LICENSED, NOT SOLD. YOU ARE PERMITTED TO USE THE SOFTWARE ONLY IN ACCORDANCE WITH THE TERMS OF, AND ONLY AS EXPRESSLY ALLOWED BY, THIS AGREEMENT. Your license confers no title or ownership in the software and should not be construed as a sale of any rights in the software. This agreement also applies to any patches or updates you may obtain for the software, and to the software on any robotic scrubber that you use.
- 4.3 You agree and acknowledge that Brain, our affiliates and our licensors own all legal right, title and interest in and to the software (including any patches and updates to the software and all copies), including any intellectual property rights that subsist in the software. "Intellectual property rights" means any and all rights under patent law, copyright law, moral rights, trade secret law, trademark law, and all other proprietary rights. We reserve all rights not expressly granted to you. Our software is protected by the copyright laws of the United States, international copyright treaties and conventions and other laws of the country in which you purchase or use the robotic scrubber.
- 4.4 You may not: (a) copy, modify, adapt, redistribute, decompile, reverse engineer, disassemble, or create derivative works of the software or any part of the software; or (b) sell, rent, lease, license, distribute or

otherwise transfer, commercialize, or offer or provide a service with, any software or device (other than the robotic scrubber as provided to you) incorporating the software or any part of the software.

- 4.5 Nothing in this agreement gives you a right to use any of our trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.
- 4.6 You agree that you will not remove, obscure, or alter any proprietary rights notices (including patent, copyright, and trademark notices) that may be affixed to or contained within the software or the robotic scrubber.

5. Privacy and Information

To continually innovate and improve our software and to provide additional or improved products, software, or services to current or future customers, we may collect, and you agree to the collection of, certain data from the software or the robotic scrubber maintained and used in accordance with Brain's Data Policy (available at www.braincorporation.com/data-privacy), as may be updated by Brain from time to time.

6. Terminating this Agreement

- 6.1 This agreement will continue to apply until terminated by either you or Brain as set out below.
- 6.2 If you want to terminate this agreement, you may do so by ceasing completely your use of the software and the autonomy features. You may be required to separately terminate your autonomy services under terms and conditions provided in your purchase order or other agreement with Brain or an authorized seller.
- 6.3 We may, at any time, immediately terminate this agreement with you if: (a) you have breached any provision of this agreement; or (b) Brain is required to do so by law. In the event you make any use of the software, autonomy services, or the autonomy features not expressly permitted by this agreement, your license rights under this agreement shall immediately and automatically terminate. When this agreement comes to an end, all legal rights, obligations and liabilities that you and Brain have benefited from, been subject to (or which have accrued over time while this agreement has been in force) or which are expressed to continue indefinitely, shall not be affected and the provisions of paragraph 10.4 shall continue to apply to such rights, obligations and liabilities indefinitely.

7. Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SOFTWARE, AUTONOMY SERVICES, AND AUTONOMY FEATURES IS AT YOUR SOLE RISK AND THAT THE SOFTWARE, AUTONOMY SERVICES, AND AUTONOMY FEATURES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND FROM BRAIN. BRAIN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. Limitation of Liability

YOU EXPRESSLY UNDERSTAND AND AGREE THAT BRAIN, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING UNDER THIS AGREEMENT THAT MAY BE INCURRED BY YOU,

WHETHER OR NOT BRAIN OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

9. Changes to this Agreement

We reserve the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this agreement and to impose new or additional rules, policies, terms, or conditions as required for safety, for compliance with laws or government regulations, and/or that do not materially impact your use of the robotic scrubber (collectively referred to in this agreement as "additional terms") on your use of the software, autonomy services, or the autonomy features. The additional terms will be effective immediately and incorporated into this agreement. Your continued use of the software, autonomy services, or the autonomy features following notice, at the mailing address or email address you provided to Brain, of any additional terms will be deemed to constitute your acceptance of all such additional terms. All additional terms are hereby incorporated into this agreement by reference.

10. General Legal Terms

- 10.1 This agreement constitutes the whole legal agreement between you and Brain and governs your use of the software, autonomy services, and the autonomy features (excluding any services which we may provide to you under a separate written agreement), and completely replaces any prior agreements between you and us in relation to the software, autonomy services, and the autonomy features. Unless expressly overwritten and agreed upon in writing by us, the terms and conditions of this agreement shall control in the event of a conflict with terms and conditions in a purchase order, vendor agreement, extended service agreement, or any other instrument. You agree that if Brain does not exercise or enforce any legal right or remedy which is contained in this agreement (or which Brain has the benefit of under any applicable law), this will not be taken to be a formal waiver of our rights and that those rights or remedies will still be available to us. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this agreement is invalid, then that provision will be removed from this agreement without affecting the rest of this agreement. The remaining provisions of this agreement will continue to be valid and enforceable.
- 10.2 THE SOFTWARE IS SUBJECT TO UNITED STATES EXPORT LAWS AND REGULATIONS. YOU MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL EXPORT LAWS AND REGULATIONS THAT APPLY TO THE SOFTWARE. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, END USERS AND END USE.
- 10.3 The rights granted in this agreement may not be assigned or transferred by you without the prior written approval of Brain. You shall not be permitted to delegate your responsibilities or obligations under this agreement to any third party without our prior written approval.
- 10.4 This agreement, and your relationship with us under this agreement, shall be governed by the laws of the ~~State of California~~ *Kenton County, KY* without regard to its conflict of laws provisions. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Any judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Claims shall be heard by a single arbitrator, unless the claim amount exceeds \$500,000, in which case the dispute shall be heard by a panel of three arbitrators. The place of arbitration shall be ~~San Diego, California~~ *KY*. The arbitration shall be governed by the laws of the ~~State of California~~ *KY*. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. The standard provisions of the Commercial Rules shall apply. Arbitrators will have the authority to allocate the costs of the arbitration process among the parties but will only have the authority to allocate attorneys' fees if a particular law

permits them to do so. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above. Notwithstanding the foregoing, you agree that Brain shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

10.5 This agreement shall serve as the Autonomous Navigation Software End User License Agreement ("EULA") as may be referenced by the robotic scrubber's user manuals and other documents by us or any authorized seller.

11. Contact Us

If you have questions or comments, or if you have a concern about this agreement, you may also contact us by postal mail or email at:

Brain Corporation
Attn: EULA
9401 Waples Street, Suite 100
San Diego, CA 92121
eula@braincorporation.com

This End User License Agreement is agreed and acknowledged by "you" as purchaser or acquirer of the robotic scrubbers. By your signature below you certify that you have the authority to bind yourself, or your employer or other entity on whose behalf you are agreeing. Additionally, by signing below you acknowledge your acceptance of this agreement as presented to you and that no addition, deletion, or modification of this agreement by you shall have any effect on the terms and conditions of this agreement or their enforceability against you.

By: (signature) _____

Name: (print) _____

On Behalf of: (company) _____

Address: _____

As its: (title) _____

Date: (Month/Day/Year) _____