

**NeuroStar® Advanced Therapy for Mental Health  
Terms and Conditions of Sale (TouchStar Upgrade)**

**1. SCOPE OF AGREEMENT**

These NeuroStar® Advanced Therapy for Mental Health Terms and Conditions of Sale (TouchStar Upgrade), together with any Sales Order, the Documentation, the Patient Engagement Program T&Cs, the Practice Locator T&Cs, the Precision Pulse Program T&Cs, the Registry Program T&Cs, the Data Use Addendum, and any other attachments, exhibits, or appendices hereto or thereto (collectively, this “Agreement”), constitute the agreement between Customer and Neuronetics, Inc. (“Neuronetics”) concerning (a) Neuronetics’ sale of Products, and (b) Customer’s purchase and use of Products. 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”), then this Agreement does not pertain to products purchased under such Prior Agreement(s) except as set forth on one or more executed Conversion Notices.

**2. SALE AND USE OF PRODUCTS**

- (a) Sale of Products. Subject to this Agreement, Neuronetics will sell to Customer, and Customer will purchase from Neuronetics, all Products set forth on any Sales Order. Except for the initial Sales Order, Customer may purchase additional Products by submitting a Sales Order to Neuronetics. Sales Orders are not binding until signed by Neuronetics. CUSTOMER AGREES THAT NEURONETICS’ THEN-CURRENT VERSION OF THIS AGREEMENT IS INCORPORATED INTO ALL SALES ORDERS BY REFERENCE AND MADE A PART THEREOF AS IF SET FORTH IN FULL THEREIN. IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AS IT EXISTS ON THE DATE ON WHICH CUSTOMER EXECUTES ANY SALES ORDER AND ANY SUBSEQUENT VERSION OF THIS AGREEMENT, THE SUBSEQUENT VERSION OF THIS AGREEMENT WILL CONTROL. FOR THE AVOIDANCE OF DOUBT, NEURONETICS IN ITS SOLE DISCRETION MAY MODIFY OR AMEND THIS AGREEMENT FROM TIME TO TIME, IN WHICH CASE THE MODIFIED OR AMENDED VERSION, AS MADE AVAILABLE TO CUSTOMER AT THE T&Cs WEBSITE OR OTHERWISE, WILL CONTROL. Products are new unless otherwise indicated on the applicable Sales Order; provided, that Products may contain components that have previously been used and, where previously used components are used, Products will meet or exceed the Specifications.
- (b) Supplies. Customer acknowledges that the safe and effective operation of a System requires use of Treatment Sessions, other Supplies, and the Software, which are specifically engineered and manufactured to be compatible with the System and to meet quality and performance standards. Customer understands that there is a separate charge for Treatment Sessions, certain other Supplies, and certain Software. Customer will use only the Treatment Sessions, other Supplies, and the Software provided by or expressly authorized by Neuronetics for use with the System. Customer acknowledges that the System contains software that monitors all procedures performed, and the System will not operate without the use of certain of the Supplies. Treatment Sessions supplied to Customer pursuant to this Agreement are for

use only with the Systems owned or operated by Customer. Customer will not use Treatment Sessions supplied to Customer pursuant to this Agreement with any other device. Upon Neuronetics’ request, Customer will provide Neuronetics with reasonable timely access (via internet or in-person, as determined by Neuronetics) to Customer’s facilities and Products in order to verify the number of NeuroStar treatments that Customer or its Authorized Users have performed, Treatment Sessions utilized, and Treatment Sessions remaining in inventory. Except in the case of suspension of sales pursuant to Section 16(b) or termination pursuant to Section 15(e) or 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 purchases will be at Neuronetics’ then-current pricing and pursuant to Neuronetics’ then-current applicable terms and conditions.

- (c) Authorized Use. Products are being sold or licensed (as applicable) to Customer with the understanding that the operation of Products must be undertaken only in a manner that is compliant with this Agreement and the Documentation. EACH PRODUCT MUST ONLY BE USED UNDER THE PRESCRIPTION, PROVISION, AND SUPERVISION OF A HEALTH CARE PROVIDER WHO IS AUTHORIZED TO PRESCRIBE, PROVIDE, AND SUPERVISE TMS THERAPY PURSUANT TO THE LAWS, RULES, AND REGULATIONS OF THE JURISDICTION IN WHICH SUCH PRODUCT IS OPERATED (each, a “Provider”). Only Providers and individuals operating under the supervision of Providers (each Provider and each such individual, an “Authorized User”) may use Products. Customer must ensure that the Authorized Users have the requisite training and skill required to use each Product as required by: (i) all applicable governmental authorities in the jurisdiction in which such Product is operated; or (ii) this Agreement. Customer and the Authorized Users must at all times be and remain in full compliance with all applicable laws, rules, and regulations, including those promulgated by state medical agencies and certification boards, relating to use of Products. Customer will 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 Products or failure to comply with: (ix) applicable laws, rules, and regulations; or (x) this Agreement.
- (d) Exclusivity. Customer will solely and exclusively use Products, and will not use a Competitor’s TMS device or system, in the provision of TMS treatments to patients for whom Products are indicated and medically appropriate.

**3. PRICING AND PAYMENT TERMS**

- (a) Prices. The prices for Products and Services specified on a Sales Order will be as set forth in such Sales Order. If pricing for Products or Services is not set forth on a Sales Order, then the prices for such Products or Services will be Neuronetics’ then-current prices, which Neuronetics will provide to Customer

promptly following Neuronetics' receipt of Customer's written request therefor.

- (b) Taxes, Fees, Expenses, and Charges. Customer will pay all taxes, assessments, levies, and fees, and other charges, interest, and penalties relating to Customer's purchase of Products and Services and Customer's performance of any procedures. Customer will be solely responsible for all sales, use, excise, or consumption taxes or duties assessed on the purchase of Products and Services and not collected by Neuronetics at the time of the applicable sale. Except for Services covered by the Limited Warranties, payment for Services is due prior to Neuronetics' performance thereof and will be charged at Neuronetics' then-current rates.
- (c) Discounts, Rebates, and Warranties. The pricing for Products may reflect or be subject to discounts, rebates, warranties, 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, warranties, or other price reductions received by Customer under this Agreement comply with the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) (the "Anti-Kickback Statute") and other applicable federal and state law, and that any discounts provided under this Agreement or any other discount program satisfy the safe harbor regulations of the Anti-Kickback Statute (including the warranties safe harbor and the discount safe harbor set forth in 42 C.F.R. § 1001.952(g) and (h), respectively). 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 this Agreement, the net price per Treatment Session, and the amount of any discounts or other price reductions received by Customer from Neuronetics' list price for Treatment Session purchases. Customer will comply with all applicable requirements of federal and state law with respect to discounts received under this Agreement. Customer acknowledges that the safe harbors of the Anti-Kickback Statute require that certain warranties and discounts, including certain rebates and reductions in price, be reported or passed on to federal and state health care programs, including Medicare and Medicaid. As a condition of this Agreement, to the extent applicable, Customer will fully and accurately report all discounts, rebates, warranties, or other price reductions, including warranty items, replacement products, credits, or refunds, in the costs claimed or charges made under any federal and state health care programs, and it will provide information upon request to reimbursement programs, including Medicare and Medicaid, in accordance with federal and state laws. The reporting requirements for warranty and discount for medical products and services reimbursed by federally funded healthcare programs are defined by federal regulations under the Anti-Kickback Statute, 42 C.F.R. § 1001.952(g) and (h), respectively. Customer will be solely responsible for determining whether any savings, discount, warranty item, credits, or refunds it receives must be reported or passed on to payors. Neuronetics will refrain from doing anything that impedes Customer from meeting its obligations under the Anti-Kickback Statute and its implementing regulations with respect to discounts received under this Agreement. No part of this Agreement will be

construed as inducement or encouragement for the referral of patients or the purchase of healthcare goods or services, except in compliance with applicable law. Neuronetics and Customer will comply with any state law, regulation, guidance document, manual provision, program memorandum, opinion letter, or other issuance from any governmental authority that regulates kickbacks, fee sharing, patient or program charges, recordkeeping, referrals, self-referrals, or medical referral services business laws (e.g., N.Y. C.L.S. Pub. Health § 4501 and Cal. Health and Safety Code § 445), and all applicable federal and state laws regulating health services or payment, including the Anti-Kickback Statute, the Stark Law (42 U.S.C. § 1395nn), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the exclusion laws (42 U.S.C. § 1320a-7), and the civil monetary penalty law (42 U.S.C. § 1320a-7a). No payment under this Agreement is intended to constitute remuneration in return for any referral of patients or the ordering of healthcare goods or services from Neuronetics.

- (d) Payment Terms. Before Neuronetics will be obligated to provide any Products or Services pursuant to this Agreement, Customer will first prepay to Neuronetics all amounts due for such Products or Services; provided, that if Neuronetics in its sole discretion determines after any number of such prepayments that Customer's payment history is exemplary, then Neuronetics may provide written or oral notice to Customer that Customer may pay any amounts due to Neuronetics within thirty (30) days after the date on which Neuronetics issues the corresponding invoice (any such notice, a "Net 30 Notice"). Payments will be directed to such address or account as Neuronetics may specify in writing from time to time. Neuronetics will not be responsible for any misdirected payments that result from cyber fraud (e.g., phishing), Customer error, or otherwise. Any invoice remaining unpaid after thirty (30) days from the invoice date will 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 will be required to timely pay the undisputed portion of such invoice. Down payments and deposits paid by Customer to Neuronetics are non-refundable. Neuronetics has sole discretion as to any amount and terms of credit that it extends to Customer and may require, at any time (including on or after Customer's receipt of a Net 30 Notice), that any or all Products or Services be paid cash in advance. Customer will reimburse Neuronetics for all collection costs (including legal fees) to recover overdue amounts not paid by Customer. Neuronetics may require Customer to pay for Products and Services in cash, wire transfer of immediately available funds, or check.
- (e) System Lease or Financing. Customer may enter into a lease or finance agreement with a leasing or financing company, and the terms thereof are solely between Customer and such leasing or financing company. If Customer elects to enter into a lease or finance agreement, such agreement will not relieve Customer of any obligations under this Agreement, except that Neuronetics will accept payment(s) made by such leasing or financing company on behalf of Customer. Any lease or finance arrangement is conditional upon Neuronetics' approval of such

arrangement and the leasing or financing company's full payment of the total purchase price in accordance with this Section 3. If the leasing or financing company fails to timely pay Neuronetics as set forth in any Sales Order, then Customer will pay to Neuronetics the unpaid portion upon written request from Neuronetics. Neuronetics retains a security interest in Products until paid in full.

#### 4. PROGRAM BENEFITS

- (a) Patient Engagement Program. From time to time, Neuronetics in its sole discretion may offer services to train customers to effectively engage with prospective and current patients regarding Products (the "Patient Engagement Program"), which may include: (i) advice regarding office staffing and patient engagement, benefits investigations, on-label indications and uses, quality assurance, Product access and oversight, and reimbursement (such advice is provided on an "as is / where is" basis, and Neuronetics disclaims all liability therefor and related thereto); (ii) customer recognition/badging on the Practice Locator; (iii) purchase discounts; (iv) warranty discounts; and (v) joint educational and marketing opportunities. Upon purchase of Treatment Sessions, Customer will automatically be enrolled and remain enrolled in the Patient Engagement Program unless: (i) Customer opts out of participating in the Patient Engagement Program; (ii) Customer is ineligible to participate in the Patient Engagement Program under this Agreement or the Patient Engagement Program T&Cs; or (iii) Neuronetics determines to discontinue the Patient Engagement Program (or any element thereof) or to change the criteria for participation in the Patient Engagement Program, and such discontinuation or change results in Customer no longer being eligible to participate in the Patient Engagement Program. Unless otherwise determined by Neuronetics, the incidental costs of participation in the Patient Engagement Program will be included in the purchase price paid by Customer for Treatment Sessions regardless of whether Customer participates in the Patient Engagement Program; provided, however, that certain elements of the Patient Engagement Program may include a separate charge or cost to Customer. Customer's participation in the Patient Engagement Program will be subject to the Patient Engagement Program T&Cs.
- (b) Upgraded Marketing Collateral Kit. Customer will receive one (1) Upgraded Marketing Collateral Kit per System with Customer's first "per click" purchase of Treatment Sessions of \$9,500 or more. Neuronetics may stage the delivery of components of the Upgraded Marketing Collateral Kit based upon completion of phases of any training required in connection with the Patient Engagement Program, as determined by Neuronetics. Customer will only use the components of the Upgraded Marketing Collateral Kit for patient education and treatment purposes with the System.
- (c) Practice Locator. From time to time, Neuronetics in its sole discretion may provide a web-based, or other, locator service to assist individuals interested in NeuroStar Advanced Therapy in locating medical professionals offering NeuroStar Advanced Therapy, which, in Neuronetics' sole discretion, 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 (the "Practice Locator"). Customer will automatically be enrolled and remain listed in the Practice Locator unless: (i) Customer opts out of participating in the Practice Locator; (ii) Customer (A) does not maintain sufficient proficiency in the use of Products (which may be measured by a minimum number of Treatment Sessions as may be specified in the Practice Locator T&Cs), and (B) has not completed a course of Product training approved by Neuronetics within the past twelve (12) months; (iii) Customer is delinquent in any payment to Neuronetics or otherwise in breach of any agreement with Neuronetics, and such delinquency or breach remains uncured for ten (10) days or more after Neuronetics notifies Customer of such delinquency or breach; or (iv) Neuronetics determines to discontinue the Practice Locator (or any element thereof) or change the criteria for participation in the Practice Locator, and such discontinuation or change results in Customer no longer being eligible to participate in the Practice Locator. Unless otherwise determined by Neuronetics, the incidental costs of the Practice Locator will be included in the purchase price paid by Customer for Treatment Sessions regardless of whether Customer participates in the Practice Locator. Customer's participation in the Practice Locator will be subject to the Practice Locator T&Cs.

- (d) Precision Pulse Program. From time to time, Neuronetics in its sole discretion may provide a program that includes a co-op marketing reimbursement element and a field support discount element, perhaps among other elements (the "Precision Pulse Program"). Except as otherwise provided in the Precision Pulse Program T&Cs, Customer will automatically be enrolled and remain listed in the Precision Pulse Program. Customer's participation in the Precision Pulse Program will be subject to the Precision Pulse Program T&Cs.
- (e) Registry Program. From time to time, Neuronetics in its sole discretion may provide a registry program by which its customers agree, perhaps among other things, to use certain components of TrakStar Internet Capability in exchange for certain benefits (the "Registry Program"). Except as otherwise provided in the Registry Program T&Cs, Customer will automatically be enrolled and remain listed in the Registry Program. Customer's participation in the Registry Program will be subject to the Registry Program T&Cs.

#### 5. TIME PERIOD FOR PURCHASES AND CANCELLATION

Sales Orders issued by Neuronetics are final and cannot be cancelled or rescheduled except with Neuronetics' prior signed written consent, which Neuronetics may provide or withhold 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 any Product for any reason. In the event of a shortage, Neuronetics reserves the right to allocate inventories and production in its sole discretion. Neuronetics will provide Customer at least five (5) days' prior notice of the scheduled shipping date, and Customer will accept delivery on such date; provided, however, that at Customer's written

request, Neuronetics will store a System for up to thirty (30) days after the System is ready for shipment at no charge to Customer. Neuronetics may charge Customer storage fees at its then-prevailing rates for storage of Systems after such thirty (30) day period. Unless otherwise set forth in the applicable Sales Order, all ownership of, responsibility for, and risk of loss in connection with any Product will pass from Neuronetics to Customer when such Product is placed with the carrier at Neuronetics' (or, if applicable, Neuronetics' supplier's) shipping point for shipment to Customer (known as FCA). Customer is deemed to have accepted Products without right of return, and risk of loss and title passes to Customer when Products are delivered to the shipper at Neuronetics' shipping point.

## 7. PACKAGING

Neuronetics has developed special shipping containers for delivery of Products. These containers are the property of Neuronetics and, unless Neuronetics otherwise agrees in writing, must be returned to Neuronetics at Neuronetics' expense upon completion of installation or service of the applicable Product. Subsequent relocation of a Product without the use of such special shipping containers may permanently damage the Product 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 Product will be at Neuronetics' sole discretion.

## 8. INSTALLATION, LOCATION, FEATURES, AND INSPECTION

- (a) Installation Date. Once a System is ready for shipment, Neuronetics will contact Customer to schedule a mutually convenient installation date for such System, and if the parties are unable to agree to an installation date, then the installation date will be deemed to be the first Neuronetics business day that is thirty (30) days after Neuronetics' scheduled shipping date (any such date, the "Installation Date"). If Neuronetics stores a System for more than thirty (30) days, Neuronetics in its sole discretion may include on Customer's invoice a storage charge at Neuronetics then-current storage rates. Unless Neuronetics otherwise agrees in writing, Customer will reimburse Neuronetics for all costs and expenses, including Neuronetics personnel time, for any installation postponement requested by Customer within fifteen (15) days of the Installation Date. Any such requested postponement may result in significant delay in rescheduling installation of a System.
- (b) Installation Site. Each System will initially be delivered and installed, and will at all times thereafter be located and used, at a site that Neuronetics approves in advance (the "Installation Site"). Without limiting the criteria that Neuronetics may use 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 applicable 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) include a wired ethernet port or wireless networking technology to allow the System to connect to TrakStar Internet Capability. If a dedicated line is not installed and verified on the Installation Date, or if such line ceases to be installed and verified at any other

time, Customer assumes full responsibility for any disruption in service, equipment damages, violations of warranty, repair costs, or improper operation of the Products, other Neuronetics equipment, or other unauthorized equipment connected to the same power circuit. If the Installation Site does not meet Neuronetics' standards on the Installation Date and, as a result, Neuronetics declines to install the applicable System on the Installation Date, then Neuronetics reserves the right to charge Customer for a full day of installation service at Neuronetics' then-current rates, and Neuronetics will not reschedule installation until Customer has paid such charge.

- (c) Relocation or Move of System. Customer may move or relocate a System from the 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 the Authorized Users; (ii) Customer receives Neuronetics' prior written consent to any such move or relocation, which consent will not be unreasonably withheld; and (iii) Neuronetics or installers approved by Neuronetics perform the move or relocation, including packing for shipment, unpacking the shipment, and installing and calibrating the System. Payment for relocation services is due prior to the move or relocation and will be charged at Neuronetics' then-current rates.
- (d) Customer's Sale or Assignment of Products.
- (i) Before offering any Product for sale or transfer to any third party or entering into any agreement for any of the foregoing, Customer will first offer to sell such Product to Neuronetics at the purchase price that Customer intends to offer for the sale or transfer of such Product. Neuronetics will have ten (10) Neuronetics business days after Neuronetics' receipt of such written notice to accept Customer's offer, and during such ten (10) Neuronetics business day period, Customer will not sell or transfer such Product or enter into any agreement for any of the foregoing. If Neuronetics accepts such offer, then Customer will sell such Product to Neuronetics at the price set forth in such written notice, and in connection with such sale, Customer will represent and warrant that such Product is in good working order, reasonable wear and tear excepted, and Customer will 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) Neuronetics business day period, then Customer may offer such Product for sale or transfer to third parties; provided, that if Customer subsequently lowers the sale price of such Product from that last sale price offered to Neuronetics, then the rights and obligations set forth in this Section 8(d)(i) automatically will be 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 Product in violation of this Section 8(d)(i), then Neuronetics will have the right to purchase such Product from the purchaser at the price paid to Customer for such Product. In no event may Customer sell or transfer any Product, directly or indirectly, to any Competitor.

- (ii) Subject to compliance with Section 8(d)(i), Customer may, with Neuronetics' written approval and in accordance with this Agreement, sell or transfer a Product to a third party other than a Competitor, in which case Neuronetics, upon providing such written approval, will allow transfer of such Product, and will provide price quotes to such third party for the moving and installation of such Product and for other Products and Services as such third party may request. No such transfer will be permitted or approved unless such third party enters into use and license agreements with Neuronetics acceptable to Neuronetics in its sole discretion.
- (iii) If Customer transfers, assigns, or sells any Product to a third party, then Neuronetics may access such Product and remove any remaining Treatment Sessions thereon and acquired under the terms of this Agreement.
- (e) Use and Maintenance. Customer will ensure that all Products are at all times properly maintained pursuant to the Specifications and that all procedures are performed in a safe and effective manner.
- (f) Inspections. Customer will allow Neuronetics to access Products from time to time to inspect (including the procedure log), service, repair, modify, and upgrade Products, 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 forty-eight (48) hours' prior notice.

## 9. INSTALLATION AND TRAINING

- (a) Installation.
  - (i) On the Installation Date, Customer must have at the Installation Site all personnel that Neuronetics identifies as necessary to the installation process, including a person who is an authorized representative of Customer (the "Customer Installation Personnel"). Upon Neuronetics completing installation of a System, Neuronetics and the Customer Installation Personnel will inspect the System for damage and for its operation in accordance with Neuronetics' then-current installation criteria (the "Installation Criteria") using any checklists that Neuronetics may provide for this purpose (the "Installation Checklists"). If Neuronetics and the Customer Installation Personnel agree that the Installation Criteria have been satisfied, then both Neuronetics and Customer will execute the Installation Checklists to evidence such agreement. If Customer refuses to execute the Installation Checklists, then the Customer Installation Personnel must specify in writing the Installation Criteria that have not been satisfied, and the Customer Installation Personnel will have no more than one (1) day after Neuronetics addresses the unsatisfied Installation Criteria to re-inspect the System, and if Neuronetics and the Customer Installation Personnel then agree that the System meets the Installation Criteria, then both Neuronetics and Customer will execute the Installation Checklists to evidence such agreement. If Customer does not re-inspect the System within such one (1) day period, or if Customer does not sign the Installation Checklists and does not specify in writing the Installation Criteria that have not been 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, the Customer Installation Personnel are not at the Installation Site or do not remain at the Installation Site and, as a result, Neuronetics declines to or is unable to install the System or inspect the System with the 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 will 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 session is included in the cost of a System. At the time of scheduling such training, Neuronetics will communicate further requirements that Customer must satisfy for such training to occur, including time commitments and necessary personnel that must be available during the appointed dates and times to facilitate effective training. Customer must schedule such training to occur within ninety (90) days after the Installation Date. Any such training scheduled beyond ninety (90) days after the Installation Date is subject to charge at Neuronetics' then-current rates, which Customer will pay in accordance with Section 3. Neuronetics will not enable a System for patient care purposes until 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, and Customer will pay for such training in accordance with Section 3.

## 10. SOFTWARE AND DOCUMENTATION

- (a) License of Software and Documentation.
  - (i) Limited License. The Software and the Documentation are not sold to Customer, but rather, are licensed to Customer. Neuronetics grants to Customer a personal, limited, non-exclusive, non-transferable, and non-sublicensable right and license for Customer and the Authorized Users to operate and use the Software and the Documentation solely in conjunction with the operation and use of the System as permitted under this Agreement and the Documentation. Customer and the Authorized Users obtain no right, title, or interest in or to the Software, except for the limited license granted under this Section 10(a), and Neuronetics and its licensors reserve all rights not granted in this Section 10(a).
  - (ii) Other Limitations. In addition to the limitations set forth in Section 10(a)(i), Customer will not loan, rent, lease, license, or otherwise transfer the Software or the Documentation to any other person, and Customer will not host the Software or the Documentation on behalf of any other person, and Customer will not copy, modify, remove, disassemble, decompile, reverse engineer, create derivative works from, tamper with, or otherwise reproduce the Software or the Documentation, except as permitted by this Agreement and with Neuronetics' signed written consent; provided, that if

so permitted, any such actions will be conducted in compliance with the confidentiality obligations set forth in this Agreement. Any such action undertaken without such permission and such consent will void all licenses and warranties granted to Customer under this Agreement.

- (b) License Termination. Notwithstanding anything to the contrary in this Section 10, Neuronetics may, on reasonable prior notice, terminate in whole or in part the license granted in Section 10(a).
- (c) TrakStar. Customer and the Authorized Users will use TrakStar only for Customer's patient care purposes and only on the TrakStar Computer using TrakStar Internet Capability for Customer's patient care purposes. Customer will not use TrakStar in connection with Customer's treatment of patients with a TMS device or system other than a System (including a Competitor's TMS device or system) or for any competitive purpose (including designing a competitive patient data management system).
- (d) Third Party Software. The Software may include Redistributable Code, which is protected under United States ("U.S.") and international copyright, trade secret, or other proprietary rights laws and international treaties. Customer is granted a non-exclusive, non-transferable (except to the extent that transfer of a System is permitted under this Agreement), and non-sublicensable license for Customer and the Authorized Users to use and display Redistributable Code solely in connection with the authorized operation of the System and in conformance with the provisions of this Agreement. Customer will not reproduce, redistribute, decompile, reverse engineer, or disassemble Redistributable Code, and Customer will not disintegrate Redistributable Code from the Software.
- (e) TrakStar Internet Capability.
  - (i) Access to and Use of TrakStar Internet Capability. Neuronetics will use commercially reasonable efforts to provide Customer with access to TrakStar Internet Capability, and Neuronetics will use commercially reasonable efforts to reestablish the availability of TrakStar Internet Capability should such availability be interrupted. Customer and the Authorized Users will use TrakStar Internet Capability only in connection with the use and operation of Systems for Customer's patient care purposes. Customer will not use TrakStar Internet Capability in connection with Customer's treatment of patients with a TMS device or system other than a System (including a Competitor's TMS device or system) or for any competitive purpose (including designing a competitive patient data management system). Customer has no right to receive administrator rights to TrakStar Internet Capability, whether to modify TrakStar Internet Capability, network settings, or otherwise. Customer is required to provide all facilities, services, and equipment meeting the Specifications and the configurations necessary to access TrakStar Internet Capability via a computer or other supported device.
  - (ii) Limitations. Customer will not: (A) rent, loan, transfer, sublicense, sell, lease, commercialize, or otherwise distribute or operate TrakStar Internet Capability to or for the benefit of any third party; (B) use TrakStar Internet Capability to enter any data other than data provided by the

System; (C) reverse engineer, decompile, disassemble, modify, or create derivative works from TrakStar Internet Capability; (D) bypass or breach any security device or protection used in connection with TrakStar Internet Capability; (E) access or use TrakStar Internet Capability other than by Customer or an Authorized User through the use of valid and applicable access credentials; (F) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner TrakStar Internet Capability; or (G) input, upload, transmit, or otherwise provide to or through TrakStar Internet Capability 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 will protect the confidentiality of access credentials assigned to Customer and the Authorized Users, and Customer will not share such credentials with or disclose such credentials to any third party, and Customer will cause the Authorized Users not to share such credentials with or disclose such credentials to any third party. Customer is fully responsible for all activity occurring under access credentials assigned to Customer and the Authorized Users. Customer will 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 Internet Capability by anyone using access credentials assigned to Customer and the Authorized Users.
- (iv) Data. As between Customer and Neuronetics, Customer will own all right, title, and interest in and to the data that Customer and the Authorized Users entered or transmitted to TrakStar Internet Capability. Customer grants to Neuronetics a royalty free, non-exclusive, perpetual, and irrevocable right and license to: (A) use such data to provide TrakStar Internet Capability to Customer, support Customer's use of Products, and satisfy regulatory needs (including medical device reporting); and (B) use aggregated or anonymized data based upon and including Customer data, so long as such data does not reveal any personally identifiable information of any particular individual person (including patients), Customer, or any of the Authorized Users, for product development and improvement, research, analysis, business analytics purposes, and marketing purposes, all subject to the provisions set forth in the Data Use Addendum. 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 this Agreement, Neuronetics owns all right, title, and interest in, and may access, retain, and use, transactional and performance data related to use of Products.
- (v) Changes, Suspension, and Termination. Neuronetics reserves the right, in its sole discretion, to make any changes to TrakStar and TrakStar Internet Capability as it deems necessary or useful, including changes to: (A) maintain or enhance the quality or delivery of Neuronetics' services to its customers, the competitive strength of or market for Neuronetics' services, the cost, efficiency, or performance

of TrakStar or TrakStar Internet Capability; or (B) comply with applicable law. Neuronetics may suspend, terminate, or otherwise deny Customer's, any of the Authorized Users,' or any other person's access to or use of all or any part of TrakStar Internet Capability without incurring any resulting obligation or liability if: (W) Neuronetics receives a judicial or other governmental demand or order, subpoena, or law enforcement request that requires Neuronetics to do so; (X) Neuronetics believes, in its sole discretion, that Customer or any of the Authorized Users have failed to comply with this Agreement or accessed or used TrakStar or TrakStar Internet Capability beyond the scope of the rights granted or for a purpose not authorized under this Agreement or the Documentation, or in any manner that does not comply with any instruction or requirement set forth in this Agreement or the Documentation; (Y) the Term expires; or (Z) this Agreement is terminated. In addition, on at least thirty (30) days prior written notice, Neuronetics may terminate its provision of TrakStar, TrakStar Internet Capability, of both to all customers, including Customer.

## 11. NEURONETICS MARKS AND MARKETING COLLATERAL

- (a) License of Neuronetics Marks and Marketing Collateral.
- (i) Limited License. The Neuronetics Marks and the Marketing Collateral are not sold to Customer, but rather, are licensed to Customer. Neuronetics grants to Customer a personal, limited, non-exclusive, non-transferable, and non-sublicensable right and license for Customer to use the Neuronetics Marks and the Marketing Collateral solely in conjunction with the operation and use of Products as permitted under this Agreement and the Documentation. Customer obtains no right, title, or interest in or to the Neuronetics Marks and the Marketing Collateral, except for the limited license granted under this Section 11(a), and Neuronetics and its licensors reserve all rights not granted in this Section 11(a).
- (ii) Other Limitations. In addition to the limitations set forth in Section 11(a)(i), Customer will not loan, rent, lease, license, or otherwise transfer the Neuronetics Marks or the Marketing Collateral to any other person, and except as otherwise provided in this Section 11, Customer will not copy, modify, remove, disassemble, decompile, reverse engineer, create derivative works from, tamper with, or otherwise reproduce the Neuronetics Marks or the Marketing Collateral, except as permitted by this Agreement and with Neuronetics' signed written consent; provided, that if so permitted, any such actions will be conducted in compliance with the confidentiality obligations set forth in this Agreement. Any such action undertaken without such permission and such consent will void all licenses and warranties granted to Customer under this Agreement.
- (b) Usage Guidelines. If Customer develops or has developed advertising, marketing, or promotional materials related to Products that uses Neuronetics trademarks, service marks, trade dress, other proprietary elements, or other indicia of origin controlled by Neuronetics, including logos and designs, then,

before using or disseminating any such materials: (i) Customer will comply with the then-current Neuronetics branding and style guidelines and the then-current Neuronetics quality control requirements; and (ii) provide copies of such materials to Neuronetics. Neuronetics reserves the right, at any time, to: (ix) require Customer to change or discontinue Customer's use of the Neuronetics Marks or the Marketing Material if Neuronetics, in its sole discretion, believes that such use is detrimental to Products, the Neuronetics Marks, the Marketing Material, or Neuronetics' business interests.; and (x) inspect to ascertain that the Neuronetics Marks and the Marketing Collateral are used only for services performed using Products. Customer will promptly comply with Neuronetics' requests regarding the use of the Neuronetics Marks and the Marketing Collateral. Customer will not adopt, use, or seek to register any trademarks, service marks, trade dress, other proprietary elements, or other indicia of origin, including logos and designs, that are confusingly similar to any of the Neuronetics Marks, and Customer will not combine any of the Neuronetics Marks with any other trademark, service mark, other mark, trade dress, other proprietary element, other indicia of origin, logo, design, word, term, device, logo or other matter. Customer will not adopt, use, or register any domain name that incorporates any of the Neuronetics Marks. Customer will not in any way use the Neuronetics Marks in a manner that could cause any confusion with, diminution in value of, or other adverse effect to the Neuronetics Marks. All goodwill derived from the use of the Neuronetics Marks will inure solely to the benefit of Neuronetics.

- (c) License Termination. Notwithstanding anything to the contrary in this Section 11, Neuronetics may, on reasonable prior notice, terminate in whole or in part the license granted in Section 11(a).

## 12. LIMITED WARRANTIES

- (a) Limited Warranties. For the duration set forth in Section 12(b), Neuronetics warrants to Customer as follows (collectively, the "Limited Warranties"):
- (i) when used by the Authorized Users in accordance with this Agreement and the Documentation, Products will: (A) be free from defects in material and workmanship; and (B) perform substantially in accordance with the Specifications;
- (ii) each Treatment Session will enable the System on which it is authorized for use in providing one (1) session of treatment with such System for one (1) 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;
- (iii) the Software, excluding Redistributable Code, as delivered with the System or upgraded by Neuronetics and properly installed and operated on the System for which it was originally licensed, will function substantially as described in the User Manual; and
- (iv) Neuronetics will pass through to Customer any warranties that Neuronetics receives on the TrakStar Computer and Redistributable Code; provided, that Customer will be 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.

- (b) Term of Limited Warranties. The term of the Limited Warranties will end as follows (collectively, the “Limited Warranty Terms”):
- (i) for the System, one (1) year from Customer’s acceptance of the System in accordance with Section 6 (the “System Limited Warranty Term”);
  - (ii) for the Software (excluding Redistributable Code), one (1) year from Customer’s acceptance of the System in accordance with Section 6 (the “Software Limited Warranty Term”);
  - (iii) for any upgrade to the System or the Software, ninety (90) days after the installation of such upgrade; and
  - (iv) for a Product other than the System and the Software, the shorter of: (A) one (1) year from Customer’s acceptance of such Product in accordance with Section 6; and (B) the shelf-life expiration date listed on any applicable packaging for such Product.
- (c) Option to Extended System Limited Warranty Term. Customer may purchase one (1) year extensions of the System Limited Warranty Term (any such extended term, an “Extended System Limited Warranty Term”). The commencement of any Extended System Limited Warranty Term is contingent upon Customer first executing or otherwise ratifying the Field Support T&Cs prior to the end of the System Limited Warranty Term or Extended System Limited Warranty Term then in effect. Under no circumstances will Neuronetics be required to assume warranty obligations with respect to any Product beyond three (3) years of the date on which such Product was delivered to Customer in accordance with Section 6.
- (d) Warranty Remedies.
- (i) Customer’s sole and exclusive remedy under the Limited Warranties is limited, at Neuronetics’ sole discretion, to repair or replacement of any Product that failed to conform to the Limited Warranties. Such repair or replacement may include replacement with refurbished Products.
  - (ii) Notwithstanding anything to the contrary in Section 12(d)(i), if the Software, other than Redistributable Code, fails to conform to the Limited Warranties during the Software Limited Warranty Term, then, as Customer’s sole and exclusive 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.
  - (iii) Where the Limited Warranties service results in Customer receiving replacement Products, such replacement Products will be subject to the Limited Warranties, including the Limited Warranty Terms.
- (e) Warranty Limitations. The Limited Warranties may, at Neuronetics’ sole discretion, be voided by any of the following:
- (i) Customer’s failure to comply with any provision of this Agreement; (ii) Customer’s failure to make any modifications,

including any updates to the Software, required by Neuronetics; (iii) abuse, misuse, negligent handling, abnormal use or working conditions, alteration, willful damage, neglect, or unauthorized installation, repair, modification, or service of Products; (iv) use of Products in a manner inconsistent with any provision of this Agreement or the Documentation; (v) use of Products by anyone other than the Authorized Users; (vi) use of expired or refurbished Supplies, or use of otherwise unauthorized supplies; (vii) the obsolescence of Products; (viii) a Force Majeure Event; or (ix) 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 Warranties. The Limited Warranties are intended to relate only to costs of repair, replacement, or service of Products. The Limited Warranties are not conditioned upon Customer’s exclusive use or minimum purchase of Products or any other Neuronetics item or service.

- (f) Prohibition on Transfer of Limited Warranties. Customer will not transfer the Limited Warranties to any third party without Neuronetics’ express written permission. Any purported transfer of the Limited Warranties without Neuronetics’ express written permission is null, void, and of no force or effect.
- (g) NO OTHER WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 12, PRODUCTS ARE PROVIDED “AS IS,” AND NEURONETICS DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, 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 GENERALITY OF THE IMMEDIATELY PRECEDING SENTENCE, NEURONETICS MAKES NO WARRANTY OF ANY KIND THAT 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 ELIGIBLE FOR REIMBURSEMENT BY INSURANCE COMPANIES AND OTHER THIRD PARTY PAYORS, 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 INTERNET CAPABILITY AND OTHER COMPONENTS OF PRODUCTS 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 LIMITATIONS.

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

- (a) Limitations of Liability.



- (i) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, NEURONETICS WILL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST REVENUE OR LOST PROFITS, LOSS OF DATA, LITIGATION EXPENSES, 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 PRODUCTS, OR FROM NEURONETICS' NEGLIGENCE OR OTHER FAULT IN CONNECTION THEREWITH. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, NEURONETICS' LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, ITS PERFORMANCE OR BREACH HEREOF, OR IN CONNECTION WITH ANY PRODUCTS OR SERVICE, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, WILL NOT EXCEED THE TOTAL OF ALL SUMS PAID BY CUSTOMER TO NEURONETICS FOR SUCH PRODUCTS 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 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 SUCH DISCLAIMERS, LIMITATIONS, AND EXCLUSIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.
- (b) Customer Insurance. Customer will maintain commercial general liability insurance and medical malpractice insurance in an amount that complies with the laws of the jurisdictions in which Products are used.
- (c) Compliance with Laws. Customer and the Authorized Users will comply with all laws, rules, and regulations applicable to Customer's and the Authorized Users' use of Products, including promotional activities, and will comply with all rules of the U.S. Federal Trade Commission and the U.S. Food and Drug Administration (the "FDA"). Customer will permit Neuronetics to affix to Products additional notices and labels as Neuronetics deems necessary or advisable in its sole discretion. Customer will not remove or tamper with any such notices or labels affixed to Products.
- (d) Neuronetics Indemnification of Customer. Neuronetics will defend, indemnify, and hold Customer harmless from and against any judgment or awarded damages (and reasonable costs and expenses of litigation, including reasonable attorneys' fees) to the extent arising from a third party's specific allegation that any Product, any Neuronetics Mark, or any Marketing Collateral furnished or licensed to Customer under this Agreement in the form provided by Neuronetics (and not in combination with any product or service provided by any party other than Neuronetics) constitutes an infringement of an issued U.S. patent or registered U.S. trademark or copyright (a "Covered Claim"); provided, that such obligation will not apply to, and the claim will not be considered a Covered Claim if it relates to, any modification of any Product by any person other than Neuronetics or any use of any Product that is: (i) not in accordance with this Agreement or the Documentation; (ii) for an indication that it is not cleared or approved by the FDA; or (iii) in combination with any technology, product, or process not supplied by Neuronetics. Neuronetics' obligations under this Section 13(d) are contingent upon: (viii) Customer promptly notifying Neuronetics in writing of the Covered Claim; (ix) Customer giving Neuronetics sole power and control over the investigation, defense, and settlement of the Covered Claim; and (x) 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. If, with respect to any Covered Claim, the use of any Product 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 will, at its option: (i) secure for Customer the right to continue using such Product by suspension of the injunction, by procuring for Customer a license, or by some other means; (ii) at Neuronetics' own expense, replace such Product with non-infringing goods; or (iii) remove such Product and refund a pro rata portion of the sums paid therefor, based on four (4) year straight line depreciation. THIS SECTION 13(d) STATES NEURONETICS' ENTIRE LIABILITY AND OBLIGATION (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT CLAIMS AND ALL OTHER CLAIMS INVOLVING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.
- (e) Customer Indemnification of Neuronetics. In addition to Customer's indemnity obligations set forth elsewhere in this Agreement, Customer will defend, indemnify, and hold Neuronetics harmless from and against any judgment or awarded damages (and reasonable costs and expenses of litigation, including reasonable attorneys' fees) in respect of claims made by the third party against Customer that are not Covered Claims.
- 14. APPLICABLE LAW, DISPUTE RESOLUTION, AND ATTORNEYS' FEES**
- (a) Applicable Law. Except as otherwise provided in Section 14(b), 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.

(i) Mediation and Arbitration. Any Dispute will be exclusively resolved: (A) first by non-binding mediation for at least one (1) day and no more than two (2) days in Chester County, Pennsylvania before a mutually agreed mediator; and (B) if the Dispute is not resolved by such mediation, then by binding arbitration in Chester County, Pennsylvania under the auspices of the American Arbitration Association (“AAA”) under its then-current Commercial Arbitration Rules (the “Rules”) before one (1) arbitrator appointed in accordance with the Rules and utilizing such limited and expedited discovery as the Rules may provide and as the arbitrator may deem appropriate. The Rules are available on AAA’s website at [www.adr.org/commercial](http://www.adr.org/commercial). Customer acknowledges and agrees that this Agreement concerns a commercial transaction, not the sale of products or services for personal or household use, and that the Rules, and not AAA’s Consumer Arbitration Rules, will be applied in any arbitration. If AAA cannot or will not serve and the parties are unable to select an administrator by mutual consent, then the administrator will be selected by a court having jurisdiction, provided that any administrator or arbitrator must agree to abide by the terms of this Section 14(b). In all cases, the arbitrator will be a retired or former judge or a lawyer with at least ten (10) years of experience. The parties intend for any disputes subject to this Section 14(b) to be resolved as promptly, efficiently, and expeditiously as possible, and if applicable, for the Rules to be applied to accomplish these objectives.

(ii) Arbitration Explained. Arbitration is a method of resolving disputes in front of one (1) or more neutral persons, known as an arbitrator, instead of having a trial in court in front of a judge or a jury. It can be a quicker and simpler way to resolve disputes. Arbitration proceedings are private and less formal than court trials. Each party to the dispute has an opportunity to be represented by an attorney and present evidence to the arbitrator. The arbitrator will issue a final and binding decision resolving the dispute, known as an award, which may be enforced as a court judgment. A court rarely overturns an arbitrator’s decision.

(iii) Covered Parties. This Section 14(b) is intended to benefit and may be enforced by or against: (A) Customer, Neuronetics, and each of their parents, subsidiaries, affiliates, successors, and assigns, and the employees, officers, directors, and controlling persons of all such companies; and (B) any other person or company (including to any Provider) who provides any Product or Service in connection with this Agreement if a Dispute is asserted against such other person or company at the same time a Dispute is asserted against Customer, Neuronetics, or any of the other persons or companies specified in this Section 14(b)(iii).

(iv) Disputes Not Subject to Arbitration. Notwithstanding anything to the contrary in this Section 14(b), the following

Disputes are not required to be arbitrated: (A) any Dispute that is within the jurisdiction of a small claims court or an equivalent court (provided, that if such Dispute is transferred, removed, or appealed from small claims court to a different court, then such Dispute will be subject to arbitration); and (B) Disputes regarding the validity or enforceability of this Section 14(b), which are for a court and not an arbitrator to decide (provided, that any Dispute regarding the validity or enforceability of this Agreement as a whole is for the arbitrator, and not a court, to decide). Moreover, this Section 14(b) does not prohibit Customer or Neuronetics, at any time, from: (X) exercising any lawful right to preserve the status quo or obtain possession of property or self-help remedies, including the right to set-off or exercise a statutory lien or other lien granted by law or rule, the right to restrain funds in an account, recoupment, repossession, replevin, or trustee’s sales; (Y) obtaining provisional or ancillary remedies or injunctive relief (other than a stay of arbitration), including attachment, garnishment, interpleader, or the appointment of a receiver by a court of appropriate jurisdiction; or (Z) bringing an individual action in court that is limited to preventing the other party from using a self-help or non-judicial remedy and that does not involve a request for damages or monetary relief of any kind. A party may also seek relief in a court with jurisdiction to move to compel arbitration or stay litigation.

(v) Governing Law. Any arbitration proceeding or award and the interpretation, validity, and enforcement of this Section 14(b) will be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq (the “FAA”). The arbitrator must apply applicable substantive law consistent with the FAA and applicable statutes of limitations and claims of privilege recognized at law. The arbitrator is authorized to award all remedies permitted by the substantive law and this Agreement that would apply in an individual court action. Injunctive, equitable, or declaratory relief may be issued but only in favor of the party seeking relief and only to the extent necessary to provide relief warranted by such party’s individual dispute. An award will be in writing and will state the findings of fact and conclusions of law on which it is based. The award is final and binding, except for any right of appeal provided by the FAA; provided, that if the amount of the Dispute exceeds \$50,000 or involves a request for injunctive or declaratory relief that could foreseeably involve a cost or benefit to either party exceeding \$50,000, then any party can, within thirty (30) days after the entry of the award by the arbitrator, appeal the award to a panel of three (3) arbitrators administered by the administrator. The panel will reconsider anew any aspect of the initial award requested by the appealing party. The decision of the panel will be by majority vote. Reference in this Section 14(b) to “the arbitrator” will mean the panel if an appeal of the arbitrator’s decision has been taken. The costs of such appeal will be borne in accordance with Section 14(b)(vi). The panel’s award is final and binding, except for any right of appeal provided by the FAA. Judgment on the award rendered by the arbitrator or any appeals panel may be entered by any court having jurisdiction. Any finding,

award, or judgment from the arbitration of any Dispute will apply only to such arbitration. No finding, award, or judgment from any other arbitration will impact the arbitration of any Dispute.

- (vi) Costs and Fees. The administrator charges filing and administrative fees, and the arbitrator charges fees. The parties will pay such fees in accordance with the administrator's rules. The parties will also bear the fees and expenses of their own attorneys, experts, and witnesses unless otherwise required by applicable law, this Agreement, or the administrator's rules. Notwithstanding the foregoing, if the arbitrator determines that any party's claim or defense is frivolous or wrongfully intended to oppress or harass the other party, then the arbitrator may award sanctions in the form of fees and expenses reasonably incurred by the other party if such sanctions could be imposed under Rule 11 of the Federal Rules of Civil Procedure.
- (vii) Jury Trial Waiver. FOR DISPUTES SUBJECT TO ARBITRATION, CUSTOMER AND NEURONETICS WILL NOT HAVE THE RIGHT TO PURSUE SUCH DISPUTE IN COURT (EXCEPT A SMALL CLAIMS COURT OR SIMILAR COURT AS CONTEMPLATED IN SECTION 14(b)(iv)) OR HAVE A JURY DECIDE THE DISPUTE. CUSTOMER KNOWINGLY AND VOLUNTARILY AGREES AND UNDERSTANDS THAT DISPUTES WILL BE RESOLVED ONLY IN ARBITRATION BY A NEUTRAL ARBITRATOR OR IN SMALL CLAIMS COURT OR SIMILAR COURT AS CONTEMPLATED IN SECTION 14(b)(iv), AND THAT THERE IS NO JUDGE OR JURY IN ARBITRATION.
- (viii) Class Action Waiver. FOR DISPUTES SUBJECT TO ARBITRATION, EACH OF CUSTOMER AND NEURONETICS AGREES THAT: (A) IT MAY NOT PARTICIPATE IN A CLASS ACTION IN COURT OR IN A CLASS-WIDE ARBITRATION, EITHER AS A PLAINTIFF, CLASS REPRESENTATIVE, OR CLASS MEMBER; (B) IT MAY NOT ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; (C) CLAIMS BROUGHT BY OR AGAINST CUSTOMER OR NEURONETICS MAY NOT BE JOINED OR CONSOLIDATED WITH CLAIMS BROUGHT BY OR AGAINST ANY OTHER PERSON OR ENTITY, ABSENT THE EXPRESS WRITTEN CONSENT OF ALL PARTIES; AND (D) THE ARBITRATOR WILL HAVE NO POWER OR AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR OTHER REPRESENTATIVE ARBITRATION OR TO ISSUE ANY RELIEF THAT APPLIES TO ANY PERSON OR ENTITY OTHER THAN CUSTOMER, NEURONETICS, OR THE OTHER ARBITRATING PARTIES INDIVIDUALLY.
- (ix) Rules of Interpretation. This Section 14(b) is binding upon and benefits Customer, Neuronetics, and their respective heirs, successors, and assigns. This Section 14(b) will survive: (A) any sale, assignment, or transfer of a party's rights under this Agreement; (B) any bankruptcy to the

extent consistent with applicable bankruptcy law; (C) any default, breach, or repossession; (D) any termination, cancellation, closure, suspension, or non-renewal of this Agreement; and (E) any termination, amendment, expiration, or performance of any transaction between Customer and Neuronetics. In the event of a conflict or inconsistency between this Section 14(b), on the one hand, and the applicable arbitration rules or the other terms of this Agreement, on the other hand, this Section 14(b) will govern.

- (x) Severability. If any portion of this Section 14(b) is held to be invalid or unenforceable, then the remaining portions will nevertheless remain in force; provided, that: (A) if a determination is made that Section 14(b)(viii) is unenforceable, and that determination is not reversed on appeal, then this Section 14(b) (other than this Section 14(b)(x)) will be void in its entirety; and (B) if a court determines that a public injunctive relief Dispute may proceed notwithstanding Section 14(b)(viii), and that determination is not reversed on appeal, then the public injunctive relief Dispute will be decided by a court, any individual Disputes will be arbitrated, and the parties will ask the court to stay the public injunctive relief Dispute until the other Disputes have been finally concluded.
- (xi) Acknowledgment. CUSTOMER ACKNOWLEDGES THE RIGHT TO HAVE AN ATTORNEY OR OTHER ADVISOR REVIEW THIS SECTION 14(b) AND THE OTHER PROVISIONS OF THIS AGREEMENT BEFORE CUSTOMER SIGNS THE APPLICABLE SALES ORDER.
- (c) Attorneys' Fees. If any dispute resolution or other legal proceeding is initiated with respect to this Agreement, and if Neuronetics is the substantially prevailing party in such proceeding, then, in addition to all other remedies available to Neuronetics, Customer will reimburse Neuronetics for its reasonable attorneys' fees, costs, and expenses associated with the proceeding, including: (i) reasonable attorneys' fees, costs, and expenses incurred prior to the initiation of the proceeding in seeking collection or other compliance with Customer's obligations hereunder; and (ii) reasonable attorneys' fees, costs, and expenses incurred in responding to unfounded claims.

## 15. HIPAA BUSINESS ASSOCIATE PROVISIONS

- (a) Access to PHI. All capitalized terms used in this Section 15 and not defined in this Agreement will have their meanings set forth in: (i) the 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, codified at 45 C.F.R. Parts 160 and 164, as amended from time to time ("HIPAA"), 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 thereto (the "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 PHI received from Customer solely as permitted or required by this Agreement or as otherwise Required By Law. All such uses and disclosures will be in compliance with each applicable requirement of 45 C.F.R. § 164.504(e).

(b) Restrictions on Use and Disclosure of PHI. Neuronetics will 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 of, or to carry out the legal responsibilities of, Neuronetics; provided, that such disclosures are Required By Law, or Neuronetics obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to such person, and such person notifies Neuronetics of any instances of which it is aware in which the confidentiality of PHI has been breached. Neuronetics may use PHI for any purposes as contemplated in this Agreement and as permitted under HIPAA and applicable state law. 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 must conform to the requirements of the Privacy Standards. Once the information is de-identified, such information will 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. Neuronetics will not directly or indirectly receive remuneration in exchange for any PHI, and Neuronetics will not use or disclose PHI for marketing, fundraising, or sale purposes unless Neuronetics or Customer has obtained a valid HIPAA-compliant authorization from the patient that specifies whether PHI can be further exchanged for remuneration, marketing, fundraising, or sale purposes by Neuronetics, and only as permitted under 45 C.F.R. §§ 164.508(a) and 164.514(f). Neuronetics will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Agreement. Neuronetics will 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 45 C.F.R. §§ 164.308, 164.310, and 164.312. Neuronetics will 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 will 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 will 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 will report to Customer any use or disclosure of PHI not provided for by this Agreement of which Neuronetics becomes aware. Neuronetics also will report to Customer within fifteen (15) Neuronetics business days Neuronetics' discovery of any Security Breach and any successful

Security Incidents. Neuronetics will report to Customer any unsuccessful Security Incidents as requested by Customer. Neuronetics' reports to Customer regarding Security Breaches will 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 will make any notifications regarding such Breaches required under the HIPAA Standards and the ARRA, and Neuronetics will provide Customer with notification-related information required under the HIPAA Standards and the ARRA.

- (c) Agents and Subcontractors. Neuronetics will require any agent or subcontractor to whom it provides PHI received from Customer 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 will 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 Field Support T&Cs or this Agreement.
- (d) Designated Record Set. Upon Customer's request, Neuronetics will provide Customer access to PHI in a Designated Record Set so that Customer can meet the requirements under 45 C.F.R. § 164.524 and the ARRA (including access to the information in electronic form). At Customer's request, Neuronetics will make any amendments to PHI in a Designated Record Set that Customer directs pursuant to 45 C.F.R. § 164.526 and the ARRA. Neuronetics will 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 will provide the individual with an accounting of disclosures relating to such individual, as required under the ARRA. Neuronetics will 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 PHI pertains solely to a healthcare item or services for which Customer has been paid out of pocket in full. Neuronetics will 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 will 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 (the "Secretary") for purposes of determining Customer's compliance with the Privacy and Security Standards.
- (e) Termination and Post-Termination. Upon termination of this Agreement for any reason, it will 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 will 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 will 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 an alleged material breach of this Section 15 by Neuronetics, Customer: (i) will provide Neuronetics an opportunity to cure such breach within thirty (30) days of Neuronetics' receipt of Customer's written notice of such breach, and may terminate this Agreement if Neuronetics does not cure such breach within such thirty (30) days; or (ii) may immediately terminate this Agreement if Neuronetics has breached a material term of this Section 15 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 Section 15 by Customer, Neuronetics will work with Customer to take steps to cure such breaches or end the violation and, if such steps are unsuccessful, Neuronetics will terminate this Agreement if feasible, and if it is not feasible to terminate this Agreement, Neuronetics may report the problem to the Secretary.

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

## 16. TERM, SUSPENSION, TERMINATION, AND SURVIVAL

- (a) Term. This Agreement will commence upon the last date of signature set forth on the applicable Sales Order (the "Agreement Effective Date") and will continue thereafter until the last obligation of either party has been performed or waived, unless sooner terminated pursuant to Section 15(e) or Section 16(c) (the "Term").
- (b) Suspension. Neuronetics may suspend 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.
- (c) Customer Breach and Termination. Upon the occurrence of a Customer Breach, Neuronetics: (i) will provide Customer an opportunity to cure such Customer Breach within thirty (30) days of Customer's receipt of Neuronetics' written notice of such Customer Breach, and may terminate this Agreement if Customer does not cure such Customer Breach within such thirty (30) days; or (ii) may immediately terminate this Agreement if such Customer Breach cannot be cured.
- (d) Effect of Termination. Upon the effective date of any Customer Breach: (i) Customer and the Authorized Users will immediately cease all use of all Products; (ii) Customer will promptly pay Neuronetics 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 Products purchased under this Agreement.

- (e) Survival. Section 2(c), Section 3(b), Section 3(c), Section 3(d), Section 7, Section 8(c), Section 8(d), Section 10(a)(ii), Section 10(b), Section 10(c), Section 10(d) (last sentence only), Section 10(e)(ii), Section 10(e)(iii), Section 10(e)(iv), Section 10(e)(v), Section 11(a)(ii), Section 11(c), Section 12(d), Section 12(e), Section 12(f), Section 12(g), Section 13, Section 14, Section 15, Section 16(d), this Section 16(e), Section 17, and Section 18 will survive the termination of this Agreement for any reason in accordance with their respective terms.

## 17. DEFINITIONS

- (a) "Competitor" means any company other than Neuronetics that is involved in the development, marketing, sale, or distribution of TMS devices or systems.
- (b) "Conversion Notice" means a document in form and substance acceptable to Neuronetics in its sole discretion that indicates Customer's desire to convert one or more Neuronetics products such that, on and after the applicable conversion date(s), such Neuronetics product(s) will no longer be governed by the applicable Prior Agreement(s) on a fixed price model, and instead will be governed by this Agreement.
- (c) "Customer" means the Neuronetics customer identified on the initial Sales Order and any persons or legal entities on behalf of which such Neuronetics customer has the actual or apparent authority to purchase any Product or Service.
- (d) "Customer Breach" means any of the following: (i) Customer failing to operate any Product in accordance with this Agreement; (ii) Customer failing to timely make any payment due to Neuronetics under this Agreement, any Prior Agreement, or otherwise; (iii) Customer tampering with or altering any Product in any way; (iv) Customer prohibiting, failing to permit, or failing to cooperate in the conduct of, any inspection of any Product requested by Neuronetics; or (v) Customer breaching any term of this Agreement or any Prior Agreement.
- (e) "Data Use Addendum" means the addendum attached at Appendix A, which is incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (f) "Dispute" means any past, present, or future dispute, controversy, or claim arising out of or relating to this Agreement, including: (i) its performance, breach, or interpretation, any Prior Agreement between Customer and Neuronetics, any Product or Service sold or provided pursuant to this Agreement or any Prior Agreement, or the relationship between Customer and Neuronetics resulting from any of the foregoing; (ii) initial claims, counterclaims, cross-claims, and third party claims; (iii) those based upon contract, tort, consumer rights, fraud, or other intentional torts, state and federal constitutions, statutes, and regulations, ordinances, common law, equity, injunctive relief, or declaratory relief; (iv) any data breach, privacy, marketing, or advertising dispute, controversy, or claim; (v) those arising from communications involving telephones, automatic dialing systems, artificial or prerecorded voice messages, text messages, or facsimile machines; and (vi) those arising out of or related to actions, omissions, transactions, facts, or conduct that occurred prior to the Agreement Effective Date.

- (g) “Documentation” means all information in written, graphic, electronic, or machine-readable form relating to use or operation of any Product, including the User Manual, the Specifications, instructions for use and installation, and service, repair, and warranty information, which is incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (h) “Field Support T&Cs” any then-current terms and conditions of any Extended System Limited Warranty Term as Neuronetics may adopt, modify, or amend in its sole discretion from time to time, and as made available to Customer at the T&Cs Website or otherwise.
- (i) “Force Majeure Event” means an act of God, act of war, terrorism, civil disturbance, shortage of power, fire, transportation contingency, catastrophe, pandemic, or law, regulation, act, or order of any government or governmental agency.
- (j) “Marketing Collateral” means the brochures, videos, testimonials, social media, product aids, and other materials that Neuronetics makes available to Customer for Customer’s marketing of its use of any Product.
- (k) “Marketing Collateral Kit” means the collection of Marketing Collateral included with Customer’s purchase of a System or separately purchased by Customer.
- (l) “Neuronetics Marks” means the trademarks, service marks, trade dress, and other indicia of origin controlled by Neuronetics, including logos and designs, that Neuronetics approves from time to time for use by Customer in connection with Customer advertising or marketing its use of any Product.
- (m) “NeuroStar Advanced Therapy” means TMS therapy delivered via the System.
- (n) “Patient Engagement Program T&Cs” means any then-current terms and conditions of the Patient Engagement Program as Neuronetics may adopt, modify, or amend in its sole discretion from time to time, and as made available to Customer at the T&Cs Website or otherwise, which are incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (o) “Precision Pulse Program T&Cs” means the then-current terms and conditions of the Precision Pulse Program as Neuronetics may adopt, modify, or amend in its sole discretion from time to time, and as made available to Customer at the T&Cs Website or otherwise, which are incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (p) “Practice Locator T&Cs” means any then-current terms and conditions of the Practice Locator as Neuronetics may adopt, modify, or amend in its sole discretion from time to time, and as made available to Customer at the T&Cs Website or otherwise, which are incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (q) “Product” means any System, the Software, or Supplies provided or to be provided under this Agreement, and the components thereof.
- (r) “Redistributable Code” means all third party software that is licensed to Neuronetics and is distributed with the Software.
- (s) “Registry Program T&Cs” means any then-current terms and conditions of the Registry Program as Neuronetics may adopt, modify, or amend in its sole discretion from time to time, and as made available to Customer at the T&Cs Website or otherwise, which are incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (t) “Sales Order” means a document in form and substance acceptable to Neuronetics in its sole discretion, executed by Customer and Neuronetics, that specifies Products or Services to be purchased by Customer for Customer’s use under this Agreement, which is incorporated into this Agreement by reference and made a part hereof as if set forth in full herein.
- (u) “Services” means all delivery, installation, training, support, maintenance, repair, and warranty services provided to Customer by or on behalf of Neuronetics under this Agreement.
- (v) “Software” means the software programs, tools, and data, whether embedded or incorporated in a Product or used in conjunction with the operation of a Product, including TrakStar, TrakStar Internet Capability, and Redistributable Code incorporated into or delivered with such software.
- (w) “Specifications” means any then-current installation, operating, maintenance, services, and usage guidelines and requirements for Products as Neuronetics may adopt, modify, or amend in its sole discretion from time to time.
- (x) “Supplies” means components, single use items (including Treatment Sessions, treatment packs, ear plugs, and personal protective equipment), and accessories, spare parts, and replacement parts sold by Neuronetics for use with Products.
- (y) “System” means the NeuroStar Advanced Therapy Systems (including treatment coil, mobile console, display screen, and treatment chair) and accessories thereto, including any Neuronetics-approved replacement therefor, but excluding any TrakStar Computer and any NeuroStar Advanced Therapy System that Customer owns that is governed by a Prior Agreement (unless converted pursuant to a Conversion Notice); provided, that if Customer purchases multiple NeuroStar Advanced Therapy Systems under this Agreement, each will be deemed a separate System for purposes of this Agreement.
- (z) “T&Cs Website” means [www.neurostar.com/t-c/](http://www.neurostar.com/t-c/) or any successor website.
- (aa) “TMS” means transcranial magnetic stimulation.
- (bb) “TrakStar” means Neuronetics’ patient data management system software, known as TrakStar, configured for installation and use on a TrakStar Computer, including any new versions, updates, and upgrades thereto.
- (cc) “TrakStar Computer” means a stand-alone personal computer purchased by Customer under the terms of this Agreement that is dedicated to use with TrakStar and that is directly attached to the System.
- (dd) “TrakStar Internet Capability” means a web-based application service through which Neuronetics makes TrakStar available for use by Customer and the Authorized Users.

- (ee) “Treatment Session” means: (i) one (1) session of treatment with the System for one (1) 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; or (ii) one (1) valid treatment link (known as SenStar) to be used for one (1) session of treatment with the System for one (1) 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.
- (ff) “Upgraded Marketing Collateral Kit” means the standard Marketing Collateral Kit, plus two (2) sets of Neuronetics branded scrubs, one (1) Neuronetics branded microfleece throw blanket, two (2) Neuronetics branded face masks, and one (1) digital frame preloaded to display Neuronetics branded assets.
- (gg) “User Manual” means any then-current Neuronetics user manual for the applicable Product as Neuronetics may adopt, modify, or amend in its sole discretion from time to time.

## 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, apparatuses, programs, software, specifications, drawings, business plans, pricing, data, and other information, including Product and Service pricing and this Agreement. 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 will be and remain its owner’s exclusive property, and the receiving party will keep and will obligate its employees and agents to keep all such information confidential, and will not copy or disclose it to others without the owner’s prior written approval, and will return all tangible copies of such information to the owner promptly upon request. Nothing herein will 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. Private and confidential information received from Neuronetics will 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 will only use the private and confidential information received from Neuronetics, including this Agreement and the Documentation, to use Products and Services in accordance with this Agreement and the Documentation. Neuronetics intends to protect the privacy and security of PHI received by or disclosed to any Neuronetics representative in accordance with Section 15. Notwithstanding any other term of this Agreement, Neuronetics may access and use, and will 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 for product development and improvement and research and analysis purposes so long as such data does not reveal any personally identifiable information of any particular individual person, Customer, or any Authorized User. Products will be considered the private and confidential information of Neuronetics without the need for any specific markings.
- (b) Binding Effect, Assignments, and Change of Name or Contact Information. This Agreement will be binding upon the parties and each of their successors and permitted assigns. Except as otherwise provided in this Agreement, Customer will have no right to assign or transfer any right or obligation under this Agreement without Neuronetics’ prior written consent. Customer will promptly notify Neuronetics of any changes to Customer’s name, address, telephone number, or other contact information.
- (c) 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 rejects all such terms. Any conflict or inconsistency between a Sales Order and this Agreement will be governed by this Agreement. Once a Sales Order is signed and delivered by Neuronetics to Customer, no subsequent change of, addition to or insertion of additional language into such Sales Order or this Agreement by Customer will be effective without specific signed written consent of Neuronetics to such change, addition, or insertion. Notwithstanding anything to the contrary in this Section 18(c), in the event of any conflict between this Agreement and the terms and conditions set forth in a Sales for Customer’s future purchase of Products or Services, Neuronetics’ then-current terms and conditions in such Sales Order will govern.
- (d) No Third Party Beneficiaries. Except as otherwise provided in Section 14(b)(iii), there are no third party beneficiaries to this Agreement.
- (e) Severability. Each clause contained in this Agreement will be treated as a separate and independent clause, and the unenforceability of any clause will not impair the enforceability of any other clause. If any clause in this Agreement will for any reason be held to be unenforceable, then the appropriate judicial body should construe such clause by limiting and reducing it such that it is enforceable to the extent compatible with applicable law.
- (f) 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 Products and Services 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; provided, that unless Customer has delivered a Conversion Notice, this Agreement does not merge or supersede any Prior Agreements. Except as otherwise provided in Section 2(a), no amendment, modification, or waiver of any provision of this Agreement will be effective unless mutually agreed in writing. No failure or delay in exercising any right or remedy will be a waiver thereof.



**APPENDIX A**  
**DATA USE ADDENDUM**



## DATA USE ADDENDUM

This Data Use Addendum (this “DUA”) is incorporated into the NeuroStar® Advanced Therapy for Mental Health Terms and Conditions of Sale (TouchStar Upgrade) (the “Terms and Conditions”) by reference and made a part thereof as if set forth in full therein, and applies to all Products purchased by Customer from Neuronetics that include a Limited Data Set for one or more purposes outlined in 45 C.F.R. § 164.514(e). 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 defined this DUA or the Terms and Conditions, all capitalized terms used in this DUA will have the meaning established for purposes of HIPAA.
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 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 and Development;
  - d. Product Development;
  - e. Clinical;
  - f. Operations;
  - g. Customer Services;
  - h. Sales; and
  - i. Marketing.

In addition to Neuronetics, 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., FDA, U.S. Department of Defense, U.S. Department of Veterans Affairs);
  - clinicians and researchers;
  - Neuronetics customers; and
  - contract research organizations.
3. **Use of Customer Identity.** Neuronetics will leave Customer’s name and operational locations confidential unless Customer permits disclosure of such information in writing.
4. **Minimum Necessary.** Neuronetics will abide by the minimum necessary policies and procedures of Customer to the extent that Customer provides such policies and procedures to Neuronetics in writing.
5. **Responsibilities of Neuronetics.** Neuronetics will:
  - 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 or 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 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 will not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest to Neuronetics, its affiliates, or its representatives.
7. **Removal of Certain Identifiers.** For the avoidance of doubt, a Limited Data Set will 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 and license numbers;
  - k. vehicle identifiers and serial numbers, including license plate numbers;
  - l. device identifiers and serial numbers;
  - m. web universal resource locators (known as URLs);
  - n. internet protocol address numbers (known as IP addresses);
  - o. biometric identifiers, including finger prints and voice prints; and
  - p. full face photographic images and any comparable images.