

Terms of use

Please read these terms of use carefully before using the Product (as defined below). By using the Product, you explicitly agree to our terms of use.

These terms of use (the "Agreement") describe the terms and conditions under which users ("Users" or "you") can use the Product provided by Epilog NV.

The Product is operated and managed by Epilog NV, registered with the Crossroads Bank of Enterprises under number 0664.618.462 and having its registered office at Vlasgaardstraat 52, 9000 Gent (Belgium) or by any of its affiliates (jointly "Epilog NV" or "we"). If you have any questions about the Product (as defined hereinafter) or this Agreement, please contact us via info@epilog.care.

1. Description of the Product

Within Epilog NV a software platform "Epilog" has been developed that processes electro-encephalography (EEG) and magnetic resonance imaging (MRI) data uploaded by a user of the Platform. The Platform enables Users to receive an analysis of EEG data of a subject that they have uploaded as well as a 3-dimensional reconstruction and visualization of this EEG data within the brain of the subject.

Please note that the Results (as defined below) do not in any way constitute medical advice and Epilog NV cannot be held liable for any consequences (including any damages) resulting from a misinterpretation of the Results by the User.

2. Definitions

"Account" means the personal account of the User and which can be used to log in to the Platform;

"Article" means an article of this Agreement;

"Delivery Date" means the date on which the User receives the login information and consequently is able to use the Platform;

"Documentation" means all documentation and information made available to the User by Epilog NV relating to the use of the Platform;

"EEG Data" means the data obtained by EEG recording;

"Fees" means the fee to be paid by the User to Epilog NV for the use of the Product;

"Intellectual Property Rights" means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights, know-how; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, (f) trade and business names, domain names, database rights, rental rights and any other industrial or intellectual proprietary rights or similar right (whether registered or unregistered); (g) all registrations, applications for registration, renewals, extensions, divisions, improvements or reissues relating to any of these rights and the right to apply for, maintain and enforce any of the preceding items, in each case in any jurisdiction throughout the world;

“Platform” means the Epilog web-based application available at <https://preop.epilog.care>;

“Product” means the Platform and the Documentation;

“Results” means the results of the analysis of the EEG data performed by the Platform and which will be incorporated in a report drafted by Epilog NV and made available to the User on the Platform;

“User” means the physician or other health care professional using the Product;

“User Content” means all information and data provided by the User on the Platform, including the EEG and MRI Data;

“Term” means the term as set forth in Article 13;

3. Applicability

By clicking the “I agree” button you acknowledge and agree that your use of the Product is exclusively governed by this Agreement. If you do not agree to any provision of this Agreement, you may not use in any manner the Product.

This Agreement can also be viewed, downloaded and printed at <https://epilog.care/termsofuse.pdf>

We reserve the right at any time, and from time to time, with or without cause and without prior notification:

- to amend this Agreement, e.g. Epilog NV is using third parties’ products and/or services and requires the terms and conditions of such third party to be applied to the contractual relationship between you and Epilog NV;
- to change the Product including eliminating or discontinuing, temporarily or permanently any service or other feature of the Product without any liability against the User or any third parties.

Any such amendments or changes made will be effective immediately upon us making such changes available on the Platform or otherwise providing notice thereof. You agree that your continued use of the Product after such changes constitutes your irrevocable acceptance of such changes. Be sure to return to this page periodically to ensure familiarity with the most current version of this Agreement.

4. Use of the Product

4.1 Requirements for use. To access the Platform, you should have an internet connection. The Results will be delivered in portable document format (PDF). The access to an internet connection and PDF reader is your sole responsibility.

4.2 Account information. You shall be solely responsible for maintaining the confidentiality and security of your Account login information such as your pin code and password and you shall be fully responsible for all activities that occur under your personal Account. You agree to immediately notify Epilog NV of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Epilog NV will not be liable for any loss or damage arising from your failure to comply with the above requirements.

4.3 Product updates. During the Term, Epilog NV may, in its sole discretion, provide you with certain updates of the Product or any part thereof. For the avoidance of doubt, Epilog NV is not obligated to provide any updates to the Product.

4.4 **Product and Results limitations.** In the event the Product would, directly or indirectly, render any information which may play a role in taking any medical, legal, financial or other personal or business decisions, such information may not be qualified as medical, legal, financial or other advice given by Epilog NV.

Furthermore, in the event the Platform is used by the User to analyze EEG and MRI data of a patient with refractory epilepsy, and the Results are used in the process to determine the location of the epileptogenic focus within the brain, the User acknowledges and agrees that:

- the Results can never be the sole basis to determine the location of the epileptogenic focus;
- the Results should be considered in conjunction with other clinical and paraclinical investigations including but not limited to clinical neurological examination, seizure semeiology, EEG, imaging (including, but not limited to, MRI) and neuropsychological evaluation;
- the final conclusion on the location of the epileptogenic focus can only be made by a physician adequately trained and licensed to treat patients with refractory epilepsy.

The User is aware of the foregoing limitations of the Product and of the Results, and specifically that no guarantee whatsoever is given on the actual origin of the epileptic discharges within the brain. The 3-dimensional reconstruction provided in the Results are merely estimates, and their accuracy cannot be guaranteed. Epilog NV cannot be held liable for any damages or claims resulting from the Product and Results limitations mentioned in this Article 4.4.

The User will duly inform the patient about all Product and Results limitations mentioned in this Article 4.4. The User also has the obligation to answer all eventual supplementary questions of the patient on the functioning, nature, purpose and limitations of the Product and/or the Results.

5. License – restrictions – Intellectual property

5.1 **User License by Epilog NV.** During the Term and subject to the timely payment of the Fees, Epilog NV grants you a non-exclusive, personal, restricted, non-sublicensable and non-transferable user license to use the Product and/or the Results in accordance with this Agreement and the Documentation (the “User License”). You are not allowed to use the Product and/or the Results for any commercial purposes or to use the Product and/or the Results or a component thereof in a manner not expressly authorized by Epilog NV. You shall use the Product solely in full compliance with (i) this Agreement and any additional instructions or policies issued by Epilog NV including, but not limited to, those posted within the Platform; and (ii) any applicable legislation, rules or regulations and (iii) the Documentation.

5.2 **Restrictions.** You agree to use the Product and/or the Results only for the intended use as set forth in this Agreement. Within the limits of the applicable law, you are not permitted to (i) make the Product available or to sell or rent the Product to any third parties; (ii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Product to any third party; (iii) adapt, alter, translate or modify in any manner the Product; (iv) decompile, reverse engineer, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (v) use or copy the Product except as expressly allowed under this Article 5; (vi) gain unauthorized access to accounts of other users or the IT equipment or structure of Epilog NV to provide the Product or use the Product to conduct or promote any illegal activities; (vii) use the Product to generate unsolicited email advertisements or spam; (viii) impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity; (ix) use any high volume automatic, electronic or manual process to access, search or harvest information from the Product (including without limitation robots, spiders or scripts); (x) alter, remove, or obscure any copyright notice, digital watermarks, proprietary legends or other notice included in the Product; (xi) intentionally distribute any worms, Trojan horses, corrupted files, or other items of a destructive or deceptive nature or use the Product for any unlawful, invasive,

infringing, defamatory or fraudulent purpose; or (x) remove or in any manner circumvent any technical or other protective measures in the Product.

All intellectual property rights in and to the Product and/or the Results which are not expressly granted to the User in this Agreement are reserved by Epilog NV and its licensors. Except as expressly set forth herein, no express or implied license or right of any kind is granted to you regarding the Product or any part thereof, including but not limited to any right to obtain possession of any source code, data or other technical material relating to the Platform.

5.3 **License by User.** By uploading, creating or otherwise providing information or data on or through the Platform, you grant Epilog NV a non-exclusive, royalty-free, worldwide, sub-licensable, transferable, license to use, copy, store, modify, transmit and display this User Content to the extent necessary to provide and maintain the Platform. Epilog NV reserves the right, but is not obliged, to review and remove any User Content which is deemed to be in violation with the provisions of the Agreement or otherwise inappropriate, any rights of third parties or any applicable legislation or regulation.

6. Suspension

6.1 **Suspension for breach.** If Epilog NV becomes aware or suspects, in its sole discretion, any violation by you of this Agreement or any other instructions, guidelines or policies issued by Epilog NV, then Epilog NV may suspend or limit your access to the Product. The duration of any suspension by Epilog NV will be until you have cured the breach that caused such suspension or limitation.

6.2 **Suspension for non-payment.** If you have not timely paid the Fees for the use of the Product, Epilog NV might automatically suspend your use of the Product. In particular, you acknowledge and agree that Epilog NV is not obligated to deliver any Results through the Platform as long as the related Fee is not paid. The duration of such suspension will continue until the User has paid all due amounts.

7. Support

Epilog NV will provide the following technical support services to the Users:

E-mail: support@epilog.care

Telephone: +32484777651

Epilog NV makes all reasonable efforts to respond as quickly as possible to any inquiries of Users.

8. Data protection

8.1 In view of the performance of this Agreement, Epilog NV can collect personal data of the User, such as name, address, e-mail address, etc. The personal data of the User will be processed in accordance with the EU General Data Protection Regulation of 27 April 2016. Epilog NV undertakes to use the obtained personal data solely with a view to fulfilling its obligations towards the User in the context of the Agreement and shall use these data each time in accordance with the confidentiality required for such data. Your personal data will be stored for the period mentioned in article 14. The User is entitled to request Epilog NV free of charge to correct any inaccuracies in its personal data if such personal data would be incomplete or inaccurate. For further information about the processing of personal data as well as to request for correction of personal data, the User can contact Epilog NV by sending an e-mail to info@epilog.care.

8.2 If, and to the extent, Epilog NV processes any personal data of third parties on the User's behalf when performing its obligations under this Agreement, the Parties record their intention that, relating to the processing of the personal data of these third parties, the User shall be the data controller and Epilog NV shall be a mere data processor and in any such case:

- a) the User acknowledges and agrees that the personal data may be transferred or stored in any country of the European Union, in order to carry out Epilog NV's obligations under this Agreement;
- b) the User shall ensure that the User is entitled to transfer / upload the relevant personal data to Epilog NV so that Epilog NV may lawfully use, process, store and transfer the personal data in accordance with the terms of this Agreement;
- c) the User shall ensure that either (i) the relevant third parties or patients whose personal data are processed have authorized such use, processing, storage and transfer as compliant with applicable data protection legislation and industry standards or (ii) personal data are delivered 'de-identified', meaning that the personal identifiers of Customer's patients have been extracted from all personal data provided to Epilog;
- d) Epilog NV shall process the personal data in accordance with the terms of this Agreement and any lawful instructions reasonably given by the User from time to time;
- e) the User acknowledges and agrees that the User Content, including personal data, shall be shared with Epilog NV's employees, representatives, officers, directors, agents, advisors, affiliates subcontractors and consultants who have a need to know such data for the purpose of providing technical support;
- f) each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

8.3 Epilog may retain and store personal data of Customer and personal data of third parties provided by Customer, for as long as reasonably needed to render the Services to Customer. However, upon expiration of the aforesaid period Epilog will be entitled to keep storing and using said personal data for statistical, internal product and service development, research and scientific purposes, provided that these data are anonymized. Customer ensures that the consent meant in Article 8.2 c of these Terms includes the consent for the processing of personal data for statistical, internal product and service development, research and scientific purposes.

9. Payment

During the Term and as a consideration for the license set out in article 5 hereof, the User agrees to pay the Fee.

All payment obligations are non-cancellable and all amounts paid are non-refundable. All invoices for any charges under this Agreement are due and payable within 30 calendar days of invoice date. Amounts due are exclusive of all applicable taxes, levies, or duties, and User will be solely responsible for payment of all such amounts. All amounts are payable in Euro. All amounts not paid by the User on the due date mentioned in the invoice shall bear interest in accordance with the law of 8 August 2002 on combating late payments in commercial transactions.

10. Warranties and disclaimers

10.1 **By Epilog NV.** Except as expressly provided in this article 10 and to the maximum extent permitted by applicable law, the Product and the Results are provided "as is," and Epilog NV makes no (and hereby disclaims all) other warranties, covenants or representations, or conditions, whether written, oral, express or implied including, without limitation, any implied warranties of satisfactory quality, course of dealing, trade usage or practice, merchantability, suitability, availability, title, non-infringement, or fitness for a particular use or purpose, with respect to the use, misuse, or inability to use the Product and/or the Results or any other products or services provided to the User by Epilog NV. Epilog NV does not warrant that (i) all errors can be corrected, or that access to or operation of the Product shall be uninterrupted, secure, or error-free, and (ii) the information, including but not limited to the Results available on or transmitted by the Platform is true, complete or accurate. The User specifically acknowledges and agrees that Epilog NV cannot be held liable for any healthcare or related decisions

made by the User or any third party based upon the Results whether such data is accurate or inaccurate. The User acknowledges and agrees that there are risks inherent to transmitting information over and storing information on the internet and that Epilog NV is not responsible and cannot be held liable for any losses of your data, including but not limited to the Results and any User Content, in connection therewith.

10.2 **By User.** You represent and warrant to Epilog NV that (a) you have the authority to enter into this binding agreement personally and (b) that any User Content provided by you for the use of the Platform is accurate and truthful and shall not (i) infringe any Intellectual Property Rights of third parties; (ii) misappropriate any trade secret; (iii) be deceptive, defamatory, obscene, pornographic or unlawful; (iv) contain any viruses, worms or other malicious computer programming codes intended to damage Epilog NV's system or data; or (v) otherwise violate the rights of a third party. The User acknowledges and agrees that Epilog NV is not obligated to back up any User Content and/or Results. You agree that any use of the Product contrary to or in violation of the representations and warranties of User in this Article constitutes unauthorized and improper use of the Product for which Epilog NV cannot be held liable.

11. Indemnification

11.1 **By Epilog NV.** Epilog NV shall defend and indemnify you as specified herein against any founded and well-substantiated claims brought by third parties to the extent such claim is based on an infringement of the Intellectual Property Rights of such third party by the Product and excluding any claims resulting from (i) your unauthorized use of the Product or any such unauthorized use by your employees, helpers or agents, (ii) your or any third party's modification of any part of the Product and/or Results, (iii) your failure to use the most recent version of the Product, or your failure to install any corrections or updates to the Product issued by Epilog NV, (iv) your or your employees', helpers' or agents' use of the Product in combination with any non-Epilog NV products or services, or (v) your or your employees', helpers' or agents' use of the Product in violation of any of the Articles of this Agreement.

Such indemnity obligation shall be conditional upon the following: (i) Epilog NV is given prompt written notice by User of any such claim; (ii) Epilog NV is granted sole control of the defense and settlement of such a claim; (iii) upon Epilog NV's request, the User fully cooperates with Epilog NV in the defense and settlement of such a claim, at Epilog NV's expense; and (iv) the User makes no admission as to Epilog NV's liability in respect of such a claim, nor does the User agree to any settlement in respect of such a claim without Epilog NV's prior written consent. Provided these conditions are met, Epilog NV shall indemnify the User for all damages and costs incurred by the User as a result of such a claim, as awarded by a competent court of final instance, or as agreed to by Epilog NV pursuant to a settlement agreement.

In the event the Platform, in Epilog NV's reasonable opinion, is likely to be or to become the subject of a third-party infringement claim Epilog NV shall have the right, at its sole option and expense, to: (i) modify the (allegedly) infringing part of the Platform so that they become non-infringing while preserving equivalent functionality or (ii) obtain for the User a license to continue using the Platform in accordance with this Agreement.

The foregoing states the entire liability and obligation of Epilog NV and the sole remedy of the User with respect to any infringement or alleged infringement of any Intellectual Property Rights caused by the Product or any part thereof.

11.2 **By User.** You hereby agree to indemnify and hold harmless Epilog NV and its current and future affiliates, officers, directors, employees, agents, consultants and representatives from each and every demand, claim, loss, liability, or damage of any kind whatsoever, including reasonable attorney's fees, whether in tort or in contract, that it or any of them may incur by reason of, or arising out of, any claim which is made by any third party with respect to (i) any breach or violation by you or by any of your employees, helpers or agents of any provisions of this Agreement; (ii) any User Content violating any Intellectual Property Rights of a third party and (iii) fraud, intentional misconduct, or gross negligence committed by you.

12. Liability

12.1 **To the maximum extent permitted under applicable law, Epilog NV's liability arising out of or in connection with the Product under this Agreement whether in contract, warranty, tort or otherwise, shall be subject to the restrictions set forth in this Agreement, including but not limited to Articles 10 and 11 of this Agreement and shall not exceed the amount paid by Customers to Epilog in connection with the Services.**

12.2 To the extent legally permitted under applicable law, Epilog NV shall not be liable to the User or any third party, for any special, indirect, exemplary, punitive, incidental or consequential damages of any nature including, but not limited to damages or costs due to loss of profits, data, revenue or income, goodwill, production of use, procurement of substitute services, negative evolution of human health, protracted illness, fatal injuries, death, or property damage arising out of or in connection with the use of the Product and/or the Results, including but not limited to any miscalculations, or the use, misuse, or inability to use the Product and/or the Results, regardless of the cause of action or the theory of liability, whether in tort, contract, or otherwise.

12.3 For the avoidance of doubt, Epilog NV shall not be liable for any claims resulting from (i) your or your employees', helpers' or agents' unauthorized use of the Product and/or the Results, (ii) your or any third party's modification of (any parts) of the Product, (iii) your failure to use the most recent version of the Product or your failure to integrate or install any corrections to the Product issued by Epilog NV, (iv) your or your employees', helpers' or agents' use of the Product in combination with any non-Epilog NV products or services, (v) your or your employees', helpers' or agents' use of the Product in violation of any of the Articles of this Agreement, (vi) your use and interpretation of the Results and any medical advice based thereon.

12.4 The exclusions and limitations of liability under this Agreement shall operate to the benefit of Epilog NV affiliates and subcontractors to the same extent such provisions operate to the benefit of Epilog NV; and all exclusions and limitations of liability enforceable towards the User are also, to the same extent, enforceable to the Users' employees, patients, helpers and/or agents.

13. Term and termination

13.1 Epilog NV grants the User the License starting from the Delivery Date for an indefinite period (the "Term"). The User will be eligible to receive all major and minor updates and upgrades for the Product during this period.

13.2 Either Party may terminate the Agreement by giving at least one (1) months written notice, unless agreed otherwise.

13.3 **Termination for breach.** Epilog NV may terminate with immediate effect this Agreement and your right to access and use the Platform (i) if Epilog NV believes or has reasonable grounds to suspect that you are violating this Agreement (including but not limited to any violation of the Intellectual Property Rights of Epilog NV) or any other guidelines or policies (including but not limited to the Privacy Policy) issued by Epilog NV or (ii) if the User fails to pay the Fees.

13.4 **Effects of termination.** Upon the termination of this Agreement for any reason whatsoever in accordance with the provisions of this Agreement, at the moment of effective termination: (i) you will no longer be authorized to access or use the Product; (ii) Epilog NV may delete data associated with your Account on the Platform, including but not limited to any User Content and Results and (iii) all rights and obligations of Epilog NV or the User under this Agreement shall terminate, except those rights and obligations under those sections specifically designated in article 15.7.

14. Data retention and deletion

Epilog may retain and store personal data of Customer and personal data of third parties provided by Customer, for as long as reasonably needed to render the Services to Customer. However, upon expiration of the aforesaid period Epilog will be entitled to keep storing and using said personal data for statistical, internal product and service development, research and scientific purposes, provided that these data are anonymized. Customer ensures that the consent meant in Article 8.2 c of these Terms includes the consent for the processing of personal data for statistical, internal product and service development, research and scientific purposes.

15. Miscellaneous

15.1 **Force Majeure.** Epilog NV shall not be liable for any failure or delay in the performance of its obligations with regard to the Application if such delay or failure is due to causes beyond our control due including by not limited to war, strikes or labor disputes, embargoes, government orders, telecommunications, network, computer, server or Internet downtime, unauthorized access to Epilog NV's information technology systems by third parties or any other cause beyond the reasonable control of Epilog NV (the "Force Majeure Event"). We shall notify you of the nature of such Force Majeure Event and the effect on our ability to perform our obligations under this Agreement and how we plan to mitigate the effect of such Force Majeure Event.

15.2 **Entire agreement.** This Agreement constitutes the entire agreement and understanding between you and Epilog NV with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

15.3 **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

15.4 **Waiver.** Any failure to enforce any provision of the Agreement shall not constitute a waiver thereof or of any other provision.

15.5 **Assignment.** This Agreement may not be assigned by the User without the prior written approval of Epilog NV but may be assigned by Epilog NV to (i) a parent company or subsidiary, (ii) an acquirer of all or substantially all of Epilog NV's assets involved in the operations relevant to this Agreement, in particular an acquirer of the intellectual property rights on the Platform or (iii) a successor by merger or other combination. Any purported assignment in violation of this article will be void. This Agreement may be enforced by and is binding on permitted successors and assigns.

15.6 **Notices.** All notices from Epilog NV intended for receipt by you shall be deemed delivered and effective when sent to the email address provided by you on your account. If you change this email address, you must update your email address on your personal settings page.

15.7 **Survival.** Articles 10, 11, 12, 14 shall survive any termination or expiration of this Agreement.

15.8 **Governing law and jurisdiction.** This Agreement shall be exclusively governed by and construed in accordance with the laws of Belgium, without giving effect to any of its conflict of law principles or rules. The courts and tribunals of Gent, division Gent shall have sole jurisdiction should any dispute arise in relating to the Product.

Last revision: 9 February 2018