

## License Agreement

### 1. Scope of validity and subject of the agreement

The following terms apply to the provision and use of the following computer programs in all versions:

- BrainVision Recorder: This software allows to record and analyze physiological signals by using a personal computer.
- BrainVision Recorder for CGX: This software allows to record and analyze physiological signals by using a personal computer.
- BrainVision RecView: This software allows to monitor physiological signals by using a personal computer.
- BrainVision Analyzer 2: This software allows to analyze physiological signals by using a personal computer.
- BrainVision CapTrak: This software allows to measure electrode locations by using a personal computer.
- actiCAP ControlSoftware: This software allows to measure impedances of actiCAP electrodes in combination with BrainVision Recorder software (see above).

which are developed by Brain Products GmbH (referred to hereinafter as "Brain Products"), the user documentation (user manual) and any other associated written material as well as all copies, updates, upgrades, and any other additions provided by Brain Products (all of which, solely and together, are referred to hereinafter as "software").

The software mentioned above is intended to be used only by scientific or medical professionals as well as trained personnel, and exclusively for research purposes. The software is not a medical product and therefore may not be used for medical purposes such as diagnosis or treatments.

Deviating, contrasting or additional terms of the user are not applicable, even if they are known, unless Brain Products has expressly agreed in writing to their applicability.

The software and any copies of the software made by the user are the intellectual property of Brain Products and its suppliers. The software is protected by law, in particular by German copyright legislation. The software may only be used in accordance with these licensing terms.

Brain Products does not guarantee that the functions of the software will work in conjunction with other software products. The requirements to be met by the operating system and hardware ("system requirements") are set out in the product description and user documentation.

The user documentation offers a binding description of the product. The user is not entitled to use the software other than as described in the user documentation. English-language user documentation is supplied in a digital form (e.g., as a PDF file) that may need to be printed out by the user.

Accompanying services offered by Brain Products, such as installation, introduction to the product, training, support etc., are not covered by this License Agreement unless this is expressly agreed in writing.

## 2. Licensing

Brain Products grants the user a non-exclusive right to use the software as intended

- for an unlimited period in return for the agreed one-time payment, or
- for a limited period for trial or demo purposes free of charge.

### Single and Multiple Software Licenses

The user can use single software licenses on any available and compatible computer. However, it is only granted one access/account, meaning the concurrent use of single software license with one access on multiple computers is not allowed.

Multiple licenses for the software (if this license type is available for the specific software) may be used for the number of accounts specified in the license agreement. Multiple licenses are only available as network licenses.

### Software License Protection

As far as available for the specific software, Brain Products uses two mechanisms for software license protection:

- **Software License Protection by Hardware Key (USB Dongle):** It allows access and execution of the software only when the hardware key (USB Dongle) is physically connected to a USB port of the computer.
- **Software License Protection by Software Key:** Software keys reside in the secure storage of the computer. The use of software keys eliminates the need to ship a physical product and enables users to quickly install and start using the software.

### Software License Protection by Hardware Key (USB Dongle)

Brain Products offers USB dongles for verifying that a user has a single or a multiple license. The dongle stores access information and thus controls access to the software. When using this software protection mechanism, the software can only be used in conjunction with a dongle. The dongle must be inserted in one of the computer's or server's USB ports.

If the supplied dongle stops working or does not work, the user is entitled to return it to Brain Products and request a replacement. During the warranty period for defects, the replacement is provided free of charge. When the warranty period for defects has expired, a replacement may be provided against payment of a lump sum to be paid in the individual case plus shipping costs. The respective amount of the lump sum can be requested by contacting Brain Products sales department or the local distributor.

In the event of theft or loss of the dongle, the user is not entitled to receive a replacement. The user is obliged to inform Brain Products immediately of any loss or theft of the dongle. Brain Products reserves the right to lock the software license if the user reports its loss.

### Software License Protection by Software Key

This software license protection mechanism requires an internet connection to activate the software product key. Software licenses and the corresponding software product key are – after activating – not transferable from one computer to another computer – which includes the case of an irreparable failure of a computer.

This software license protection mechanism is not available for all software versions. For more information, please contact Brain Products sales department or your local distributor.

### Decompilation and changes to the program or license protection mechanism

The decompilation of the software code provided into other forms of code and any other kind of reverse engineering of the software are not permissible.

It is not permissible to remove or circumvent the software's license protection mechanism or try to hack the software's license protection mechanism in any other way.

Copyright marks, serial numbers and other such marks or information that identify the program must on no account be removed or altered. The same applies to the suppression of the display of such marks or information on the screen.

### Access control

The user must ensure that everyone who uses the software as intended complies with the terms of use.

The user is obliged to take appropriate precautions to prevent unauthorized third parties from accessing the program and documentation.

### Reselling and subrental

When using Software License Protection by Hardware Key the user may sell off or give away the software, including the Hardware Key, the user manual and other accompanying material, to a third party on a permanent basis provided the third party accepts the terms of this agreement (“transfer of the software”). Rental for commercial purposes and leasing are not permissible.

## **3. Support, updates and upgrades**

If Brain Products removes program errors by means of bug fixes or updates, Brain Products will make the relevant part of the program or update available to the user free of charge.

Support will be provided only for the currently valid version of the software that has been improved by the bug fixes and updates provided.

If the software is further developed in the form of an upgrade for which a charge has to be made, support for the previous version is only provided for a period of one year after the release of the new version.

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#### **4. Protected rights of third parties**

Brain Products shall indemnify the user against all claims asserted against the user by third parties due to the infringement of property rights by the software supplied by Brain Products. The prerequisite for this is that the user (i) immediately notifies Brain Products in writing if a third-party asserts claims and that (ii) any legal disputes, including any out-of-court settlements, are left to Brain Products or are conducted only in consultation with Brain Products.

If the user is responsible for the infringement of third-party intellectual property rights, the user is not entitled to assert claims against Brain Products.

#### **5. Liability for defects**

If Brain Products remedies defects by means of updates or workarounds, the remedy of defects shall be carried out in accordance with the following provisions:

Technical data, specifications, and performance data in public statements, in particular in advertising material, do not constitute quality specifications. The functionality of the software is based on the description in the user documentation.

Software license protection by using Hardware or Software Keys is one of the agreed features of the product and does not represent a defect in or of the software.

The warranty does not apply to defects caused by the software being used in a hardware and software environment that does not meet the requirements characterized in the user documentation or to any changes or modifications made to the software or Hardware or Software Keys by the user without the prior written consent of Brain Products or by operation of law. This also applies if the defect is due to improper operation by the user.

The user - unless it is a consumer - is obliged to examine the software supplied for obvious defects that an average user would be bound to notice. Brain Products must be notified in writing of any obvious defects (e.g., missing manuals) within two weeks of delivery. Defects that only become evident subsequently must be reported to Brain Products in writing within two weeks of their discovery by the user. The notice of defect must be sent before this period expires. If the user fails to fulfill the obligation to examine the software or notify Brain Products of a defect, the software is considered to be approved despite the defect.

#### **6. General Liability**

Claims for losses or for the reimbursement of costs incurred in vain are made – whatever the legal basis – in accordance with this clause.

Brain Products is not liable for itself, for its representatives or subcontractors, unless the life, body or health of another person were injured intentionally or negligently; essential contractual obligations (cardinal obligations) were violated intentionally or negligently. Essential contractual obligations are those whose fulfilment is necessary to achieve the objective of these licensing terms, and which protect material legal positions arising from this of these licensing terms.

In the event of a breach of essential contractual obligations, Brain Products and the user shall only be liable for the foreseeable damage typical of the contract if this was caused by slight negligence, unless it is a matter of injury to life, body, or health, or if they have intentionally or grossly negligently breached non-material contractual obligations. In addition, the Brain Products and the user shall be liable to the extent that mandatory statutory liability regulations exist.

## **7. Breaches of Contract**

Brain Products is entitled to withdraw from these licensing terms if the user, the user's legal representatives or subcontractors violates his rights of use. In this case, the user must return the entire software to Brain Products – including the dongle, if the software is protected by means of a Hardware Key.

## **8. Final clause**

No tacit, oral or written ancillary agreements were made. Additional agreements, amendments, and supplements to these licensing terms and to the respective individual agreements or bookings shall only be effective if they are agreed in writing at or after conclusion of these licensing terms and are expressly referred to as additional agreements, amendments, or supplements. This shall also apply to an amendment to this written form clause. Electronic documents in text form do not fulfil the written form requirement. The above written form requirement does not apply to an individual contractual agreement between the parties.

The user can only make a counterclaim if it is uncontested or recognized as having legal force.

The user can only exercise a right of retention if the user's counterclaim is based on the same contractual relationship.

If the user is a merchant, public law entity or separate estate under public law, or if the user has no general legal venue in the country, the exclusive legal venue for all disputes arising from the contract is Munich, Germany. Brain Products is also entitled to take legal action at any other legal venue.

The law of the Federal Republic of Germany is applicable to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

The English-language version of these licensing terms is the authoritative version.

Should current or future provisions of these licensing terms be wholly or partially invalid or lose their legal validity or enforceability later, the validity of the remaining provisions of these licensing terms shall not be affected. The Brain Products and the user shall try to find an effective provision in place of the invalid provision that comes closest to the economic meaning of the invalid provision.

If, during the term of these licensing terms, the economic, legal, and competitive conditions underlying these licensing terms, on which the provisions of these licensing terms are based, change significantly, and affect a change in the contractual relationship between Brain Products and the user, Brain Products and the user will discuss the consequences of such a

change with each other and adapt the contract to the changed conditions. The party asserting the reasons for the change must explain them to the other party.

June 2023, Brain Products GmbH