

## Licensing Terms

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

The following terms apply to the provision and use of the "BrainVision Amplifier SDK" as developed by Brain Products GmbH (referred to hereinafter as "Brain Products"), the user documentation as documented in the source code of the software (referred to hereinafter as "user manual"), and provided by Brain Products (all of which, together, are referred to hereinafter as "Software").

The user manual offers a binding description of the product. The user is not entitled to use the Software other than as described in the user documentation. The English-language user manual is supplied only in the source code of the software.

By installing, accessing or otherwise using the Software, the user accepts these licensing terms. If the user does not accept these licensing terms, the user shall not install, access, or use the Software.

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 allows the user to develop own applications that process data of Brain Products' hardware products. The Software 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 suitable for clinical use and therefore may not be used for medical purposes such as diagnosis or treatment.

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 are set out in the user documentation.

Brain Products retains ownership of the Software (all files and compiled components within the Software). Copyrights will be in every source code file.

### 2. Delivery of the Software

The Software is made available to the user for download on the website:

<https://www.brainproducts.com/downloads.php?kid=34>

Accompanying services, such as installation, introduction to the product, training, support etc., are not covered by these licensing terms unless this is expressly agreed in writing.

### **3. Licensing**

Brain Products grants the user free of charge a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software during the term of these licensing terms for developing own software applications that process data of Brain Products hardware products. The user may not sell, rent, loan or lease (all of which, together, referred to hereinafter as "commercial use") the Software or own software applications developed by the user that process data of Brain Products hardware to any third party.

Written agreement (licensing) from Brain Products is required before a commercial use of the Software or own Software applications developed by the user that process data of Brain Products hardware products can be made.

#### Authorized Device

These licensing terms grant the user the right to use the Software on any device he owns, rents or otherwise controls (hereinafter referred to as "Authorized Device"), on multiple hardware configurations concurrently, within a network or any form of multi-station computer system for the purposes of these licensing terms.

#### Decompilation, reverse engineering

The user may not reverse engineer, decompile, disassemble or otherwise translate any compiled components of the Software. The user may only modify or adapt the Software within the disclosed source code files.

The interface information required for establishing interoperability with an independently created computer program is provided to the user by Brain Products on request free of charge.

#### High risk, medically classified use

The Software must not be used for high risk or medically classified use.

#### Copyright

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 these licensing terms.

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

### Modification

The user must inform Brain Products immediately if he develops a change to the source code of the Software. If the user develops a change to the software that later is incorporated into the source code of the Software by Brain Products (referred to hereinafter as “modification”), the user transfers all his exploitation rights to the modification to Brain Products and grants Brain Products the not limited, exclusive, transferable, sublicensable and non-revocable right to use the modification. The user's right to appropriate remuneration for the modification remains unaffected.

## **4. Sublicensing**

The Software itself may not be sublicensed by the user.

Brain Products grants the user the right to sublicense applications developed by the user that use the compiled components of the Software (referred to hereinafter as “work result”) for a non-commercial use under the users own license agreement as long as the compiled components of the Software are unmodified. The user must provide that its own license agreement complies with the terms and conditions of these licensing terms.

Written agreement (licensing) from Brain Products is required before the user has the right to sublicense work results under the user’s own license agreement for a commercial use.

The user must provide that its own license agreement makes clear that the Software must not be used for high risk, medically classified or commercial use.

The user must include Brain Products copyright notices in the work results. The work result must carry prominent notices stating the parts of the Software used by the user.

The users licensing agreement must: (i) effectively disclaims on behalf of all third parties all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; (ii) effectively excludes on behalf of all third parties all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits.

If German Law is applicable for the user's license agreement, the exclusion of warranty and liability as described in the following sections 9 and 10 are to be agreed upon effectively with the third party.

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

Brain Products does not provide support and maintenance services to the Software - in particular but not exclusively to all files or components within the Software - or to any application developed by the user that uses the compiled components of the Software or any other part of the Software under these licensing terms. The user acknowledges that Brain Products is under no obligation, express or implied, to provide updates, enhancements, modifications, revisions or additions to the Software or to any application that uses the compiled components of the Software or any other part of the Software and that these licensing terms does not grant any rights to the foregoing to the user.

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

Brain Products exempts the user from any claims that third parties might make against the user as a result of the violation of protected rights by the Software supplied by Brain Products. The prerequisite for this is that the user must notify Brain Products in writing immediately when a third party makes a claim, and that any legal disputes, including any settlements out of court, must be left to Brain Products or only conducted in agreement with Brain Products.

If the user is responsible for violating the protected rights of third parties, it is not possible for the user to make claims against Brain Products.

## **7. Testing rights**

During the term and for two years after termination of these licensing terms, Brain Products may - 30 days after prior written notice to the user - review the user's books, records and receipts to verify the user's compliance with these licensing terms.

## **8. Breaches of contract**

Brain Products is entitled to withdraw from these licensing terms if the user, his legal representatives or subcontractors violate his rights of use.

## **9. Disclaimer of warranty**

Unless otherwise confirmed in writing by Brain Products makes the Software available "as is". Except in the case of intent or malice of Brain Products, its representatives or subcontractors, Brain Products shall not provide any warranty for legal or material defects of the Software.

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 manual. The information

contained therein is to be understood exclusively as a performance description and not as guarantees. A guarantee shall only be granted if it has been expressly designated as such in writing by Brain Products prior to conclusion of these licensing terms.

## **10. Limitation of 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 negligently breached non-material contractual obligations. In addition, Brain Products and the user shall be liable to the extent that mandatory statutory liability regulations exist.

In no event Brain Products will be liable to the user or any third party who has modified or changed non-compiled sections of the Software as permitted above in these licensing terms for any damages, including any general, special, incidental or consequential damages, that result from a change of the non-compiled sections of the Software or the inability to use the Software (including, but not limited to, loss of data, processing errors, losses that must be borne by you or others, or the inability of the Program to cooperate with any other Program).

Brain Products is free to object that the user shares responsibility.

## **11. Term**

These licensing terms shall remain in effect until terminated.

By uninstalling the Software by the user, these licensing terms are terminated.

Brain Products has the right to terminate these licensing terms immediately, without judicial intervention, if the user fails to comply with any term herein.

In the event of termination of these licensing terms - for whatever legal reason - regardless of the actual one, the user shall be obliged to uninstall the entire Software as well as all copies or destroy it. The destruction and deletion must be proven in writing to Brain Products upon first request and must be affirmed in lieu of oath upon written request.

## **12. 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.

If Brain Products uses additional other General Terms and Conditions that conflict with these licensing terms, the provisions of this licensing terms shall prevail over the General Terms and Conditions.

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).

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. 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.

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