

# EEG STORE PURCHASE AGREEMENT



## 1 AGREEMENT

In accordance with this EEG Store Purchase Agreement (hereinafter referred to as Agreement), entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2019, (hereinafter Effective Date) by and between **EEG Store** (hereinafter “**EEG Store**”), and \_\_\_\_\_ (hereinafter “**Buyer**”), parties do agree to abide by the terms described here.

**WHEREAS, EEG Store** owns equipment and supplies useful to the **Buyer**;

**WHEREAS, Buyer** desires to buy or lease such items;

**NOW, THEREFORE**, in consideration of mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 2 ITEM AND PRICE

**1. Invoice.** The item(s) and the agreed-upon price for each transaction will be described on the relevant invoice. **Buyer** understands that the agreed-upon price may differ from listings in promotional materials and on websites. Both parties agree to the purchase price listed on the invoice.

**2. Guarantee of Quality.** **EEG Store** warrants that all items sold are in excellent working order and as described on the invoice. **Buyer** understands that details of item(s) (such as color, model, make, etc) may be different from what is used by other practitioners, or what was used in the course. If the **Buyer** has specific preferences, these will be requested before purchase, and – if accepted by **EEG Store** – will be listed on the invoice. While **EEG Store** makes every effort to meet customer requests, we warrant the overall quality of the item, not its specific characteristics.

**3. Transaction Details.** The specific arrangement of the transaction is described on the invoice. **Buyer** understands that it will be one of the following, and that different parts of the sale may have different arrangements.

- **Purchase.** The **Buyer** pays a single fee. With respect to the Software, the version is perpetually licensed to the **Buyer**, which means that the **Buyer** is eligible for free updates (but not upgrades) at no additional charge. With respect to physical items, such as computer, amplifier, and so on, these transfer ownership upon purchase.
- **Lease to Own.** The **Buyer** agrees to make a down payment, and monthly payments for the length of the term. This is governed by an additional agreement, signed by both parties, called the **EEG Store Lease Agreement (ESLA)**.
- **Subscription.** The **Buyer** agrees to make a down payment, and monthly payments. Subscription users are eligible for free upgrades. Some conditions apply; this relationship is governed by an additional agreement signed by both parties, called the **EEG Store Subscription Agreement (ESSA)**.

**4. Type Of Items.**

- **New item.** Items described as new have been tested and validated, but not previously used.
- **Used item.** Items described as used have been tested and validated, have been previously used, and are in good, working order. Used items are sold as is, without warranty of any kind.

## 3 REFUNDS

With certain conditions and exceptions, equipment may be returned for refund within thirty (30) calendar days of the receipt of the item by the buyer, based on delivery confirmation by shipping entity.



# EEG STORE PURCHASE AGREEMENT

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**1. Conditions.** The conditions that apply to refunds are as follows:

- (a) The items to be returned were sold individually – that is, they were not sold as parts of a package or system; or the entire package or system is being returned;
- (b) The items to be returned are delivered to **EEG Store** within one week (or earlier) after the end of the 30-day period – that is they must be in **EEG Store's** possession within 37 calendar days of the date they were originally delivered;
- (c) The items are in new, resalable condition, in the original packaging;
- (d) The items are in excellent, working order;
- (e) The items are packaged securely, insured, and shipped to **EEG Store** by the Buyer; the Buyer is responsible to pay packing, shipping, and insurance costs;
- (f) **EEG Store** will not refund original shipping charges;
- (g) There is a restocking fee of 15%;
- (h) For items not eligible for refund, as outlined below, all sales are final.

**2. Exceptions.** Certain exceptions apply to refunds, as follows:

- (a) Ten-20 paste and NuPrep paste are not eligible for refund;
- (b) Electrodes are not eligible for refund;
- (c) Used equipment is not eligible for refund.

**3. Processing.** Once the returned items are in the possession of **EEG Store**, the refund will be processed within fourteen (14) calendar days, subject to the conditions and exceptions as described above.

## 4 INTERNATIONAL

If the **Buyer** is located – or requires shipping – outside the US, the **Buyer** is responsible for all applicable shipping charges, insurance, taxes, tariffs, duties, and fees.

## 5 INSTALLATION ISSUES

Where the purchase will require installation by the **Buyer**, especially for software-only and self-install bundles, **EEG Store** disclaims responsibility for problems during the installation process. **Buyer** understands that **EEG Store** warrants the general functionality of items, but not for specific hardware or in unconventional configurations. The **Buyer** agrees that installation and problems during installation are entirely the **Buyer's** responsibility.

## 6 HEALTHCARE PROVIDER QUALIFICATION

**1. Qualifications of Buyer.** The **Buyer** understands that because EEGer4 is an FDA-cleared medical device, and due to the difficulty of the modality, as a condition of purchase of the software, the **Buyer** must warrant that they are qualified. In particular, **Buyer** warrants that:

- (a) The **Buyer** or their assigns are adequately trained and mentored in neurofeedback, or actively engaged in such training and mentoring.
- (b) The **Buyer** or their assigns are supervised by a professional healthcare board, or by a clinician themselves so supervised. The appropriate Licensing information has been added to the Signature page.

**2. Acceptance of EEG Software User License Agreement.** The **Buyer** acknowledges that they have read and do agree to the EEG Software User License Agreement.

**3. Contact information.** The **Buyer** agrees to keep their contact and license information up to date with **EEG Store**.

## 7 WAIVER OF LIABILITY

**1. Indemnification.** Upon purchase, **Buyer** assumes full liability and responsibility for use of the items. **Buyer** agrees to their proper use and operation. To the greatest extent possible under applicable law, **Buyer** shall fully indemnify, hold harmless, and defend **EEG Store** and its directors, officers, employees, partners, consultants, agents, stockholders, family, assigns, and Affiliates, (collectively, "**EEG Store**"), as well as related companies (such as EEG



# EEG STORE PURCHASE AGREEMENT

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Software, EEG Education & Research, etc – collectively, “sister companies”) from and against all claims, actions, suits, demands, liabilities, obligations, charges, damages, losses, settlements, judgments, fines, penalties, costs, and expenses (including without limitation reasonable attorney’s fees and costs), whether or not involving a third party claim, which arise out of, relate to or result from (a) death, losses or damage, financial or otherwise, sustained as a result of this purchase, other involvement, or other transaction with **EEG Store**; (b) use of items purchased from **EEG Store**; (c) any breach of any representation, guarantee, policy, or warranty of **EEG Store**; or (d) any breach of any covenant or other obligation or duty of **EEG Store** under this Agreement or under applicable law.

**2. Settlement Cap.** In such case where waiver of claims and liabilities and indemnification may be found to be invalid or otherwise unenforceable, **Buyer** agrees that the amount recoverable shall not exceed the purchase price.

## 8 DISPUTES

**1. Resolution.** Disputes arising out of or related to this Agreement shall be resolved in accordance with this provision.

**2. Communication.** In the case of a dispute, parties will attempt to resolve such disputes through open communication and dialogue. To this end, if a party has a concern about an actual or possible dispute, and there is not otherwise a reason to immediately give a Notice of Dispute, the concerned party will informally notify – in writing – the other party of the nature of the dispute and explore the possibility of reaching an agreeable resolution, prior to initiating a Notice of Dispute.

**3. Notice of Dispute.** If the parties cannot resolve the matter by informal dialogue or there is a reason to give notice immediately, either party may give written Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

**4. Mediation.** After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator.

**5. Arbitration.** Upon written request of either party, any controversy or claim between or among the parties shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Commercial Arbitration Rules of the American Arbitration Association, and the “Special Rules” set forth below unless both parties, in their respective sole discretion, agree in writing to mediate the dispute prior to submitting to binding arbitration. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action. The party that requests arbitration has the burden to initiate the arbitration proceedings pursuant to and by complying with the Commercial Arbitration Rules of the American Arbitration Association and shall pay all associated administrative and filing fees

**6. Costs.** In the event of arbitration, mediation or if a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing party or parties shall be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation reasonable attorney fees at the trial level and on appeal.

## 9 ALTERATION AND TERM OF PURCHASE AGREEMENT

**1. Term.** This Agreement commences as of the Effective Date and may be terminated only by written agreement of both parties.

**2. Alteration.** This Agreement may be altered only by mutual written consent of **Buyer** and **EEG Store**.

**3. Limitation.** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**4. Severability.** If any clause, provision, part, or parts of this Agreement shall be deemed void, invalid, or unenforceable, remaining portions of the Agreement will remain binding, in full force and effect.

**5. Legality.** This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida.

**6. Entirety.** This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties.



# EEG STORE PURCHASE AGREEMENT

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## 10 SIGNATURE

In witness to having read, understood, and being in agreement to the terms of this Agreement, the Buyer does affix their signature below, and hereby does acknowledge receipt of a copy of it.

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Signature

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Print Name

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Date

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Healthcare License Type

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Healthcare License Number

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Organization/Clinic/Agency/Institution (if any)

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Position

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Email

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Phone

