**NEURALA VIA**

**ORDER FORM**

This Neurala VIA Order Form (“**Order Form**”) is by and between [INSERT PARTNER COMPANY LEGAL ENTITY AND ADDRESS], (“**Licensor**”) and the entity listed as Customer below (“**Customer**”). This Order Form is entered into pursuant to and will be governed by Neurala VIA Terms and Conditions attached hereto and incorporated herein by reference (the “**Terms**” and, together with any and all Order Forms, the “**Agreement**”). All capitalized terms not defined in this Order Form have the meaning given to them in the Terms. In the event of any conflict between this Order Form and the Terms, the terms set forth in this Order Form will prevail, but solely with respect to this Order Form. Licensor does not agree to any other terms, including any terms on Customer’s purchase order or delivery acknowledgments. The defined terms that are specific to each licensing model are set forth in this Order Form below.

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| --- | --- | --- | --- | --- |
| **Customer Name: [INSERT CUSTOMER LEGAL ENTITY NAME]** | | | | |
| **Order Form Effective Date: [DATE]** | | **Initial Order Form Term:** One year from the Order Form Effective Date. The Order Form will automatically renew foradditional periods of One year (each a “**Renewal Term**”) unless terminated as provided in the Terms. | | |
| **Product (If Checked)** | **Licensing Model and Restrictions** | | **License Term (If Checked)** | **Fee** |
| Brain Builder Cloud | Permitted Storage: [100 GB] | | Order Form Term | **$XX,XXX.XX** |
| Video Annotation Hours: up to 1 hour per month | |
| Number of Brains: [2] | |
| Maximum Number of Monthly API Calls: [250,000 per month] | |
| Maximum Number of Authorized Users: [3] | |
| Neurala VIA  Brain Builder | Maximum Number of Instances: [X] | | Order Form Term  Perpetual | **$XX,XXX.XX** |
| Neurala VIA Inspector | Maximum Number of Instances: [X] | | Order Form Term  Perpetual | **$XX,XXX.XX** |
| (1) Source Data:   * In connection with Brain Builder Cloud only, Customer is to provide Licensor data to develop Brain(s) by uploading such data to the Brain Builder Cloud platform (the “Customer Source Data”) | | | | |
| (2) Definitions and Related Additional Terms:  (a) Applicable Definitions and Related Additional Terms for Brain Builder Cloud:  (i) “**API Call**” means a single image presentation made to a Deployed Brain (as defined in the Terms) via an API for which a prediction is requested. Customer may, in any calendar month, use up to the maximum number of API Calls set forth in this Order Form. The number of API Calls is reset to zero on the first day of each calendar month. If Customer does not use all available API Calls in a given month, the unused API Calls are forfeited and do not accumulate or roll over into the next month.  (ii) “**Authorized User**” means each named employee or independent contractor authorized and granted access to the Brain Builder Cloud by Customer or on Customer’s behalf.  (iii) “**Permitted Storage**” means the maximum amount of memory permitted to store Source Data within Brain Builder Cloud.  (iv) “**Video Annotation Hours**” means the actual elapsed video playback time that may be automatically annotated using Brain Builder’s AI-assisted video annotation capability as set forth on an Order(s).  (b) Applicable Definitions and Related Additional Terms for Neurala VIA Brain Builder and Neurala VIA Inspector  (i) “**Instance**” means a single copy of the Licensed Software installed on a single device (e.g., personal computer, industrial computer or other individual device). Two copies of the Licensed Software on the same device counts as two Instances. , One copy on each of two different devices, count as two Instances. | | | | |
| (3) **Fee Payment Schedule**: The Fee set forth above is the fee for the entire License Term. | | | | |
| Each signor of this Order Form represents and warrants that: (a) signor has authority to enter into this Agreement on behalf of the party the signor signed and (b) the applicable party is bound by the Order Form and Terms. | | | | |

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| --- | --- | --- | --- |
| **Licensor**  By:  Title:  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | **Customer**  By:  Title:  Date: | |
| Address for notice:  [ ] | With a copy to:  [ ] | Address for notice:  [ ] | With a copy to:  [ ] |

**Neurala VIA Terms and Conditions**

These **Neurala VIA Terms and Conditions** (the “**Terms**”) are between [INSERT PARTNER COMPANY LEGAL ENTITY AND ADDRESS], (“**Licensor**”) and the entity listed as Customer in the applicable Order Form (“**Customer**”). The Terms combined with all Order Forms that incorporate the Terms, and any attachments, schedules or other incorporated documents, are collectively referred to as the “**Agreement**” and govern the relationship between the parties with respect to any Products ordered in any Order Form. Each of Licensor and Customer are referred to as a “**party**” and collectively as the “**parties**”. In consideration of the mutual covenants and conditions set forth below, Licensor and Customer agree as follows:

1. **DEFINITIONS**. As used in this Agreement:

“**Affiliate**” means an entity that directly or indirectly, through one or more intermediaries: (a) owns more than 50% of the outstanding voting securities of a party or (b) is controlled by a party, in each case where the term “control” means possession of power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract interest or otherwise.

**“Agreement”** has the meaning provided in the preamble.

**“Brain”** means a data file containing a unique set of numerical inputs that drive application programs and that is: (a) identified by Licensor as a Brain and (b) trained using the Products and Source Data for the detection of Objects.

**“Brain Builder Cloud”** means Neurala’s proprietary software-as-a-service offering distributed by Licensor that allows customers to: (a) recognize certain Objects within Source Data, (b) export any Outputs as set forth herein and (c) access the Brain via API.

**“Confidential Information”** means all written or oral information, disclosed by either Party to the other that has been identified as confidential or that by its nature ought reasonably to be considered confidential. Information relating to the Products and the Documentation is the Confidential Information of Neurala.

**“Documentation”** means text and/or graphical materials, whether in print or electronic form, that describe the features, functions and use of the Products, which materials are designed to facilitate use of the Products and are provided by Licensor to Customer pursuant to the terms of this Agreement.

**“Intellectual Property Rights”** mean all forms of industrial and intellectual property rights and protections throughout the world, including any: (a) patents (including any patent applications, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof); (b) copyrights; (c) Internet domain names, trademarks, service marks, and trade dress, together with all goodwill associated therewith; (d) trade secrets; (e) rights in databases and designs (ornamental or otherwise); (f) moral rights, rights of privacy, rights of publicity, and similar rights; and (g) any other proprietary rights and protections, whether currently existing or hereafter developed or acquired arising under statutory or common law, including all applications, disclosures, and registrations with respect thereto.

“**Licensed** **Software**” means object code versions of any Product that is licensed by Customer pursuant to any Order Form and is distributed by Licensor to Customer, including Neurala Via Brain Builder and Neurala via Inspector, and all updates and upgrades thereto.

**“Licensing Restrictions”** mean the limitations on use for any Product as set forth in the applicable Order Form (e.g., maximum number of Authorized Users or API Calls, Instances. Etc.).

**“Object Tag”** means any file name, folder name or indicated area of interest on or around a visible object, item, or other physical trait identified by Customer.

**“Object Tag Data”** means any data generated by Object Tags identified by Customer, with the understanding that the Object Tag Data does not include any Customer Source Data.

**“Object”** means any visible object, item or other physical trait that is the subject of an Object Tag.

**“Order Form”** means a document signed by an authorized representative of each Party identifying the Products to be made available, the fees to be paid and other relevant terms and conditions.

**“Outputs”** mean any reports, scripts, responses or other outputs that are generated through Customer’s use of the Products including, but not limited to, reports, exports of training data annotated using the Products and / or predictions made by a Brain following the presentation of an image via Brain API Calls or otherwise.

**“Product”** means the Neurala product or service distributed by Licensor and ordered pursuant to any Order Form, including, as applicable, Brain Build Cloud, Neurala Via Brain Builder and Neurala Via Inspector.

**“Source Data”** means text, graphic, audio, visual or audio-visual data or content to be tagged using the Products, (including any Licensed Software) including any resultant derivatives thereof (such as the training masks.) Source Data may be provided by Customer (“**Customer Source Data**”), Licensor (“**Licensor Source Data**”) or both, as may be set forth in the Order Form.

**2. PRODUCTS.**

**2.1 License to Licensed Software.** Subject to the terms and conditions of this Agreement, including the Licensing Restrictions, Licensor grants Customer a non-exclusive, non-transferable license to (without a right to sub-license) copy, use, install and operate the Licensed Software ordered in any Order Form solely for Customer’s internal use and solely in accordance with the Documentation.

**2.2 Terms applicable Solely to the Brain Builder Cloud: (a) Access to Brain Builder** **Cloud.** Subject to the terms and conditions of this Agreement, including the Licensing Restrictions, Licensor grants Customer a non-exclusive, non-transferable right to access and use such components of Brain Builder Cloud ordered in any Order Form solely for Customer’s internal use and solely in accordance with the Documentation.

(b) **Customer Source Data**. Unless otherwise specified in the applicable Order Form, Customer will make available at no charge to Licensor and Neurala all Customer Source Data required by Licensor and Neurala for the performance of the Brain Builder Cloud. Customer hereby grants to Licensor and Neurala: (a) a worldwide, non-exclusive, royalty-free license to use the Customer Source Data and Object Tag Data during the Term in connection with the Brain Builder Cloud and (b) a right to use the Customer Source Data (so long as Licensor or Neurala does not identify the Source Data with Customer or any individual) for the purposes of improving the Products, software and services for you and/or other customers. Customer will obtain all third-party licenses, consents and permissions needed for Licensor and/or Neurala to use the Customer Source Data as contemplated herein.

(c) **Deployed Brain**. Once Customer has provided the necessary Inputs, the Brain Builder Cloud will configure and train a Brain template using the Inputs (the “**Trained Brain**”). Customer acknowledges that Brain Builder Cloud’s ability to configure and train the Brain will be dependent on the quality and quantity of the Inputs provided by the Customer. Following development of the Trained Brain, the Trained Brain will be made available for use via an API within the Brain Builder Cloud (the “Deployed Brain”). Customer is permitted to submit images for prediction requests for only the number of Monthly Brain API Calls permitted in the Order Form. Neither Licensor nor Neurala make any warranties as to when Customer will receive any requested predictions through the Deployed Brain.

**2.3. Restrictions.** Except as expressly permitted herein, Customer will not (a) copy or duplicate the Products; (b) decompile, disassemble, reverse engineer or attempt to obtain or perceive the source code from which any component of the Products is compiled or interpreted, (c) modify the Products, the Documentation or create any derivative product from any of the foregoing, except with the prior written consent of Neurala; (d) use the Products to build a similar or competitive product; (e) use any device or software that damages, interferes with or disrupts the Products; (f) use the Products in a manner inconsistent with the Documentation or the Agreement; (g) use the Products for the benefit of any third party including in connection with a managed service, software-as-a-service, infrastructure-as-a-service model or any other “as-a-service model, and (g) provide any third party with access or use the Products for the benefit of such third party. Customer will ensure that its use of the Products and the Documentation complies with applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction. The Products are each a "commercial item" as that term is defined at 48 C.F.R. 2.101.

**2.4 Reservation of Rights.** The Products, Documentation and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Neurala and/ or its suppliers. All rights in and to the Products not expressly granted to Customer in this Agreement are reserved by Neurala and its suppliers.

**2.5 Feedback.** Any comments or materials that Customer provides or sends to Licensor or Neurala, such as questions, comments, suggestions, including suggestions for improvements, enhancements or modifications, or the like regarding the Products (collectively “Feedback”) will be deemed to be non-confidential. Neither Licensor nor Neurala has any obligation of any kind with respect to any Feedback and will be free to reproduce, use, disclose, exhibit, display, transform, create derivative works of or distribute the Feedback. Further, Licensor and Neurala are free to use any ideas, concepts, know-how or techniques contained in any Feedback for any purpose whatsoever, including developing, manufacturing and marketing products and services incorporating such Feedback, and without any obligation of paying Customer for such use.

**2.6 Product Analytics.** Neurala and Licensor may compile statistical and other information related to the performance, operation and use of the Products, including the right to use Object Tag Data on an anonymized basis (e.g., without identifying it with you or any individual) for the purpose of improving our products, software and services.

**3.** **Customer Responsibilities.**

**3.1 Inputs and Outputs.** Customer acknowledges and agrees that: (a) the Products are designed to recognize certain Objects designated by Customer based on Source Data uploaded by Customer, and that such recognition is developed based on Customer’s placement or use of Object Tags as well as Customer’s actions, instructions and other inputs provided by Customer (collectively, “**Inputs**”); (b) any Outputs are wholly dependent upon Customer’s Inputs; and (c) the ability of the Products to recognize Objects, and provide Outputs is dependent upon the quality, video and/or image resolution, lighting, weather and volume of the Source Data provided by Customer. We make no warranty or guarantee regarding the Outputs, including the accuracy or reliability thereof.

**3.2 Use of the Deployed Brain.** Customer represents and warrants that, unless expressly approved by Neurala in writing in any Order Form, Customer will not create any Brains that are used for any mission-critical application, including in any life support applications, devices or systems; the operation of nuclear facilities; aircraft navigation systems; aircraft communication systems; air traffic control; direct life support machines; weapons systems; military or space equipment requiring radiation hardened components; and Enhanced 911 or the E911 emergency calling system.

**3.3 Compliance with Laws.** Customer will at all times comply with all applicable laws and regulations, including any export control laws.

**4. SUPPORT.** Subject to the terms and conditions contained in this Agreement, Licensor will provide to Customer technical support and maintenance in accordance with Neurala’s then current Technical Support and Maintenance Policies set forth at <https://info.neurala.com/master_legal_support_maintenance>

**5. FEES AND PAYMENT.**

**5.1 Fees.** Customer will pay the fees set forth on each Order Form (“Fees”). Unless otherwise specified in any Order Form, all invoices issued by Licensor will be due and payable thirty (30) days after receipt. All Fees will be paid in U.S. dollars and exclude all applicable sales, use, and other taxes. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. The Fees are exclusive of any sales, use or other taxes and similar taxes, which will be the responsibility of Customer. Upon notice to you prior to the end of the then current Term, Licensor may increase any fees specified in the Order Form, provided the increase will not become effective until the expiration of the then-current Term.

**6. CONFIDENTIALITY**

**6.1** **Protection of Confidential Information.** During this Agreement, each Party will have access to certain Confidential Information of the other Party. Except as may otherwise be permitted in this Agreement, each Party agrees: (a) not to disclose the Confidential Information of the other Party to anyone except its employees, contractors and advisors on a strict need to know basis and subject to a written duty of confidence, (b) to use the Confidential Information strictly for the performance or receipt of this Agreement, and (c) to use commercially reasonable endeavors to protect the confidentiality of the other Party's Confidential Information.

**6.2 Exceptions.** The provisions of Section 6.1 will not apply to Confidential Information that (a) is or becomes publicly available through no fault of the recipient, (b) is already in the recipient’s possession at the time of its disclosure without any duty of confidence, or (c) is independently developed by the recipient without use of or reference to the disclosing Party’s Confidential Information. Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent required: (1) to comply with the order of a court or other governmental body, or as necessary to comply with applicable law, or (2) to establish or preserve a Party’s rights under this Agreement.

**7. WARRANTIES.**

**7.1 Mutual Warranties.** Each party represents and warrants that: (a) it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on such party’s behalf has been duly authorized and empowered to enter into this Agreement; (b) the execution, delivery and performance of this Agreement does not and will not materially conflict with, violate or result in a breach of any provision of any government or court order, judgement or decree, or with any other contract or agreement to which it may be bound; and (c) it will comply with all laws, rules and regulations applicable to it.

**7.2 By Each Party.** Customer represents and warrants that Customer has (a) provided all notices and obtained all third party licenses, consents and permissions needed to allow Licensor and Neurala to use the Customer Source Data as contemplated herein and (b) such Source Data does not, and will not, infringe upon or otherwise violate the rights of any third party, including any applicable rights of privacy. Licensor and Neurala warrant, for Customer’s benefit only, that it uses commercially reasonable efforts to prevent introduction of viruses, Trojan horses or similar harmful materials into the Products (but we are not responsible for harmful materials submitted by your Authorized Users) (the “**Performance Warranty**”).

**7.3 Remedy and Disclaimer.** Licensor and Neurala will use commercially reasonable efforts, at no charge to you, to correct reported non-conformities with the Performance Warranty. If Neurala determines corrections to be impracticable, and notifies Customer in writing (email accepted) Neurala may terminate the applicable Order Form. The Performance Warranty will not apply: (i) unless you make a claim within thirty (30) days of the date on which you first noticed the non-conformity, (ii) if the non-conformity was caused by misuse, unauthorized modifications or third-party products, software, services or equipment or (iii) Products for which no Fee was charged. Our sole liability, and your sole and exclusive remedy, for any breach of the Performance Warranty are set forth in this Section 7. Furthermore, Customer acknowledges that the Products may contain bugs, errors, omissions and other problems that could cause system or other failures and data loss. Customer acknowledges that it will not introduce a product similar to or compatible with the Products. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS AND DOCUMENTATION ARE PROVIDED “AS IS,” AND “WITH ALL FAULTS”. LICENSOR AND NEURALA MAKE NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE. LICENSOR AND NEURALA DO NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCTS IS WITH CUSTOMER.**

**8. DISCLAIMER OF DAMAGES; LIMITATIONS ON LIABILITY.**

**8.1 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF VALUATION, LOSS OF DATA, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL LICENSOR OR NEURALA BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES OR SUBSTITUTE PRODUCTS.**

**8.2 LICENSOR AND NEURALA’S MAXIMUM AGGREGATE LIABILITY UNDER ANY ORDER FORM WILL NOT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY LICENSOR UNDER SUCH ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE. FOR THE AVOIDANCE OF DOUBT, THE PARTIES STATE THAT ANY AMOUNT AWARDED BY A COURT OR AGREED UPON IN SETTLEMENT IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATION, OR A CLAIM FOR BREACH OF CONFIDENTIALITY, OR ANY MISAPPROPRIATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY, WILL BE CONSIDERED TO BE A DIRECT DAMAGE NO MATTER HOW DENOMINATED BY THE COURT.**

**9. INDEMNIFICATION.**

**9.1 Licensor and Neurala Indemnity.** Licensor and Neurala will indemnify, defend and hold harmless Customer, its directors, officers, employees and representatives (each a “**Customer Indemnified Party**”) from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys’ fees and court costs, (collectively “**Losses**”) arising out of arising out of any third party claim alleging that the Products infringe any U.S. patent or copyright.

**9.2 Exclusions.** Section 9.1 will not apply if the alleged claim arises, in whole or in part, from (a) a use or modification of the Products by Customer in a manner outside the scope of any right granted or in breach of this Agreement, (b) a combination, operation or use of the Products with other software, hardware or technology not provided or authorized by Licensor, if the claim would not have arisen but for the combination, operation or use, or (c) the Customer Source Data (any of the foregoing circumstances under clauses (a), (b) or (c) will be collectively referred to as a “Customer Indemnity Responsibility”).

**9.3 Customer Indemnity.** Customer will indemnify, defend and hold harmless Licensor and Neurala, its directors, officers, employees and representatives (each a “Licensor Indemnified Party”), from and against any and all Losses arising out of a breach of (a) Section 2.1 (Restrictions), (b) Section 3 (Customer Responsibilities), (c) Section 6 (Confidentiality) and (d) any Customer Indemnity Responsibility.

**9.4 Indemnification Process.** The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent

**9.5 Infringement.** If any Product is, or in Neurala’s opinion, is likely to become the subject of any infringement-related claim, then Neurala will, at its expense and in its discretion: (a) procure for Customer the right to continue using the Product; (b) replace or modify the infringing technology or material so that the Product becomes non-infringing and remains materially functionally equivalent; or (c)(i) terminate this Agreement, (ii) in the context of a term license, give Customer a refund for any pre-paid but unused fees or (iii) in the context of a perpetual license, Neurala may take back such infringing item or items, terminate this license in whole or in part, and refund to Customer the fees paid thereof, pro-rated over a 36 month period from date of delivery using the straight line method.

**9.6 THE PROVISIONS OF THIS SECTION 9 STATE NEURALA AND LICENSOR’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT ANY PRODUCT INFRINGES A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHT.**

**10. TERM AND TERMINATION.**

**10.1 Term.** The term of this Agreement will commence on the Effective Date of the initial Order Form entered into by the parties that incorporate these Terms and will continue for as long as any Order Form is in effect.

**10.2 Order Form Termination.** Each Order Form will commence on the Order Form Effective Date and continue for the Order Form Initial Term and any Renewal Terms, as set forth in the applicable Order Form. Either party may terminate any Order Form by providing written notice to the other party no less than ninety (90) days prior to the end of the then current term of the Order Form.

**10.3 Termination for Material Breach.** Either party may terminate this Agreement or any Order Form effective immediately upon written notice to the other if the other party materially breaches any provision of this Agreement (or the applicable Order Form) and does not substantially cure the breach within thirty (30) days after receiving written notice. Termination of the Agreement will automatically cause the termination of all Order Forms.

**10.4 Effects of Termination.**

**(a) Payment**; **Access to Products**. Upon termination or expiration of an Order Form for any reason, any amounts owed to Licensor under the Order Form will be immediately due and payable, and all rights granted pursuant to the Order Form, and all Customer use of the Products, will immediately cease.

**(b) Survival.** The provisions of this Agreement that, by their nature and content, should survive the termination or expiration of this Agreement will so survive, including Sections 1, 2.3-2.6, 3, 5, 9, 10.4 and 11.

**11. GENERAL**

**11.1** **Assignment.** This Agreement cannot be assigned by either Customer or Licensor without the prior written consent of the other; provided, however, that Licensor may assign this Agreement to any person or entity that is an Affiliate, or acquires by sale, merger or otherwise, all or substantially all of its assets, stock or business that relate to this Agreement. Any attempted assignment or delegation in violation of this Section 11.1 will be null, void and of no effect.

**11.2 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth in the signature page below and beneath such party’s signature on the Order Form will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

**11.3 Governing Law; Disputes.** This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement, will be made exclusively in the state or federal courts located in Boston, Massachusetts and both parties hereby submit to the jurisdiction and venue of such courts.

**11.4 Remedies.** Customer acknowledges that any actual or threatened breach of Section 2 will constitute immediate, irreparable harm to Licensor and/or Neurala for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**11.5 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**11.6 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**11.7 Third-Party Beneficiaries.** Neurala, Inc., a Delaware corporation located at 12 Channel St., 2nd Floor, Suite 202

Boston, MA 02210 USA, is an intended third party beneficiary to this Agreement. Other than Neurala, Inc., the parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than Neurala, Inc., the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement. For the avoidance of doubt, no Authorized User will be deemed an intended third-party beneficiary.

**11.8 Construction.** The parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

**11.9 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

**11.10 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.