

## 1. SCOPE OF AGREEMENT

These Neurostar® Advanced Therapy for Mental Health TouchStar® Upgrade Terms and Conditions of Sale, together with any attachments and appendices (these “Terms and Conditions”) and the Sales Order (collectively, this “Agreement”), constitute the agreement between Customer (as identified in the Sales Order) and Neuronetics, Inc. (“Neuronetics”) concerning Neuronetics’ (a) sale of the Products set forth in the Sales Order to Customer and (b) Customer’s use of such Products. 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 in the Sales Order. Neuronetics maintains its current terms and conditions on <https://neurostar.com/tc> and a hard copy is available to Customer upon written request therefor. Customer Orders for Products are not binding until accepted by Neuronetics in writing. 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) 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 System 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 9, Customer shall advance or promptly reimburse Neuronetics for any and all travel, special delivery, transportation and other out-of-pocket expenses payable or incurred by Neuronetics regarding Customer’s use of the System. If Customer requests Neuronetics to provide any Services outside the scope of the Limited Warranty, Customer shall pay Neuronetics for such Services in accordance with this Section 2.

(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 amount of the discount, if any, received by Customer from Neuronetics’ list price for Product 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.

#### 4. TIME PERIOD FOR PURCHASES; CANCELLATION

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

#### 5. 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 Products for up to thirty (30) days after the Products are ready for shipment at no charge. Neuronetics shall charge Customer storage fees at its then-prevailing rates for storage of Products in excess of thirty (30) days. Unless otherwise set forth in the Sales Order or an Order Confirmation, all Products will be delivered FCA (Incoterms 2020) Neuronetics' shipping point. All terms implied by FCA are incorporated into this Agreement. 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.

#### 6. PRODUCT INSTALLATION, USE & INSPECTION

- (a) Installation Date. Once the Products are 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 Product, then the installation date of the Product shall be deemed to be the first business day of Neuronetics that is forty five (45) days after Neuronetics' scheduled shipping date. If any Product 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 Product installation.
- (b) 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.

- (c) 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 6 **Error! Reference source not found.**, or for any other reasonable purpose requested by Neuronetics during normal business hours upon at least 48 hours prior notice.

#### 7. 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 Products, 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.
- (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 Products or inspect the System with Customer Installation Personnel as set forth in Section 7(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.

#### 8. 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 13(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) 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.
- (iii) 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 A 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.
- (b) License Termination. Notwithstanding the foregoing, Neuronetics may on reasonable prior notice terminate the license granted by Section 8(a) as to one or more or all of the Neuronetics Marks and Marketing Collateral.
- 9. LIMITED WARRANTY**
- (a) Warranty Term. The term of the Limited Warranty in Section 9(b) shall be ninety (90) days after the installation of the Products.
- (b) Limited Warranty. For the duration of the warranty terms set for in Section 9(a), Neuronetics warrants to Customer that:
- (i) The Products will be free from defects in material and workmanship and conform to applicable Specifications.
- (ii) Software included with the Products, but 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.
- (iii) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) NO OTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE IN THIS SECTION 9, 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.

#### 10. 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 10(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.**

## 11. 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 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 11(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.

## 12. 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 A. 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.

### 13. 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 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.
- (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(b), 3(b), 3(c), 3(d), 4, 5, 6(b), 8, 9, 10, 11, 12, 13(d), 14, and 15 shall survive the termination of this Agreement for any reason in accordance with their respective terms.

### 14. 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) on which the Products identified on in the Sales Order will be installed.
  - (m) "**Termination Events**" has the meaning assigned to such term in Section 13(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(b)).
  - (r) "**Treatment Session**" means the NeuroStar Treatment Session for use with the Systems.
  - (s) "**User Manual**" means the Neuronetics NeuroStar Advanced Therapy System user manual provided by Neuronetics including, if any, new versions, revisions, updates and modifications thereto.
- ## 15. 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 set forth on the Sales Order or the applicable Order Confirmation. This Agreement merges and supersedes all prior and contemporaneous agreements, representations and understandings of the parties with respect to the subject matter hereof. 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**  
**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
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 12 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.