

Neurequity Mental Health and Wellbeing Portal

Terms and Conditions

Reference: NEU-MHWP-TC

Version 1.2 – May 2022

This Agreement is an agreement between the individual or entity obtaining the Neurequity cloud portal as set out on the Order Form (“Customer”) and Neurequity Limited, a company registered in England and Wales with registered number 13152981 whose principal place of business is at Surrey Technology Centre, 40 Occam Road, The Surrey Research Park, Guildford, GU2 7YG (“Supplier”).

BACKGROUND

- (A) The Supplier has developed the Neurequity cloud portal which it makes available to subscribers via the internet on a pay-per-use basis.
- (B) The Customer wishes to use the Neurequity cloud portal in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Neurequity cloud portal subject to the Order Form and these terms and conditions.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Customer Staff: those individually named Authorised Users agreed from time to time in writing by the Parties that have: (i) attended and successfully completed a course (or other form of knowledge transfer) delivered by the Supplier in administration of the Services; or (ii) have, in the reasonable opinion of the Supplier, received sufficient knowledge transfer in administration of the Services via other means.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).

Business Hour: a period of one hour during Normal Business Hours.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: (i) the date identified as such and set forth on the Order Form or, if such date is not set forth on the Order Form the date on which the Order Form is executed; or (ii) such other date agreed in writing by the Parties.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services; and aggregated and anonymised data collected by Supplier relating to Customer's use of the Services. For the avoidance of doubt, Service Content does not constitute Customer Data.

Documentation: the documentation made available to the Customer by the Supplier via the Services or online via a web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Initial Subscription Term: the initial term of this Agreement as set out in the Order Form.

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Onboarding: the process performed by the Supplier to prepare the Services for use by the Customer including as applicable the provisioning of the Services, the initial creation of accounts for Authorised Users, the loading and set up of Service Content, the tailoring of the Services to correspond (as far as practicable) with the Customer's corporate branding guidelines and the delivery of knowledge transfer to Authorised Customer Staff.

Order Form: the document signed by both the Parties that specifies details of the Customer's order.

Renewal Period: the period described in clause 14.1.

Service Content: content made available to Authorised Users through: (i) the general features of the Services including e-learning modules, videos, animations, surveys, questionnaires, assessments, documentation, frequently asked questions, pre-recorded events, live events hosted by Supplier or third parties and links to content held externally from the Services.

Services: the Neurequity cloud portal subscription services and Service Content provided by the Supplier to the Customer under this Agreement via the website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Software: the online software applications provided by the Supplier as part of the Services.

Subscription Fees: the subscription and (where relevant) onboarding fees payable by the Customer to the Supplier for the User Subscriptions, as set out on the Order Form or as agreed from time to time by the Parties.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: the Supplier's policy for providing support in relation to the Services as shown at Schedule 1.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. User subscriptions

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - (c) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed as required by the Supplier and that each Authorised User shall keep their password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
 - (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Customer's use of the Services to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the

Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

- (f) if any of the audits referred to in clause 2.2(e) reveal that any individual has been provided access to the Services who is not an Authorised User, then without prejudice to the Supplier's other rights, the Supplier may disable access to the Services for such individuals and the Customer shall not issue any new user account to any such individual;
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the Supplier's then-current prices within 10 Business Days of the date of the relevant audit; and
- (h) access by Customer to the Services for the first time shall be provided by Supplier upon completion of Onboarding. Onboarding shall commence on the Commencement Date or on such later date agreed in writing by the Parties. The Supplier shall complete Onboarding within a reasonable period subject to the Customer providing all information requested by the Supplier that is required to complete Onboarding.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 2.3.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation and/or Service Content (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and/or Documentation and/or Service Content in order to build a product or service which competes with the Services and/or the Documentation and/or the Service Content; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation and/or Service Content available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation and/or Service Content, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of any Virus or Vulnerability into the Supplier's network and information systems.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and/or the Service Content and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 Unless otherwise agreed in writing by the Supplier the rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order Form and the Supplier shall grant access to the

Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as calculated by reference to the Supplier's then-current price list or as otherwise agreed in writing by the Parties and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 3.4 The Customer may only reduce the number of Authorised Users at the time of renewal of the Subscription Term. The Customer is not: (i) permitted to reduce the number of Authorised Users during the Subscription Term; or (ii) entitled to receive a refund of any prepaid Subscription Fees.

4. Services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance performed outside Normal Business Hours; and
 - (b) planned upgrades to the Software, which will be agreed in advance with the Customer; and
 - (c) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance; and
 - (d) emergency maintenance to address urgent issues that may threaten the security, integrity, or availability of the Services, which may be performed at any time with reasonable advance notice provided by the Supplier to the Customer where practicable under the circumstances.

- 4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 4.4 The Supplier may suspend the Customer's access to the Services if:
- (a) the Customer or any Authorised User materially breaches any provision of this Agreement; or
 - (b) the Supplier determines that provision of the Services to the Customer is prohibited by applicable law; or
 - (c) there is any use of the Services by the Customer or any Authorised User that in the Supplier's reasonable opinion threatens the security, integrity, or availability of the Services.
- 4.5 If suspension of the Customer's access to the Services takes place, the Supplier will use commercially reasonable efforts under the circumstances to:
- (a) provide the Customer with notice of any suspension of the Services and, if applicable, an opportunity to remedy the circumstances leading to suspension prior to any such suspension; and
 - (b) where practicable, limit the nature and period of suspension based on the circumstances leading to the suspension; and
 - (c) remove the suspension as quickly as possible once the circumstances leading to the suspension have been resolved to the Supplier's reasonable satisfaction.
- 4.6 If access to the Services is suspended pursuant to this clause 4:
- (a) the Supplier shall have no liability for any damages, liabilities, losses (including any loss of data or profits), or any other consequences that the Customer may incur in connection with any suspension of the Services; and
 - (b) the Customer shall not be entitled to a refund of any prepaid fees for the Services; and
 - (c) the Supplier shall have no obligation to accept or resolve any Support Request until suspension of the Services is removed.
- 4.7 The features and functions of the Services may change over time provided that such changes do not materially decrease the overall functionality of the Services. It is the

Customer's responsibility to ensure that the Customer's systems, applications, and computer hardware remain compatible with the then-current Services. The Supplier shall make commercially reasonable efforts to ensure changes made to the Services are backwards-compatible, however the Customer acknowledges and accepts that it may be necessary for the Supplier to make changes to the Services that are not backwards-compatible. The Supplier shall make commercially reasonable efforts to provide advance notice of changes to the Services that are not backwards-compatible, however the Supplier reserves the right to make such changes without prior notice where it is deemed necessary to maintain the security and integrity of the Services.

5. Data protection

- 5.1 This Agreement is subject to the terms of the Neurequity data processing agreement ("DPA"), which shall be incorporated into this Agreement. A copy of the DPA is available at www.neurequity.com/dpa. By accepting this Agreement or accessing the Services, the Customer agrees to the DPA. The Supplier reserves the right to modify the DPA in its reasonable discretion from time to time in order, for example, to ensure it reflects any changes to the technical and organisational measures employed by the Supplier or any changes to Data Protection Legislation.

6. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. Supplier's obligations

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions; the

Customer's use of the Services with or on computer hardware, peripherals, operating system programs and software applications not expressly stated as supported by the Supplier; the Customer's use of other than the most current version of the Services if a non-infringing version has been made generally available by the Supplier; or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 The Supplier:

- (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services, Documentation, Service Content and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - (iii) the Software or the Services will be free from Vulnerabilities or Viruses.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Documentation and Service Content may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7.6 The Supplier shall follow its back-up procedures for Customer Data as set out in its applicable pPolicy, a copy of which shall be provided to the Customer on request, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and

exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the procedure described in its applicable policy. The Supplier shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

8. Customer's obligations

8.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services, the Documentation and the Service Content in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors, and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining, and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the

Customer's network connections or telecommunications links or caused by the internet.

- 8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9. Charges and payment

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and the Order Form.

- 9.2 The Customer shall on the Commencement Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:

- (i) on the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period;

- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

- (i) on the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, on or around 30 days prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

- 9.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, and the support fees payable pursuant to clause 4.3 at the start of each Renewal Period upon 30 days' prior notice to the Customer and the Order Form shall be deemed to have been amended accordingly.

10. Proprietary rights

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, the Documentation and the Service Content. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Documentation or the Service Content.

10.2 The Supplier confirms that it has all the rights in relation to the Services, the Documentation and the Service Content that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10.3 Unless the Customer issues the Supplier with written notice to the contrary, the Customer gives the Supplier the right to use the Customer's name and company logo in print, online, and in other multimedia advertising and marketing materials for the purpose of disclosing that the Customer is a customer of the Supplier.

11. Confidentiality

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8 The above provisions of this clause 11 shall survive termination of this Agreement, however arising.

12. Indemnity

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation and/or Service Content, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services, Documentation or Service Content in accordance with this Agreement infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given notice of any such claim within 10 days of the Customer becoming aware of any claim;
 - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services, Documentation or Service Content in a manner contrary to the instructions given to the Customer by the Supplier; or

- (c) the Customer's use of the Services, Documentation or Service Content after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

- 13.1 Except as expressly and specifically provided in this Agreement:
 - (a) the Customer assumes sole responsibility for results obtained from the use of the Services, Documentation and Service Content by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - (c) the Services, Documentation and Service Content are provided to the Customer on an "as is" basis.
- 13.2 Nothing in this Agreement excludes the liability of either Party:
 - (a) for death or personal injury caused by that Party's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
 - (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the

User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

- 13.4 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Term and termination

- 14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 14.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

- (e) the other Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other Party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (j) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(j) (inclusive);
- (l) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

14.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services, the Documentation and the Service Content;
- (b) each Party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other Party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after

the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

- (d) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and Order Form, the provisions in the Order Form shall prevail.

17. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

18. Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or

remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

- 21.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 21.4 Nothing in this clause 21 shall limit or exclude any liability for fraud.

22. Assignment

- 22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

- 22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Counterparts

- 25.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.2 Transmission of the executed Order Form by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement.
- 25.3 No counterpart shall be effective until each Party has provided to the other at least one executed counterpart.

26. Notices

- 26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes, or sent by fax or email to the other Party's fax number or email address respectively as set out in the Order Form.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would

have been delivered in the normal course of post. A notice sent by fax or email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender) (or if delivery is not in business hours, at 9 am on the first business day following delivery).

27. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28. Jurisdiction

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated on the Order Form.

Schedule 1 Support Policy

The Supplier shall provide support for the Neurequity portal service ("Service Support") during Support Hours.

Requesting Service Support: the Customer may raise a ticket (a "Support Request") via the Supplier's website or via a Supplier email address as advised from time to time by the Supplier. The Customer shall assign a priority to each Support Request when it is raised based on the true impact on the Customer's effective use of the Neurequity portal service. The Supplier shall respond to each Support Request according to the priority assigned to the respective Support Request and shall use reasonable endeavours to provide the Customer with an estimate of the time to resolution where possible. The Supplier shall prioritise all Support Requests according to priority.

The priority of each Support Request shall be determined as defined below:

Priority 1 (Urgent): a business critical error relating to the Neurequity portal service resulting in: (i) a complete loss of functions of the Neurequity portal service; or (ii) loss of or significant degradation of a major function of the Neurequity portal service that affects the majority of Authorised Users, where no suitable workaround exists. Priority 1 (Urgent) Support Requests may only be raised if the Neurequity portal service is in commercial use by the Customer.

Priority 2 (High): a severe error relating to the Neurequity portal service resulting in loss of or significant degradation of a major function of the Neurequity portal service for the majority of Authorised Users, where a suitable workaround exists.

Priority 3 (Medium): an error relating to the Neurequity portal service that results in degraded operations or a slight impairment in functions of the Neurequity portal service. This priority is used as the default for all Support Requests that are not Feature Requests and do not meet the criteria for a higher priority.

Priority 4 (Low): (i) a cosmetic-only defect relating to the Neurequity portal service that does not affect the operation of the Neurequity portal service; or (ii) a request made by the Customer for a new feature or a change to an existing feature of the Neurequity portal service ("Feature Request"). The completion of Feature Requests is not guaranteed and where the Supplier agrees to complete a Feature Request may result in additional costs to the Customer.

The target initial response time for Support Requests shall be according to the assigned priority as set out below:

Priority 1 (Urgent): 6 Business Hours

Priority 2 (High): 8 Business Hours

Priority 3 (Medium): 16 Business Hours

Priority 4 (Low): 48 Business Hours

The Supplier shall have the right to:

- (i) downgrade the priority of any Support Request that, in its reasonable opinion, does not meet the criteria for a higher priority; and
- (ii) treat any Support Request as a request to provide services to the Customer and advise the Customer of the same if, in the Supplier's reasonable opinion, the Support Request constitutes a request for services in which case the Parties shall enter into separate negotiations and the Support Request shall be closed; and
- (iii) temporarily restrict Service Support provided to the Customer should, in the Supplier's reasonable opinion, the volume and/or nature of Support Requests indicate a requirement for additional knowledge transfer to be provided to Authorised Customer Staff.