

## 1. SCOPE OF AGREEMENT

These Neurostar® Advanced Therapy for Mental Health Terms and Conditions of Sale, together with any attachments and appendices (these "Terms and Conditions"), any Sales Order or Order Confirmation, as applicable, the current terms and conditions of the Patient Engagement Program (if any) and the current terms and conditions of the Physician locator (if any) (collectively, this "Agreement"), constitute the agreement between Customer (as identified on the initial Sales Order) and Neuronetics, Inc. ("Neuronetics") concerning Neuronetics' (a) sale of the Products under this Agreement and (b) Customer's purchase and use of such Products under this Agreement. For the avoidance of doubt, if Neuronetics and Customer are parties to one or more other agreements that predate this Agreement (each a "Prior Agreement"), this Agreement does not pertain to products purchased under such Prior Agreements except to the extent Customer executes one or more System Conversion Notices in the form attached as Appendix A. The term "Customer" also includes any persons and/or legal entities for which the Customer has the actual or apparent authority to purchase Products on behalf of and whose acceptance of such Products from Neuronetics shall constitute agreement to be bound by the Agreement.

## 2. SALE & USE OF PRODUCTS

(a) Sale of Products. Subject to these Terms and Conditions, Neuronetics hereby agrees to sell to Customer, and Customer hereby agrees to purchase from Neuronetics, all Products set forth on the Sales Order. Except for the initial Sales Order (which is included as part of this Agreement), Customer may purchase additional Products under this Agreement by submitting a sales order in the form attached as Appendix B (or by such other written, telephonic, or other ordering method approved by Neuronetics in its sole discretion) to Neuronetics. Customer orders for Products are not binding until accepted by Neuronetics in writing. Upon Neuronetics acceptance of such order, Neuronetics will generate and send Customer an order confirmation prior to or contemporaneously with delivery of the Products ordered thereunder (each an "Order Confirmation"). **CUSTOMER EXPRESSLY AGREES THAT NEURONETICS' THEN-CURRENT TERMS AND CONDITIONS OF SALE ARE EXPRESSLY INCORPORATED BY REFERENCE INTO THE ORDER CONFIRMATION. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ANY SUBSEQUENT TERMS AND CONDITIONS OF NEURONETICS, THE SUBSEQUENT TERMS AND CONDITIONS SHALL GOVERN WITH RESPECT TO THE PRODUCTS COVERED BY THE APPLICABLE ORDER CONFIRMATION.** Neuronetics maintains its current terms and conditions on <http://neurostar.com/tc> and a hard copy is available to Customer upon written request therefor. Products provided under this Agreement are new unless otherwise indicated on the Sales Order. Products may, however, contain components that have previously been used and, where previously used components are used, the Neuronetics Products shall meet or exceed Neuronetics' specifications for newly manufactured products.

(b) Supplies. Customer acknowledges that the safe and effective operation of the System requires use of the Software and Supplies, which are specifically engineered and manufactured to meet System compatibility, quality and performance

standards, and accordingly Customer agrees to use only the Software and Supplies provided by or expressly authorized by Neuronetics with the System. Customer hereby acknowledges that the System contains software that monitors all procedures performed, and the System will not operate without the use of certain Supplies such as a valid SenStar Treatment Link or Treatment Sessions. Treatment Sessions supplied to Customer pursuant to this Agreement are for use only with the NeuroStar Advanced Therapy Systems owned or operated by Customer during the Term. Customer shall not utilize Treatment Sessions supplied to Customer pursuant to this Agreement with any other device. Upon Neuronetics' request, Customer shall provide Neuronetics with reasonable timely access (via internet or in-person, as determined by Neuronetics) to Customer's facilities, the Systems and the TrakStar® software in order to verify the number of NeuroStar treatments Customer or its Authorized Users have performed, Treatment Sessions utilized and as an accounting of Treatment Sessions remaining in inventory. Except in the case of suspension of sales pursuant to Section 16(b) or termination pursuant to Section 16(c), Neuronetics will not discontinue offering Customer the option to purchase Supplies under this Agreement for a period of at least three (3) years after the Agreement Effective Date. Any such Customer purchases shall be at Neuronetics' then-current pricing and other terms and conditions.

(c) Authorized Use. The Products are being sold or licensed (as applicable) to Customer with the understanding that the operation of the System must be undertaken only in a manner that is compliant with the User Manual. **The System must only be used under the prescription and supervision of a health care provider who is authorized to prescribe and/or provide TMS therapy pursuant to the laws, rules and regulations of the jurisdiction in which the System is operated (each, a "Provider").** Only Providers and individuals operating under the supervision of a Provider (each Provider and each such individual, an "Authorized User") may use the Products. Customer must ensure that all Authorized Users have the requisite training and skill required to use the Products as required by all applicable governmental authorities in the jurisdiction in which the System is operated. Customer and its Authorized Users must at all times be and remain in full compliance with all applicable laws, rules and regulations, including, without limitation, those promulgated by state medical agencies and certification boards, relating to use of the Products. Customer agrees to defend, indemnify and hold Neuronetics harmless from and against all claims, damages and expenses (including reasonable attorneys' fees) against or incurred by Neuronetics arising out of Customer's or any Authorized User's actual or alleged misuse of the Products and/or failure to comply with applicable laws, rules and regulations.

## 3. PRICING AND PAYMENT TERMS

(a) Price for Products. The prices for the Products specified on the Sales Order shall be as set forth in the Sales Order. If pricing for Products is not set forth on the Sales Order or in an Order Confirmation, then the prices for such Products shall be Neuronetics' then-current rates.

(b) Taxes, Fees, Expenses, and Charges. Customer shall pay any and all taxes, assessments, levies and/or fees, and any and all

other charges, interest and penalties, relating to Customer's purchase of Products and Services and Customer's performance of any procedures. Customer shall be solely responsible for any and all sales, use, excise or consumption taxes or duties assessed on the purchase price of Products and Services and not collected by Neuronetics at time of sale. Except for Services covered by the Limited Warranty set forth in Section 12, payment for such Services is due prior to Neuronetics performance thereof and will be charged at Neuronetics then-current rates.

- (c) Discounts and Rebates The pricing for the Products may reflect or be subject to discounts, rebates or other price reductions, which Customer may be obligated under applicable laws to report to Medicare, Medicaid or other state, federal or private payers, and to make this information available to these entities for review. It is the Parties' intent that any discounts, rebates or other price reductions received by Customer under this Agreement comply with the federal Anti-Kickback Statute and other applicable federal and state law and, further, that any discounts provided under this Agreement or any other discount purchase program satisfy the discount safe harbor of the federal Anti-Kickback Statute (as set forth under 42 C.F.R. §1001.952(h)). At the termination of this Agreement, Neuronetics will provide Customer with a statement informing Customer of the total number of Treatment Sessions purchased by Customer under the Agreement, the net price per Treatment Session, and the amount of the discount, if any, received by Customer from Neuronetics' list price for Treatment Session purchases. Customer agrees to comply with all applicable requirements of federal and state law with respect to discounts received under the this Agreement. Customer acknowledges that the Discount Safe Harbor of the federal Anti-Kickback Statute requires that certain discounts, including certain rebates and reductions in price, be reported and/or passed on to federal and state health care programs such as Medicare and Medicaid. As a condition of this Agreement, Customer understands and agrees that, to the extent applicable, it will properly disclose discounts and rebates, and reflect such discounts and rebates in costs claimed or charges made, under federal and state health care programs in accordance with federal and state laws. The reporting requirements for discount programs for medical products reimbursed by federally funded healthcare programs are defined by federal regulations under the federal Anti-Kickback Statute, 21 C.F.R. §1001.952(h). Neuronetics will refrain from doing anything that impedes Customer from meeting its obligations under the federal Anti-Kickback Statute, and its implementing regulations, with respect to discounts received under this Agreement.
- (d) Payment Terms. Unless otherwise required by Neuronetics, Customer shall pay all amounts due to Neuronetics within thirty (30) days after the date Neuronetics issues the corresponding invoice. Payments shall be directed to such address and/or account as Neuronetics may specify in writing from time to time. Neuronetics shall not be responsible for any misdirected payments by Customer as a result of cyber fraud (e.g., phishing), Customer error or otherwise. Any invoice remaining unpaid after thirty (30) days from invoice date shall accrue interest at the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate allowed by law. In the event of a good faith dispute regarding any portion of an invoice, Customer

shall be required to timely pay the undisputed portion of such invoice. Down payments and deposits paid by Customer to Neuronetics under this Agreement are non-refundable. Neuronetics has sole discretion as to the amount, if any, and the terms of credit that it extends to Customer and may require that any or all Products ordered on the Sales Order or any Order Confirmations be paid cash in advance. Customer will reimburse Neuronetics for all collection costs (including legal fees) to recover overdue amounts not paid by Customer under this Agreement.

- (e) System Lease or Financing. Customer may enter into a lease or finance agreement with a leasing or finance company, and the terms thereof are solely between Customer and such leasing or finance company. If Customer elects to enter into a lease or finance agreement, such arrangement shall not relieve Customer of any obligations under this Agreement, except that Neuronetics will accept payment(s) made by such leasing or finance company on behalf of Customer. Any leasing or financing arrangement is conditional upon Neuronetics' approval of the leasing or financing arrangement and the leasing or finance company's full payment of the total purchase price in accordance with this Section 2. In the event the leasing or finance company fails to timely pay Neuronetics the total purchase price as set forth in any Sales Order, Customer agrees to pay to Neuronetics the unpaid portion of the purchase price upon written request from Neuronetics. Neuronetics retains a security interest in the System until paid for in full by Customer.

#### 4. PROGRAM BENEFITS

- (a) Patient Engagement Programs. From time to time, Neuronetics may, in its sole discretion, offer services to train customers to effectively engage with prospective and current patients regarding NeuroStar Advanced Therapy (each a "Patient Engagement Program"), which may include advice regarding office staffing and patient engagement, benefits investigation, reimbursement training, customer recognition/badging on the Physician locator (as defined below), purchase discounts, warranty discounts and joint educational and marketing opportunities. Customer shall receive an Upgraded Marketing Collateral Kit with Customer's first "per click" purchase of Treatment Sessions of \$5,000 or more per System. Neuronetics may stage the delivery of components of the Upgraded Marketing Collateral Kit based upon completion of phases of required Patient Engagement Program training, as determined by Neuronetics. Customer shall only use the components of the Upgraded Material Collateral Kit for patient education and treatment purposes with the System. With any "per click" purchase of Treatment Sessions, Customer shall automatically be enrolled and remain enrolled in the then-current Patient Engagement Program (if any) unless: (i) Customer opts out of participating in the Patient Engagement Program; (ii) Customer is ineligible to participate in the Patient Engagement Program under the Patient Engagement Program terms and conditions; or (iii) Neuronetics determines to discontinue the Patient Engagement Program (or any element thereof) or to change the criteria for participation therein resulting in Customer no longer being eligible to participate. Unless otherwise determined by Neuronetics, the incidental costs of participation in any such Patient Engagement Program shall be included in the purchase price paid by Customer for Treatment Sessions under this Agreement regardless of whether Customer participates in

such Patient Engagement Program; provided, however, that certain program elements may include a separate charge or cost to Customer. Customer's participation in any Patient Engagement Program shall be subject to the terms and conditions of such Patient Engagement Program as Neuronetics may adopt or modify in its sole discretion from time to time. Customer may obtain a copy of such Patient Engagement Program terms and conditions at <http://www.neurostar.com/tc>, which are incorporated by reference and made a part hereon. Treatment Sessions purchased by Customer on a fixed price model are ineligible for participation in Patient Engagement Programs.

- (b) **Physician locator.** From time to time, Neuronetics may, in its sole discretion, provide a web-based, or other, locator service to assist individuals interested in NeuroStar Advanced Therapy in locating medical professionals offering NeuroStar Advanced Therapy (the "Physician locator"). In Neuronetics sole discretion, the Physician locator may include a call center or similar service to facilitate the ability of prospective patients to locate NeuroStar Advanced Therapy providers and schedule appointments with such providers. In connection with Customer's "per click" purchase of Treatment Sessions, Customer agrees to enroll as of the date of the Agreement Effective Date, and shall automatically be enrolled and remain listed in, the Physician locator unless: (i) Customer opts out of participating in the Physician locator; (ii)(A) Customer fails to perform the at least one hundred (100) Treatment Sessions (or such other number of Treatment Sessions as may be specified in the Physician locator terms and conditions from time to time) within the previous six (6) months (measured on a rolling basis) as specified in the Physician locator terms and conditions as in effect from time to time, and (B) has not completed a course of training for NeuroStar Advanced Therapy approved by Neuronetics within the past twelve (12) months ago; (iii) Customer is delinquent in any payment to Neuronetics or otherwise in breach of any agreement with Neuronetics and such delinquency and/or breach remains uncured for ten (10) days or more after Neuronetics notifies Customer of such delinquency or breach and pending removal from the Physician locator; or (iv) Neuronetics determines to discontinue the Physician locator (or any element thereof) or change the criteria for participation therein resulting in Customer no longer being eligible to participate. Unless otherwise determined by Neuronetics, the incidental costs of the Physician locator shall be included in the purchase price paid by Customer for Treatment Sessions under this Agreement regardless of whether Customer participates in the Physician locator. Customer's participation in the Patient Locator shall be subject to the terms and conditions of the Patient Locator as Neuronetics may adopt or modify in its sole discretion. Customer may obtain a copy of the Physician locator terms and conditions at <http://www.neurostar.com/tc>, which are incorporated by reference and made a part hereon. Treatment Sessions purchased by Customer on a fixed price model are ineligible for participation in the Physician locator call center or other services.

## 5. TIME PERIOD FOR PURCHASES; CANCELLATION

The Sales Order and all Order Confirmations issued by Neuronetics are final and cannot be cancelled or re-scheduled except with Neuronetics' prior signed written consent in its sole discretion.

## 6. SHIPMENT, STORAGE, RISK OF LOSS, ACCEPTANCE

Neuronetics will use commercially reasonable efforts to meet shipment schedules. However, all shipment and installation dates provided by Neuronetics at the time of order acceptance by Neuronetics are estimates only. Neuronetics will have no liability whatsoever because of any delay in the delivery of all or any part of any order or installation of a System for any reason. In the event of a shortage, Neuronetics reserves the right to allocate inventories and production in its sole discretion. Neuronetics shall provide Customer at least five (5) days' prior notice of the scheduled shipping date and Customer shall accept delivery on such date; provided, however, at Customer's written request, Neuronetics will store the System for up to thirty (30) days after the System is ready for shipment at no charge. Neuronetics may charge Customer storage fees at its then-prevailing rates for storage of Systems in excess of thirty (30) days. Unless otherwise set forth in the Sales Order or an Order Confirmation, all Systems will be delivered FCA (Incoterms 2020) Neuronetics' shipping point. All terms implied by FCA are incorporated into this Agreement and Order Confirmations. Customer is deemed to have accepted the Products without right of return, and risk of loss and title passes to Customer, when the Products are delivered to the shipper at Neuronetics' shipping point.

## 7. PACKAGING

Neuronetics has developed special shipping containers for delivery of the System. These containers are the property of Neuronetics and, unless otherwise arranged for, must be returned to Neuronetics, at Neuronetics' expense, upon completion of installation or service of the System. Customer acknowledges and agrees that subsequent relocation of a System without the use of such special shipping containers may permanently damage the System and/or render it inoperable. Neuronetics maintains a limited supply of special shipping containers and availability of the special shipping containers to Customer for the purpose of relocating a System shall be at Neuronetics' sole discretion.

## 8. SYSTEM INSTALLATION, LOCATION, FEATURES & INSPECTION

- (a) **Installation Date.** Once the System is ready for shipment, Neuronetics will contact Customer to schedule a mutually convenient installation date. If the parties are unable to agree to an installation date for a System, then the installation date of the System shall be deemed to be the first business day of Neuronetics that is thirty (30) days after Neuronetics' scheduled shipping date. If the System is stored by Neuronetics for more than thirty (30) days, Neuronetics may at its option include on Customer's invoice a storage charge at Neuronetics then-current storage rates. Unless otherwise agreed in writing by Neuronetics, Customer shall reimburse Neuronetics for all costs and expenses, including Neuronetics personnel time, for any installation postponement requested by Customer within fifteen (15) days of the scheduled installation date. Customer acknowledges and agrees that any such requested postponement may result in significant delay in rescheduling the System installation.
- (b) **Installation Site.** The System shall initially be delivered and installed, and shall at all times thereafter be located and used, at a site approved in advance by Neuronetics (the "Installation Site"). Without limiting the criteria used by Neuronetics in approving a proposed Installation Site, the proposed

Installation Site must (i) be in a clean, sanitary, welcoming, well ventilated and lighted space reflecting professional medical care, (ii) include a dedicated power line (i.e., circuit) for the System in order to ensure proper operation of the System and to avoid interaction with other devices and equipment that would otherwise be connected to the same power circuit and (iii) a wired ethernet port to allow the System to connect to TrakStar Cloud. If a dedicated line is not installed and verified at the time of System installation, Customer hereby assumes full responsibility for any disruption in service, equipment damages, violations of warranty, repair costs or improper operation of Neuronetics' or other unauthorized equipment connected to the same power circuit. If on the Installation Date, the proposed installation site does not meet Neuronetics' standards and as a result Neuronetics declines to install the System, Neuronetics reserves the right to charge Customer for a full day of installation service at Neuronetics' then-current rates, and Customer shall pay such invoice in accordance with Section 3. Neuronetics will not reschedule installation until Customer has paid such charge.

(c) Relocation of System. Customer may move or relocate the System from its then-current Installation Site only if (i) Customer provides at least thirty (30) days' prior written notice to Neuronetics of the proposed new Installation Site, including a full description of the proposed new Installation Site and any changes in Authorized Users and/or custodian of the System, (ii) Customer receives Neuronetics' prior written consent to any such relocation, which consent shall not be unreasonably withheld, and (iii) Neuronetics or installers authorized by Neuronetics perform the relocation including packing for shipment, unpacking the shipment and installing and calibrating the System. Payment for relocation services is due prior to System relocation and will be charged at Neuronetics then-current rates.

(d) Sale or Assignment of the System.

(i) Before offering any System for sale or transfer to any third party or entering into any agreement for any of the foregoing, Customer shall first offer to sell such System to Neuronetics at the purchase price (if any) Customer intends to offer for the sale or transfer of the System. Neuronetics' shall have ten (10) business days after Neuronetics' receipt of such written notice to accept Customer's offer, and during such ten (10) business day period, Customer shall not sell or transfer such System or enter into any agreement for any of the foregoing. If Neuronetics accepts such offer, then Customer shall sell such System to Neuronetics at the price set forth in its notice and in connection with such sale, shall represent and warrant that such System is in good working order, reasonable wear and tear excepted, and shall deliver good title to Neuronetics, free and clear of all liens, claims and encumbrances. If Neuronetics rejects such offer or fails to accept such offer within such ten (10) business days, then Customer may offer the System for sale or transfer to third parties; provided that if Customer subsequently lowers the sale price of the System from that last offered to Neuronetics, then the rights and obligations of this Section 8(d)(i) are automatically reinstated such that Customer must comply with this Section 8(d)(i) before it may proceed with the sale or transfer. If Customer sells any System in violation of Section 8(d)(i), then Neuronetics shall

have the right to purchase the System from the purchaser at the price paid to Customer for the System. In no event may Customer sell or transfer any System, directly or indirectly, to a company involved in the development, marketing, sale and/or use of TMS systems other than Neuronetics.

(ii) Subject to compliance with Section 8(d)(i), Customer may, with Neuronetics' written approval and in accordance with these Terms and Conditions, sell or transfer the System to another person (other than any company involved in the marketing and sale of TMS systems), in which case Neuronetics, upon approval, will allow transfer of the System, and will further quote the new System owner prices for moving and installation of the System and for such other Products and Services as the new owner may request. No such transfer will be permitted or approved unless the proposed transferee enters into use and license agreements with Neuronetics acceptable to Neuronetics in its sole discretion.

(iii) If Customer transfers, assigns or sells one or more Systems to a third party, Neuronetics may access the System(s) and remove any remaining Treatment Sessions thereon and acquired under the terms this Agreement.

(e) Use and Maintenance. Customer shall ensure that the System is at all times properly maintained pursuant to the Specifications and that all procedures are performed in a safe and effective manner.

(f) System Inspections. Customer shall allow Neuronetics access to the System from time to time to inspect (including the procedure log), service, repair, modify and upgrade the Software or the System, to remove Treatment Sessions in accordance with Section 8(d)(iii), or for any other reasonable purpose requested by Neuronetics during normal business hours upon at least 48 hours prior notice.

## 9. INSTALLATION AND TRAINING

(a) Installation.

(i) On the Installation Date, Customer must have all personnel on-site that Neuronetics identifies as necessary to the installation process including, without limitation, a person authorized to provide acceptance on behalf of Customer ("Customer Installation Personnel"). Upon Neuronetics completing the physical installation of the System, Neuronetics and Customer Installation Personnel shall inspect the System for damage and for its operation in accordance with Neuronetics' then-current installation criteria using such checklists as Neuronetics may provide for this purpose. Upon Neuronetics and Customer Installation Personnel agreeing that all such criteria have been satisfied, both Neuronetics and Customer shall execute the checklist evidencing such fact. If Customer refuses to execute such checklist, Customer must specify in writing the specific criteria in the checklist that is not satisfied, and Neuronetics will address such issue. Customer will have no more than one (1) day after Neuronetics addresses the issue to re-inspect the System, and if Customer then agrees that the System meets Neuronetics' then-current installation criteria using such



checklists as Neuronetics may provide for this purpose, both Neuronetics and Customer shall execute the checklist evidencing such fact. If Customer does not re-inspect the System within such one-day period or it does not sign the installation acceptance checklist and does not specifically identify the criteria in the checklist that is not satisfied, then the Installation Date will be deemed to have occurred on the date on which Neuronetics stated that the System was ready for re-inspection.

- (ii) If, on the Installation Date, Customer Installation Personnel are not on-site or they do not remain on-site and as a result Neuronetics declines to or is unable to install the System or inspect the System with Customer Installation Personnel as set forth in Section 9(a)(i), then (i) Neuronetics reserves the right to invoice Customer for a full day of installation service at Neuronetics' then-current rates, and Customer shall pay such invoice in accordance with Section 3 and (ii) the Installation Date will be deemed to have occurred on such date.
- (b) Initial Course of Training. An initial course of training to occur in a single course of three consecutive eight hour days for up four (4) Authorized Users (inclusive of the Provider) is included in the cost of each System. At the time of scheduling training, Neuronetics will communicate further requirements that Customer must satisfy for training to occur including time commitments, necessary personnel and the number of patients that must be available during the day (and times) so as to allow effective training. Customer must schedule this training to occur within ninety (90) days after the Installation Date. Any training scheduled beyond ninety (90) days after the Installation Date is subject to charge at Neuronetics' then-current rates. Neuronetics will not enable the System for patient care purposes until such time as the Provider has successfully completed such training as documented in accordance with Neuronetics' then-current training process.
- (c) Additional Training. All additional training will be pursuant to Neuronetics' then-current policies and procedures and at Neuronetics' then-current rates.

## 10. SOFTWARE AND DOCUMENTATION

- (a) License of Software and Documentation. The Software and Documentation included or used with the System is not sold but rather is licensed to Customer. Neuronetics hereby grants to Customer a personal, limited, non-exclusive, non-transferable, and non-sublicensable right and license during the Term (as defined in Section 16(a)) for Customer and its Authorized Users to operate and use the Software and the Documentation solely in conjunction with the operation and use of the System as permitted hereunder. Customer and its Authorized Users obtain no right, title or interest in or to the Software, except for the limited license granted hereunder, and Neuronetics and its licensors reserve all rights not expressly granted.
  - (i) Limitations. Customer and its Authorized Users may use the Software only in connection with the use and operation of the System in accordance with the Documentation and Neuronetics' instructions provided from time to time. Customer may not loan, rent, lease, license or otherwise transfer to any other person, or host on behalf of any other person, the Software, and may not copy, modify, remove,

disassemble, decompile, reverse engineer, create derivative works from or tamper with the Software. Any attempted transfer or use of the Software without the prior signed written consent of Neuronetics will void the license and all warranties granted herein in connection with the System.

- (ii) TrakStar. Customer and its Authorized Users may use TrakStar only for Customer's patient care purposes and only on the TrakStar Computer for Customer's patient care purposes and not for treating patients with a TMS system other than a System or for any competitive purpose such as designing a competitive patient data management system.
- (iii) Copies. Customer and its Authorized Users may not copy or otherwise reproduce the Software or Documentation except as expressly permitted by this Agreement and provided that Customer complies with the obligations of confidentiality set forth herein. Except to the extent that this prohibition is not permitted under applicable law, Customer will not decompile, reverse engineer or disassemble the Software in an attempt to derive or use the source code therefrom.
- (iv) Third Party Software. The Software may include Redistributable Code, which is the property of Neuronetics' licensors, and protected under United States and international copyright, trade secret or other proprietary rights laws, as well as international treaties. Customer is hereby granted a non-exclusive, non-transferable (except to the extent that transfer of the corresponding System is expressly permitted under this Agreement) and non-sublicensable license during the Term for Customer and its Authorized Users to use and display the Redistributable Code solely in connection with the authorized operation of the System and in conformance with the terms and conditions of this Agreement. Except to the extent that this prohibition is not permitted under applicable law, Customer may not reproduce, redistribute, decompile, reverse engineer or disassemble the Redistributable Code, and may not disintegrate the Redistributable Code from the Software.
- (b) TrakStar Cloud.
  - (i) Access and Use of TrakStar Cloud. Neuronetics will use commercially reasonable efforts to provide Customer with access to TrakStar Cloud and use commercially reasonable efforts to reestablish the availability of TrakStar Cloud should access be interrupted. Customer and its Authorized Users may use TrakStar Cloud during the Term only in connection with the use and operation of the System for Customer's patient care purposes and not for treating patients with a TMS system other than a System or for any competitive purpose such as designing a competitive patient data management system. Customer has no right to receive administrator rights to TrakStar Cloud, whether to modify TrakStar Cloud, network settings or otherwise. Customer is required to provide all facilities, services and equipment meeting required specifications and configurations necessary to access TrakStar Cloud via a computer or other supported device.

- (ii) Limitations. Customer may not: (A) rent, loan, transfer, sublicense, sell, lease, commercialize or otherwise distribute or operate TrakStar Cloud to or for the benefit of any third party; (B) enter data from any system other than data provided by the System; (C) reverse engineer, decompile, disassemble, modify or create derivative works from TrakStar Cloud; (D) bypass or breach any security device or protection used in connection with TrakStar Cloud or access or use TrakStar Cloud other than by Customer or an Authorized User through the use of his or her own then valid access credentials; (E) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner TrakStar Cloud; or (F) input, upload, transmit or otherwise provide to or through TrakStar Cloud, any information or materials that are unlawful or injurious or that contain, transmit or activate any virus or other harmful code.
- (iii) Passwords and Security. Customer shall protect the confidentiality of user access credentials assigned to Customer and its Authorized Users, and not share or disclose, and shall cause its Authorized Users not to share or disclose, any such credentials to any third party. Customer is fully responsible for all activity occurring under access credentials assigned to Customer and its Authorized Users. Customer agrees to defend, indemnify and hold Neuronetics harmless from and against all claims, damages and expenses (including reasonable attorneys' fees) against or incurred by Neuronetics arising out of access of TrakStar Cloud by anyone using access credentials assigned to Customer and its Authorized Users.
- (iv) Data. As between Customer and Neuronetics, Customer shall own all right, title and interest in and to the data that Customer and its Authorized Users entered into and/or transmitted to TrakStar Cloud. Customer hereby grants to Neuronetics a royalty free, non-exclusive, perpetual and irrevocable right and license to (A) use such data to provide TrakStar Cloud to Customer, support Customer's use of the System and for regulatory purposes such as medical device reporting, and (B) use aggregated or anonymized data based upon and/or including Customer data, so long as such data does not reveal any personally identifiable information of any particular individual person (including patients), of Customer or of any Authorized Users, for product development and improvement, research, analysis, business analytics and marketing purposes, subject to the terms of the Data Use Addendum provisions set forth in Appendix C hereto. Neuronetics will use commercially reasonable efforts to recover Customer data in accordance with Neuronetics' then-current disaster recovery and business continuity procedures. Notwithstanding any other term of these Terms and Conditions, Neuronetics owns all right, title and interest in, and may access, retain and use, transactional and performance data related to use of the System, Software and/or TrakStar Cloud.
- (v) Changes; Suspension; Termination. Neuronetics reserves the right, in its sole discretion, to make any changes to TrakStar and TrakStar Cloud that it deems necessary or useful, including changes to maintain or enhance the

quality or delivery of Neuronetics' services to its customers, the competitive strength of or market for Neuronetics' services, TrakStar or TrakStar Cloud cost, efficiency or performance, or to comply with applicable law. Neuronetics may suspend, terminate or otherwise deny Customer's, any Authorized User's or any other person's access to or use of all or any part of TrakStar Cloud without incurring any resulting obligation or liability, if: (A) Neuronetics receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Neuronetics to do so; (B) Neuronetics believes, in its sole discretion, that Customer or any Authorized User has failed to comply with, this Agreement, or accessed or used TrakStar or TrakStar Cloud beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; or (C) the Term expires or this Agreement is terminated. In addition, on at least thirty (30) days prior written notice, Neuronetics may terminate its provision of TrakStar and/or TrakStar Cloud to all customers.

## 11. LIMITED COPYRIGHT AND TRADEMARK LICENSE

- (a) Limited License. The Software and Documentation are not sold but rather they are licensed to Customer. Subject to Customer's compliance with this Agreement, Neuronetics hereby grants to Customer a personal, non-exclusive, non-transferable (except to the extent that transfer of the corresponding System is expressly permitted under this Agreement), and non-sublicensable license during the Term (as defined in Section 16(a)) for Customer and its Authorized Users to operate and use the Software and the Documentation solely in conjunction with the operation and use of the System as permitted hereunder, in the form provided by Neuronetics, and in accordance with the Documentation. Customer and its Authorized User obtain no right, title or interest in or to the Software, except for the license granted above in this Section 10(a), and Neuronetics and its licensors reserve all rights not expressly granted in this Agreement.
- (b) Usage Guidelines. To the extent Customer develops or has developed advertising, marketing or promotional materials related to the System that utilizes Neuronetics' trademarked, copyrighted, or otherwise proprietary elements, it shall comply with the then current Neuronetics' trademark usage guidelines (see NeuroStar Advanced Therapy Branding and Style Guide) and Neuronetics' quality control requirements before any public use or dissemination of such materials and subsequently provide copies of such materials to Neuronetics. Neuronetics reserves the right, at any time, to require Customer to change or discontinue Customer's use of the Neuronetics Marks and/or Marketing Material if Neuronetics, in its sole discretion, believes that such use is detrimental to the Products, the Neuronetics Marks or Neuronetics' business interests. Neuronetics reserves the right to inspect to ascertain that the Neuronetics Marks and Marketing Collateral are used only for services performed using the Products. Customer shall promptly comply with Neuronetics' requests regarding the use of the Neuronetics Marks and the Marketing Collateral. Customer shall not adopt, use or seek to register any trademarks or service marks that are confusingly similar to the Neuronetics Marks, or any of them,

and shall not combine the Neuronetics Marks with any mark, word, term, device, logo or other matter. Customer shall not adopt, use or register any domain names that incorporate one or more Neuronetics Marks. Customer shall take no action or otherwise in any way use the Neuronetics Marks in a manner which would cause any confusion, diminution in value or other adverse effects on the Neuronetics Marks. All goodwill derived from the use of the Neuronetics Marks shall inure solely to the benefit of Neuronetics.

- (c) License Termination. Notwithstanding the foregoing, Neuronetics may on reasonable prior notice terminate the license granted by Section 11(a) as to one or more or all of the Neuronetics Marks and Marketing Collateral.

## 12. LIMITED WARRANTY

- (a) Warranty Term. The term of the Limited Warranty in Section 12(b) shall be as follows:

- (i) For the System and Software (excluding Redistributable Code), one (1) year from Customer's acceptance of the System in accordance with Section 6.
- (ii) For upgrades to the System and/or Software, ninety (90) days after the installation of such upgrade(s).
- (iii) For other Products, the shorter of: (a) one (1) year from Customer's acceptance of such Products in accordance with Section 6; and (b) the shelf-life expiration dates listed on the applicable packaging (if any).

- (b) Limited Warranty. For the duration of the warranty terms set for in Section 12(a), Neuronetics warrants to Customer that:

- (i) The System will be free from defects in material and workmanship and, when used in accordance with the Documentation by Authorized Users, will perform substantially in accordance with the Specifications.
- (ii) Each Treatment Session will enable the System on which it is authorized for use in providing a single session of treatment for a single patient consisting of the number of pulses in the cleared or approved indication for which the System is being used in accordance with the Specifications and Documentation.
- (iii) Software, excluding Redistributable Code, as delivered with the System or upgraded by Neuronetics and properly installed and operated on the System it is originally licensed for, will function substantially as described in the User Manual.
- (iv) Neuronetics will pass through to Customer the warrant(ies) that Neuronetics receives on the TrakStar Computer and Redistributable Code (if any). For the avoidance of doubt, pass through of the warranty means that Customer is required to deal directly with the manufacturer of the TrakStar Computer and Redistributable Code, as applicable, in relation to technical support, service, warranty and all other matters related to the TrakStar Computer and Redistributable Code.

- (v) All other Products will be free from defects in material and workmanship and conform to applicable Specifications.

- (c) Extended Limited Warranty Option. Customer may purchase one (1) year extensions of the Warranty Term for the System on Neuronetics' then-current terms and conditions and pricing for such coverage (the "Extended Limited Warranty Term"). The Extended Limited Warranty Term shall begin at the end of the prior Warranty Term period, and commencement of the Extended Limited Warranty Term is contingent on Customer first entering into a separate agreement (the "Services Agreement") with Neuronetics prior to the expiration of the prior Warranty Term. The Services Agreement shall set forth the terms and conditions of the Extended Limited Warranty Term. Under no circumstances will Neuronetics be required to enter into a Services Agreement that would provide warranty obligations with respect to any Product beyond three (3) years of the date that the product was delivered to Customer in accordance with Section 6.

- (d) Warranty Remedies. Customer's sole and exclusive remedy under the Limited Warranty set forth herein is limited, at Neuronetics' sole discretion, to repair or replacement (which may include replacement with refurbished Products or components) of any Product and/or component that failed to conform to the Limited Warranty. If Software, other than Redistributable Code, fails to so conform during its warranty period, as the sole remedy Neuronetics or Neuronetics' supplier will at its discretion provide a suitable fix, patch or workaround for the non-conformance which may be included in a past or future version of the Software. Where the Limited Warranty service results in Customer receiving replacement Products and/or components, such replacement Products and/or components shall be subject to the Limited Warranty, including the Warranty Term, applicable to the original Products and/or components. Where refurbished Products or components are provided, such refurbished Products or components shall meet or exceed Neuronetics' specifications for newly manufactured Products or components.

- (e) Warranty Limitations. The Limited Warranty provided under this Agreement, may, at Neuronetics' sole discretion, be voided by any of the following: (i) Customer's failure to comply with the terms of this Agreement; (ii) Customer's failure to make any modifications, including without limitation, any Software updates required by Neuronetics; (iii) the abuse, misuse, negligent handling, abnormal use or working conditions, accident, alteration, willful damage, neglect or unauthorized repair or modification of the Products; (iv) use of the Products in a manner inconsistent with the User Manual; (v) use of the Products by anyone other than an Authorized User; (vi) use of expired or refurbished Supplies or with otherwise unauthorized supplies; or (vii) failure to follow Neuronetics' instructions (whether written or oral). Neuronetics will make the final determination as to whether the existence and cause of any alleged defect satisfies the Limited Warranty.

- (f) Prohibition on Warranty Transfer. The Limited Warranty set forth herein is not, without Neuronetics' express written permission, transferable to any third party. Any purported transfer of this Limited Warranty without Neuronetics express written permission is null, void and of no force or effect.
- (g) NO OTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE IN THIS SECTION 12, THE PRODUCTS ARE PROVIDED "AS IS" AND NEURONETICS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND NEURONETICS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, NEURONETICS MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, AVAILABLE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. CUSTOMER ACKNOWLEDGES THAT NEURONETICS DOES NOT CONTROL THE TRANSFER OF DATA OVER THE INTERNET, AND THAT TRAKSTAR CLOUD AND OTHER COMPONENTS OF THE SYSTEM WILL BE SUBJECT TO LIMITATIONS INHERENT IN THE USE OF THE INTERNET. NEURONETICS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH INTERNET PROBLEMS. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### 13. LIMITATIONS OF LIABILITY, INSURANCE, LEGAL COMPLIANCE AND DEFENSE OF INFRINGEMENT

#### (a) Limitations of Liability.

- (i) NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEURONETICS SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST REVENUE OR LOST PROFITS, LOSS OF DATA, LITIGATION EXPENSE, DAMAGE TO REPUTATION, LOSS OF BUSINESS OR ANY OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING IN CONNECTION WITH THE SALE, LICENSE, INSTALLATION, PERFORMANCE, FAILURE, USE OR INTERRUPTED USE OF THE PRODUCTS, AND INCLUDING THE NEUROSTAR ADVANCED THERAPY SYSTEM AND ANY COMPONENT THEREOF, OR FROM NEURONETICS' NEGLIGENCE OR OTHER FAULT IN CONNECTION THEREWITH. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEURONETICS' LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, ITS PERFORMANCE OR BREACH HEREOF, OR IN CONNECTION WITH THE PRODUCTS, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, INDEMNIFICATION OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF ALL SUMS PAID BY CUSTOMER TO

NEURONETICS FOR THE PRODUCT OR SERVICE THAT IS THE SUBJECT OF THE CLAIM.

- (ii) CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTY SET FORTH IN THIS AGREEMENT APPLY REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT NEURONETICS HAS SET THE PURCHASE PRICE OF THE PRODUCTS AND OTHER FEES AND CHARGES IN RELIANCE ON THE DISCLAIMERS OF WARRANTY AND LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH IN THIS AGREEMENT AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.
- (b) Customer Insurance. Customer shall maintain commercial general liability insurance and medical malpractice insurance in an amount that complies with the laws of the jurisdiction in which the System is used.
- (c) Compliance with Laws. Customer and all Authorized Users shall comply with all laws, rules and regulations applicable to Customer's and Authorized Users' use of the System, including but not limited to, promotional activities and all rules of the Federal Trade Commission and the Food and Drug Administration. Customer shall permit Neuronetics to affix to the System additional notices, in Neuronetics' sole discretion, as it deems necessary or advisable. Customer shall not remove or tamper with any such notices or labels affixed to the System.
- (d) Defense of Infringement. Neuronetics will indemnify and defend Customer against any judgment or awarded damages (and reasonable costs and expenses of litigation such as attorneys' fees) to the extent arising from a third party's specific allegation that any Product, Neuronetics Mark, or promotional materials furnished or licensed to Customer under this Agreement in the form provided by Neuronetics (and not in combination with any product or services provided by any party other than Neuronetics) constitutes an infringement of an issued United States patent or registered United States trademark or copyright (a "Covered Claim"); provided that the foregoing obligation shall not apply to, and the claim shall not be considered a Covered Claim if the claim is directed to, any modification of any of the Products by any person other than Neuronetics or any use of the Products that is (i) not in strict accordance with this Agreement and the applicable Documentation, (ii) for an indication that it is not cleared or approved by the United States Food and Drug Administration or (iii) in combination with any technology, product or process not supplied by Neuronetics. Neuronetics' obligations under this Section 13(d) are contingent on (1) Customer promptly notifying Neuronetics in writing of the Covered Claim, (2) Customer giving Neuronetics sole power and control over the investigation, defense and settlement of the Covered Claim and (3) Customer reasonably cooperating with Neuronetics in connection with its investigation, defense and settlement of the Covered Claim. Neuronetics has no liability whatsoever with respect to any claims settled by Customer without Neuronetics' prior written consent. In addition, Customer shall indemnify Neuronetics against any judgment or awarded damages (and reasonable costs and expenses of litigation such as attorneys' fees) in respect of claims made by the third party against Customer that are not Covered Claims. If, with respect to any



such claim, the use of the Products is, or in Neuronetics' opinion is likely to be, enjoined, then within a reasonable time after such injunction (or decision by Neuronetics, if applicable), Neuronetics shall, at its option (A) secure for Customer the right to continue using the Products by suspension of the injunction, by procuring for Customer a license or by some other means, or (B) at Neuronetics' own expense, replace the Products with non-infringing goods, or (C) remove the enjoined Products and refund a pro rata portion of the sums paid therefor, based on four year straight line depreciation. **THE FOREGOING STATES NEURONETICS' ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE), AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT CLAIMS AND ANY AND ALL OTHER CLAIMS INVOLVING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

**14. APPLICABLE LAW; DISPUTE RESOLUTION; ATTORNEYS' FEES**

- (a) Applicable Law. The laws of the Commonwealth of Pennsylvania govern this Agreement, without regard to conflict of laws principles or any other principles that would result in the application of a different body of law.
- (b) Dispute Resolution. Any case, controversy or claim arising out of or relating to this Agreement, including its breach and/or interpretation, shall be exclusively resolved (i) first by non-binding mediation for at least one day and no more than two days in Chester County, Pennsylvania before a mutually agreed mediator and (ii) if the case, controversy or claim is not resolved by such mediation, then binding arbitration to occur in Chester County, Pennsylvania under the auspices of the American Arbitration Association under its the then-current Commercial Arbitration Rules ("Rules") before one arbitrator appointed in accordance with such Rules and utilizing such limited and expedited discovery as the Rules may provide for and the arbiter may deem appropriate. It is the intent of the Parties that any disputes subject to this Section 14(b) shall be resolved as promptly, efficiently and expeditiously as possible and the Rules shall be applied to accomplish these objectives. Notwithstanding the foregoing dispute resolution process, neither party shall be precluded, at any time, from seeking injunctive relief in any court of law to compel arbitration or to preserve the status quo. The arbitrator shall issue a written report to the parties, detailing the basis of any arbitration award. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.
- (c) Attorney Fees. If any dispute resolution or other legal proceeding is initiated with respect to this Agreement, in the event that Neuronetics is the substantially prevailing party in such proceeding, in addition to all other remedies available to Neuronetics, Customer shall reimburse Neuronetics for its reasonable attorneys' fees, costs and expenses associated with the proceeding, including (i) expenses incurred prior to the initiation of the proceeding in seeking collection or other compliance with rights hereunder and (ii) expenses incurred in responding to unfounded claims.

**15. HIPAA BUSINESS ASSOCIATE PROVISIONS**

- (a) Access to PHI. All capitalized terms in these HIPAA Business Associate Provisions shall have the meaning set forth in their definitions in the (i) Standards for Privacy of Individually

Identifiable Health Information (the "Privacy Standards") and the Standards for the Security of Electronic Protected Health Information (the "Security Standards") issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), at 45 C.F.R. Parts 160 and 164, as such definitions are currently in effect and as subsequently amended; and (ii) The American Recovery and Reinvestment Act of 2009 and any regulations issued pursuant to such Act ("ARRA"). In fulfillment of certain provisions of this Agreement and in the course of its continued relationship with Customer, Neuronetics may have or will require access to Protected Health Information ("PHI") of Customer. Neuronetics may use and disclose said PHI received from Customer solely as permitted or required by this Agreement or as otherwise Required By Law. All such uses and disclosures shall be in compliance with each applicable requirement of 45 C.F.R. § 164.504(e).

- (b) Restrictions on Use and Disclosure of PHI. Neuronetics shall not use or disclose PHI received from Customer in any manner that would constitute a violation of the Privacy Standards if used in such manner by Customer. Except as otherwise limited in this Agreement, Neuronetics may disclose PHI for the proper management and administration or to carry out the legal responsibilities of Neuronetics, provided that disclosures are Required By Law, or Neuronetics obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Neuronetics of any instances of which it is aware in which the confidentiality of the information has been breached. Except as otherwise limited in this Agreement, Neuronetics may use PHI to provide data aggregation services to Customer as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Neuronetics may de-identify PHI, provided that the de-identification processes conform to the requirements of the Privacy Standards. Once the data is de-identified, such information shall no longer be considered PHI. Neuronetics may also create a Limited Data Set for purposes of research, public health, or health care operations subject to the Data Use Addendum in Appendix C. Neuronetics shall not directly or indirectly receive remuneration in exchange for any PHI, unless Neuronetics or Customer has obtained a valid HIPAA-compliant authorization from the patient that specifies whether the PHI can be further exchanged for remuneration by Neuronetics. Neuronetics agrees to use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Agreement. Neuronetics agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, maintains, or transmits on behalf of Customer, as required by the Security Standards and the ARRA, including without limitation, 45 C.F.R. §§ 164.308, 164.310 and 164.312. Neuronetics agrees to implement reasonable and appropriate policies and procedures to comply with the Security Standards as required by 45 C.F.R. § 164.316(a) and the ARRA. Neuronetics also agrees to maintain such policies and procedures in written or electronic form and will document and retain such documentation regarding all actions, activities and assessments required under the Security Standards consistent with 45 C.F.R. § 164.316(b) and the ARRA. Neuronetics agrees to mitigate, to the extent practicable, any harmful effect that is known to

Neuronetics of an unauthorized use or disclosure of PHI by Neuronetics in violation of the requirements of this Agreement. Neuronetics agrees to report to Customer any use or disclosure of PHI not provided for by this Agreement of which Neuronetics becomes aware. Neuronetics also agrees to report within 15 business days to Customer Neuronetics discovery of any Security Breach and any successful Security Incidents. Neuronetics agrees to report to Customer any unsuccessful Security Incidents as requested by Customer. Neuronetics' reports to Customer regarding Security Breaches shall include the identification of each individual whose unsecured PHI (as defined under ARRA and the HIPAA Standards) has been, or is reasonably believed by Neuronetics to have been, accessed, acquired, or disclosed during such Security Breach. Customer agrees to make any notifications regarding such Breaches required under the HIPAA Standards and the ARRA, and Neuronetics agrees to provide Customer with notification-related information required under the HIPAA Standards and the ARRA.

(c) Agents and Subcontractors. Neuronetics agrees to require any agent or subcontractor to whom it provides PHI received from, or created or received by Neuronetics on behalf of Customer, to agree to be bound by the same restrictions and conditions that apply through this Agreement to Neuronetics with respect to such PHI. Neuronetics agrees to disclose to such subcontractors or agents only the minimum PHI necessary (as defined under the HIPAA Standards and the ARRA) to perform or fulfill a specific function required or permitted under the Services Agreement or this Agreement.

(d) Designated Record Set. Upon request of Customer, Neuronetics agrees to provide Customer access to PHI in a Designated Record Set so that Customer may meet the requirements under 45 C.F.R. § 164.524 and the ARRA (including access to the information in electronic form). At the request of Customer, Neuronetics agrees to make any amendments to PHI in a Designated Record Set that Customer directs or agrees to pursuant to 45 C.F.R. § 164.526 and the ARRA. Neuronetics agrees to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and the ARRA. To the extent that Customer provides the individual with a list of business associates and the individual contacts Neuronetics directly, Neuronetics agrees to provide the individual with an accounting of disclosures relating to that individual, as required under the ARRA. Neuronetics agrees to implement a restriction agreed to by Customer on the use and disclosure of an individual's PHI, providing Customer notifies Neuronetics in writing of same. Neuronetics understands that Customer must accept a request for a restriction if the disclosure is to a health plan for the purposes of carrying out payment or health care operations (and is not for treatment) and the PHI pertains solely to a healthcare item or services for which Customer involved has been paid out of pocket in full. Neuronetics agrees to provide to Customer information collected as described immediately above to permit Customer to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Neuronetics agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from,

or created or received by Neuronetics on behalf of, Customer, available to the Secretary of the Department of Health and Human Services ("Secretary") for purposes of determining Customer's compliance with the Privacy and Security Standards.

(e) Post-Termination. Upon termination of this Agreement for any reason, Customer agrees that it shall be infeasible for Neuronetics to return or destroy all PHI received from Customer to the extent that this information will have been revised and incorporated into Neuronetics' database of related information. Neuronetics agrees to extend the protections of this Agreement to PHI in its possession and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of PHI infeasible, for so long as Neuronetics maintains such PHI. Neuronetics shall require any subcontractors or agents to return or destroy all PHI received from Customer, but only to the extent that such received PHI has not been revised and incorporated into Neuronetics' database of related information. Upon Customer's knowledge of a material breach by Neuronetics of this Agreement, Customer shall either (1) provide Neuronetics an opportunity to cure the alleged material breach within 30 days of receipt of written notice of the breach and terminate this Agreement if Neuronetics does not cure the breach within said 30 days; or (2) immediately terminate this Agreement if Neuronetics has breached a material term of these HIPAA Business Associate Provisions and cure is not possible. If neither termination nor cure is feasible, Customer may report the breach to the Secretary. Upon Neuronetics' knowledge of a pattern of material breaches or violations of this Agreement by Customer, Neuronetics shall work with Customer to take steps to cure the breach or end the violation and if such steps are unsuccessful, Neuronetics shall terminate this Agreement, if feasible. If it is not feasible to terminate this Agreement, Neuronetics may report the problem to the Secretary.

(f) Cooperation. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Customer and Neuronetics to comply with the HIPAA Standards.

## 16. TERM, SUSPENSION AND TERMINATION

(a) Term. This Agreement shall commence upon the last date of signature set forth on the Sales Order (the "Agreement Effective Date") and shall continue thereafter until the last obligation of either party hereunder has been performed or waived, unless sooner terminated as a result of any Termination Event described below (the "Term").

(b) Suspension. Neuronetics may suspend and/or decline further sales of Products and Services if Customer's account is not current or if Customer is otherwise in breach of this Agreement. Neuronetics may require Customer to pay for Products and Services in cash, wire transfer of immediately available funds or cashier's check.

(c) Termination Events. This Agreement may be terminated by Neuronetics upon written notice to Customer upon the occurrence of any of the following events, unless Customer has cured such event (if curable) to Neuronetics' satisfaction within thirty (30) days after the date of Neuronetics written notice (or immediately upon written notice if such event is not curable)

(collectively, the "Termination Events"): (i) Customer fails to operate any of the Products in accordance with this Agreement; (ii) Customer fails to make any payment due to Neuronetics under this Agreement, any Prior Agreement(s) or otherwise on a timely basis; (iii) Customer has tampered with or altered in any way any of the Products; (iv) Customer prohibits, fails to permit or fails to cooperate in the conduct of any inspection of the System requested by Neuronetics; or (v) Customer breaches any term of this Agreement or any Prior Agreement(s).

- (d) **Effect of Termination.** Upon the effective date of any Termination Event: (i) Customer and all Authorized Users shall immediately cease all use of the Products, including, for the avoidance of doubt, the System and the Software; (ii) Customer shall promptly pay Neuronetics any and all unpaid amounts due and owing; (iii) Neuronetics may cancel all pending orders for Products and refuse to accept any future orders from Customer for Products; and (iv) Neuronetics may deactivate the Systems purchased under this Agreement. Sections 2(a), 2(c), 3(b), 3(c), 3(d), 7, 8(c), 8(d), 10(a)(i), 10(a)(ii), 10(a)(iii), 10(a)(iv) (last sentence only), 10(b)(ii), 10(b)(iv), 10(b)(v), 12, 13, 14, 15, 16(d), 17, and 18 shall survive the termination of this Agreement for any reason in accordance with their respective terms.

## 17. DEFINITIONS

- (a) **"Documentation"** means any and all information in written, graphic, electronic or machine-readable form relating to use or operation of the System, including but not limited to, the User Manual, instructions for use and installation, service, repair and warranty information.
- (b) **"Marketing Collateral"** means the brochures, videos, testimonials, social media, customer facing product aids and other materials that Neuronetics makes available to Customer for Customer's marketing of its use of the System.
- (c) **"Marketing Collateral Kit"** means the collection of Marketing Collateral included with Customer's System purchase or separately purchased by Customer.
- (d) **"Neuronetics Marks"** means the trademarks, service marks, trade dress and other indicia of origin controlled by Neuronetics, including all logos, designs and trade dress, that Neuronetics approves from time to time for use by Customer in connection with Customer advertising or marketing its use of the System.
- (e) **"Product"** means any System, Software or Supplies provided or to be provided under this Agreement.
- (f) **"Redistributable Code"** means all third party software that is licensed to Neuronetics and is distributed with the Software.
- (g) **"Sales Order"** means the document executed by Customer and Neuronetics that specifies the Products to be purchased by Customer for Customer's use under these Terms and Conditions.
- (h) **"Services"** means any and all delivery, installation, training, support, maintenance, repair and warranty services provided to Customer by or on behalf of Neuronetics under this Agreement.
- (i) **"Software"** means the software programs, tools and data, whether embedded or incorporated in the System or used in conjunction with the operation of the System, including,

without limitation, TrakStar, TrakStar Cloud and Redistributable Code incorporated into or delivered with such software.

- (j) **"Specifications"** means installation, operating, maintenance, services and usage guidelines and requirements for the Products as published by Neuronetics from time to time.
- (k) **"Supplies"** means components, single use items (including NeuroStar treatment sessions), treatment packs, ear plugs, personal protective equipment, accessories, spare parts and replacement parts sold by Neuronetics for use with the System.
- (l) **"System"** or the **"NeuroStar Advanced Therapy System"** means the NeuroStar Advanced Therapy System(s) (including treatment coil, mobile console, display screen and treatment chair) and accessories thereto but excluding the TrakStar Computer (if any) purchased by Customer under the terms of this Agreement. In the event that Customer purchases multiple NeuroStar Advanced Therapy Systems under this Agreement, each shall be deemed a separate System for purposes of the Agreement. "System" shall include any Neuronetics- approved replacement for the System (if any). Unless converted pursuant to Appendix A, each NeuroStar Advanced Therapy System(s) owned by Customer that is governed by a Prior Agreement is expressly excluded from this Agreement.
- (m) **"Termination Events"** has the meaning assigned to such term in Section 16(c).
- (n) **"TMS"** means transcranial magnetic stimulation.
- (o) **"TrakStar"** means Neuronetics' patient data management system software, known as TrakStar®, configured for installation and use on a computer directly attached to the System including, if any, new versions, updates and upgrades thereto.
- (p) **"TrakStar Computer"** means a stand-alone personal computer of Customer that is dedicated to use with TrakStar.
- (q) **"TrakStar Cloud"** means a web-based application service through which Neuronetics makes TrakStar available for use by Customer and its Authorized Users (as defined in Section 2(c)).
- (r) **"Treatment Session"** means the NeuroStar Treatment Session for use with the Systems.
- (s) **"Upgraded Marketing Collateral Kit"** means the standard Marketing Collateral Kit, plus two (2) sets of Neuronetics' branded scrubs, one (1) Neuronetics' branded blanket, two (2) Neuronetics' branded face masks and one digital frame preloaded to display Neuronetics' branded assets.
- (t) **"User Manual"** means the Neuronetics NeuroStar Advanced Therapy System user manual provided by Neuronetics including, if any, new versions, revisions, updates and modifications thereto.

## 18. GENERAL PROVISIONS

- (a) **Proprietary Information.** In connection with this Agreement, Customer and its employees and agents may have access to private and confidential information owned or controlled by Neuronetics relating to equipment, apparatus, programs, software, specifications, drawings, business plans, pricing, data and other information, including but not limited to Product pricing and these Terms and Conditions. Similarly, Neuronetics

and its employees and agents may have access to private and confidential information owned or controlled by Customer relating to Customer's practice. All such information shall be and remain its owner's exclusive property, and the receiving party shall keep and shall obligate its employees and agents to keep any and all such information confidential and shall not copy or disclose it to others without the owner's prior written approval, and shall return all tangible copies of such information to the owner promptly upon request. Nothing herein shall limit either party's use or dissemination of information not actually derived from the other party or information that has been or subsequently is made public by the owner or with the owner's consent. Customer expressly agrees and acknowledges that private and confidential information received from Neuronetics may not be disclosed to other customers or any competitors of Neuronetics, including any employees or agents of such competitors, without the prior written consent of Neuronetics. Customer shall only use the private and confidential information received from Neuronetics, including the Documentation, to use the System in accordance with this Agreement and the applicable Documentation. Neuronetics intends to protect the privacy and security of protected health information received by or disclosed to any Neuronetics representative in accordance with the HIPAA Business Associate Provisions above. Notwithstanding any other term of this Agreement, Neuronetics may access and use, and shall retain all right, title and interest in transactional and performance data related to use of the Software. Neuronetics may use aggregated and anonymized data based upon Customer data, so long as such data does not reveal any personally identifiable information of any particular individual person, of Customer or of any Authorized Users, for product development and improvement and research and analysis purposes. The Products will be considered the private and confidential information of Neuronetics without the need for any specific markings.

- (b) Binding Effect: Assignments. This Agreement shall be binding upon the parties hereto and all successors and permitted assigns. Except as provided herein, Customer shall have no right to assign or transfer any right or obligation hereunder without Neuronetics' prior written consent.
- (c) Entire Agreement, Merger, Amendments and Waivers. This Agreement sets forth the complete and exclusive agreement between the parties regarding Customer's purchase and use of

the Products purchased by Customer under this Agreement. This Agreement merges and supersedes all prior and contemporaneous agreements, representations and understandings of the parties with respect to the subject matter hereof. Unless Customer has delivered a System Conversion Notice, this Agreement does not merge or supersede any Prior Agreements. No amendment, modification or waiver of any provision of this Agreement shall be effective unless mutually agreed in writing, provided that in the event of any conflict between this Agreement and the terms and conditions set forth in an Order Confirmation for Customer's future purchase of Products, the terms and conditions in the Order Confirmation shall govern. No failure or delay in exercising any right or remedy shall be a waiver thereof.

- (d) Conflict. No inconsistent or additional terms of any Customer purchase order, acceptance or other document, regardless of when issued, will become part of this Agreement, and Neuronetics hereby expressly rejects any and all such terms. Any conflict or inconsistency between the Sales Order and these Terms and Conditions shall be governed by these Terms and Conditions. Once the Sales Order is signed and delivered by Neuronetics to Customer, no subsequent change of, addition to or insertion of additional language into the Sales Order or these Terms and Conditions by Customer shall be effective without specific signed written consent of Neuronetics to such change, addition or insertion. In the event of any conflict between this Agreement and the terms and conditions set forth in an Order Confirmation for Customer's future purchase of Products, Neuronetics' then-current terms and conditions in the Order Confirmation shall govern.
- (e) No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.
- (f) Severability. The Parties agree that each provision contained in this Agreement shall be treated as a separate and independent clause, and unenforceability of any one clause shall not impair the enforceability of any other clause. Moreover, if one or more provisions contained in this Agreement shall for any reason be held to be overly broad so as to be unenforceable, such provisions shall be construed by the appropriate judicial body by limiting and reducing them, so as to be enforceable to the extent to be compatible with the applicable law.



**APPENDIX A**

**SYSTEM CONVERSION NOTICE**

Neuronetics, Inc. and the undersigned customer (“Customer”) are parties to a Master Sales Agreement dated \_\_\_\_\_ (the “MSA”). Neuronetics and Customer also are parties to one or more prior agreements (each a “Prior Agreement”) under which Customer purchases Treatment Sessions and other Products from Neuronetics for use with the following NeuroStar Advanced Therapy for Mental Health systems (each a “Legacy System”). Capitalized terms used herein and not otherwise defined have the meanings set forth in the MSA

- Convert all Customer Legacy Systems
- Convert the following Customer Legacy System(s):
 

NS- _____	NS- _____	NS- _____
NS- _____	NS- _____	NS- _____
NS- _____	NS- _____	NS- _____
NS- _____	NS- _____	NS- _____
NS- _____	NS- _____	NS- _____

Customer hereby requests that Neuronetics convert the Legacy Systems from such Prior Agreements to the MSA, such that, from and after the Conversion Effective Date, all Product purchases for use with the applicable Legacy System shall be governed by the MSA rather than the Prior Agreements and the Prior Agreements shall be of no further force or effect with respect to such Product purchases or converted Legacy Systems. The Conversion Effective Date shall be the date that Neuronetics converts the Legacy Systems to the MSA in Neuronetics customer relationship management system. Neuronetics shall use its commercially reasonable efforts to process Legacy System conversions as promptly as practicable. Customer acknowledges and agrees that once a Legacy System is converted to the MSA it cannot be converted back to the Prior Agreement to which is was previously subject.

**Customer:** \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX B**  
**SALES ORDER**

**SALES ORDER**

<b>BILL TO:</b>		<b>SHIP TO/INSTALLATION LOCATION:</b>	
Attention:		Attention:	
Practice:		Practice:	
Customer #:		Customer #:	
Address:		Address:	
City/State/Zip:		City/State/Zip:	

<b>SALESPERSON</b>	<b>PAYMENT TERMS</b>	<b>FCA INCOTERMS 2010</b>	<b>VALID UNTIL</b>
		Neuronetics Warehouse	30 days after Quote Date

<b>QTY</b>	<b>CATALOG #</b>	<b>DESCRIPTION</b>	<b>SHIPPING METHOD</b>	<b>UNIT PRICE</b>	<b>LINE PRICE</b>

Subtotal	
Sales Tax* __%	TBD*
Shipping	\$5,000.00
<b>TOTAL</b>	
* final tax to be calculated upon invoicing	

**APPENDIX C**  
**DATA USE ADDENDUM**

This Data Use Addendum (“DUA”), is incorporated by reference into the NeuroStar® Advanced Therapy Terms and Conditions of Sale and applies to all Product purchased by Customer from Neuronetics. This DUA addresses the conditions under which Neuronetics may obtain, use, maintain and disclose a Limited Data Set derived from Customer’s information, in accordance with 45 C.F.R. §164.514.

1. Definitions. Unless otherwise specified in this DUA or the Terms and Conditions, all capitalized terms used in this DUA shall have the meaning established for purposes of the Health Insurance Portability and Accountability Act (“HIPAA”), codified at Title 45 parts 160 through 164 of the U.S. Code of Federal Regulations, as amended from time to time.
  2. Permitted Uses and Disclosures of Limited Data Set. This DUA allows Neuronetics to use Customer’s information to create a Limited Data Set and use and disclose the Limited Data Set for research, public health, or health care operations, including but not limited to inclusion in regulatory filings (e.g., FDA submissions), data analytics supporting research initiatives or healthcare operations, and internally by Neuronetics to perform product evaluation and improvements. Authorized personnel from the following divisions within Neuronetics may use and disclose information from a Limited Data Set:
    - a. Executive team
    - b. Legal Department
    - c. Research & Development
    - d. Product Development
    - e. Clinical
    - f. Operations
    - g. Customer Services/Sales
    - h. Marketing
- In addition to Neuronetics, it is expressly authorized that Neuronetics may share the Limited Data set or outputs derived from the Limited Data Set with the following types of third party entities:
- Regulatory Agencies (e.g., Food and Drug Administration, Department of Defense, the Department of Veterans Affairs)
  - Clinicians
  - Neuronetics Customers
3. Use of Customer Identity. Neuronetics agrees to leave Customer’s name and operational locations confidential unless Customer agrees to such disclosure in writing.
  4. Minimum Necessary. Neuronetics shall access only those data fields which are the minimum necessary to accomplish the purposes set forth in this DUA.
  5. Responsibilities of Neuronetics. Neuronetics agrees to:
    - a. Treat the Limited Data Set as both confidential information and PHI, subject to the Terms and Conditions and HIPAA;
    - b. Use or disclose the Limited Data Set only as permitted by this DUA, the Terms and Conditions, or as Required by Law;
    - c. Use appropriate safeguards as required by HIPAA, including appropriate physical, administrative, and technical safeguards to prevent the use or disclosure of the Limited Data Set other than as permitted by this DUA, the Terms and Conditions, or as Required by Law;
    - d. Report to Covered Entity any unauthorized use or disclosure of the Limited Data Set that rises to the level of a Breach, in accordance with the requirements of Section 15 of the Terms and Conditions;
    - e. Not use or further disclose the Limited Data Set in a manner that would violate HIPAA, if done by Customer;
    - f. Ensure that any agents to whom Neuronetics provides the Limited Data Set agree to at least the same restrictions and conditions that apply to Neuronetics under this DUA;
    - g. Not use the Limited Data Set to identify or contact the individuals who are the subjects of any Limited Data Set.
  6. No Transfer of Rights, Title or Interest. Customer hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its data. Any disclosure of such data in a Limited Data Set hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to Neuronetics, its affiliates or its representatives.
  7. Removal of Certain Identifiers. For avoidance of doubt, the parties acknowledge and agree that a Limited Data Set shall exclude the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
    - a. Names;
    - b. Postal address information, other than town or city, State, and zip code;
    - c. Telephone numbers;
    - d. Fax numbers;
    - e. Electronic mail addresses;
    - f. Social security numbers;
    - g. Medical record numbers;
    - h. Health plan beneficiary numbers;
    - i. Account numbers;
    - j. Certificate/license numbers;
    - k. Vehicle identifiers and serial numbers, including license plate numbers;
    - l. Device identifiers and serial numbers;
    - m. Web Universal Resource Locators (URLs);
    - n. Internet Protocol (IP) address numbers;
    - o. Biometric identifiers, including finger and voice prints; and
    - p. Full face photographic images and any comparable images.