NEURAL MAGIC
TERMS OF SERVICE

Neuralmagic, Inc. ("Neural Magic" or "we") is willing to provide certain software to you as the individual, the company, or the legal entity (referenced below as "you" or "your" or "Customer") that enters into a sales order, order form, registration form or similar document with Neural Magic that references these Terms of Service only on the condition that you accept all of the terms and conditions of these Terms of Service (hereinafter, the "Agreement" or "Terms of Service"). Read the terms and conditions of this Agreement carefully before downloading and using any software from Neural Magic. This is a legal and enforceable contract between you and Neural Magic. By entering into a sales order, order form, registration form or similar document with Neural Magic that references this Agreement, you agree to be bound by the terms and conditions of this Agreement.

For the sake of clarity, if you are entering into this Agreement on behalf of (and for use on behalf of) a company or other entity (a "corporate entity"), you represent that you have the authority to bind such corporate entity to the terms of this Agreement and you acknowledge that the term "you" or "Customer" referenced below refers to such corporate entity.

1.   DEFINITIONS

1.1   *Affiliates* means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity

1.2   *Authorized Reseller* means any third-party reseller, distributor or channel partner that has been authorized by Neural Magic to resell the Software and/or Services to end customers.

1.3   *Customer Data* means all data and information made available by Customer or its Users to Neural Magic in connection with Customer's use of the Software or in connection with Neural Magic's provision of the Services.

1.4   *Documentation* means the documentation for the Software generally supplied by Neural Magic to assist its Customers in the use of the Software, including user and system administrator guides and manuals and other written materials, including the software functional specifications.

1.5   *License Term* means the period of time in which Customer shall be entitled to use the Software and Documentation as specified on the applicable Sales Order.

1.6   *Losses* means all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorney fees.

1.7   *Maintenance Services* or *Services* means Neural Magic's maintenance and support services for the Software.

1.8   *Sales Order* means each Neural Magic or Authorized Reseller ordering document entered into by duly authorized representatives of both Customer and Neural Magic (or its Authorized Reseller as the case may be) which references this Agreement, identifies the specific Software or Services ordered by Customer from Neural Magic or its Authorized Reseller, sets forth the prices for such Software and Services and contains other applicable terms and conditions. Sales Orders may be in the form of an online registration form.

1.9   *Software* means the software products provided by Neural Magic to Customer and which are listed on a Sales Order and all updates, enhancements, bug fixes and new releases thereto that Neural Magic makes available to Customer hereunder. Software includes the Software Portal.

1.10   *Software Portal* means the Neural Magic services and functionality which may be hosted by Neural Magic and made available to Customer through a web browser, or self hosted by the Customer on-premise.

1.11   *Usage Data* has the meaning ascribed to it in Section 8.6.

1.12   *Users* mean individuals who are authorized by Customer to use the Software. Users consist of any employee of Customer or its Affiliates and any independent contractor of Customer or its Affiliates.

1.13   *Open Source* means third party embedded open source software components that ship with the Software.

2.   SERVICES/LICENSES/MODIFICATIONS TO TERMS AND SOFTWARE

2.1   *Software*. Neural Magic shall provide Customer with the specific Software specified on a Sales Order. Any conflict between the terms and conditions set forth in this Agreement and any Sales Order shall be resolved in favor of this Agreement unless such Sales Order expressly references the conflicting provision in this Agreement that it is intended to control and states that it is to control.

2.2   *License*. Subject to the terms and conditions of this Agreement, upon the entering into of a Sales Order by Neural Magic (or its Authorized Reseller) and Customer, Neural Magic grants to Customer, solely during the License Term, a non-exclusive,

non-transferable (except as set forth in Section 11.2) license to install, execute and use the Software, in compiled binary code form only, as well as the accompanying Documentation, solely for Customer's internal use, and solely in connection with the number of licenses licensed by Customer (as reflected on the Sales Order). The foregoing license is subject to the other terms set forth in this Agreement, any additional terms set forth in the applicable Sales Order, and payment of all applicable license fees. All licenses granted with respect to any Software and Documentation shall immediately expire on the last day of the License Term. The Customer is responsible for procuring and maintaining the network connections and data feed that connect the Customer to the Software Portal to the extent that the Software Portal is hosted by or on behalf of Neural Magic.

2.3   *Copies.* Customer may make a reasonable number of copies of the Software and Documentation solely for Customer's internal back-up and archival purposes only, provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered by Neural Magic.

2.4   *Delivery.* Delivery shall be deemed to have been made upon (i) transfer of the Software and Documentation by Neural Magic to its shipping agent or (ii) receipt of electronic confirmation by Neural Magic that the electronic mail to Customer containing the instructions for downloading the Software and Documentation site has been sent.

2.5   *Modification of Agreement.* Neural Magic may modify this Agreement upon notice to Customer at any time through a service announcement or by sending an email to Customer's primary email address. If Neural Magic makes significant changes to the Agreement that affect Customer's rights, Customer will be provided with at least 30 days advance notice of the changes by email to Customer's primary email address. Customer may, as its sole remedy, terminate this Agreement by providing Neural Magic notice by email within 30 days of being notified of the availability of the modified Agreement if the Agreement is modified in a manner that substantially and adversely affects Customer's rights in connection with the use of the Software. In the event of such termination, shall be entitled to receive a refund of any prepaid, unused fees paid in advance for the balance of the unexpired License Term. Customer's continued use of the Software after the effective date of any change to the Agreement will be deemed to be Customer's approval of the modified Agreement.

2.6   *Modification of Software.* Notwithstanding any other provision of this Agreement, Neural Magic and its licensors reserve the right to enhance, change and remove certain functionality contained in the Software at any time. In the event, however, that such changes will reasonably be deemed to substantially and adversely affect the overall functionality of the Software and no workaround is reasonably available to the Customer, then Customer may notify Neural Magic that it intends to terminate its Sales Order for the affected Software. If upon receiving Customer's notice Neural Magic fails to remove such adverse changes and restore the functionality to the Software within thirty (30) days of receiving Customer's notice then Customer may as its sole remedy, elect to terminate its its Sales Order for the affected Software upon written notice to Neural Magic (in which case Customer shall be entitled to receive a refund of any prepaid, unused fees paid in advance for the balance of the unexpired License Term).

3.   FEES; PAYMENT TERMS

3.1   *License Fees.* In consideration of the licenses granted by Neural Magic under this Agreement and for any Services provided by Neural Magic, Customer agrees to pay Neural Magic (or its Authorized Reseller as the case may be) all fees set forth on the applicable Sales Order ("Fees").

3.2   *Additional Hardware and Software.* Customer is responsible for the purchase or licensing of all additional equipment and software necessary to install and operate properly the Software as detailed in the then-current Documentation. Future versions of the Software and new Neural Magic products may require additional equipment and/or software, as well as updated versions of the additional equipment and software. Purchase or licensing of these items, if required, shall be solely the responsibility of Customer.

3.3   Payment Terms. Customer agrees to pay Neural Magic for the Software and Services provided and expenses incurred on the basis and at the rates specified in each Sales Order. Unless otherwise set forth on the Sales Order, payment shall be due within thirty (30) days after the date of Neural Magic's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and half percent (1 1/2%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due.

3.4   *Taxes.* Customer shall be solely and exclusively responsible for the payment of all sales, use and similar taxes arising from or relating to the Software and Services rendered hereunder, except for taxes related to the net income of Neural Magic.

4.   CONFIDENTIALITY

4.1   *Confidential Information.* During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. For the sake of clarity, the Software is the Confidential Information of Neural Magic and Customer Data is the Confidential Information of Customer. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable

care be used. Customer further agrees that it shall not use the Software or Services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Services and will not publicly post any analysis or reviews of the Software or Services without Neural Magic's prior written approval. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

4.2   *Exclusions*. Information will not be deemed Confidential Information hereunder if such information: (i) is known by the receiving Party prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure

4.3   *Injunctive Relief*. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

5.   **LIMITED WARRANTY**

5.1   *Software Warranty*. Neural Magic warrants that during the License Term the Software will perform in conformity with its Documentation, in all material respects. Such warranty does not apply to Software that has been damaged, mishandled, mistreated, altered or used or maintained or stored other than in conformity with the Documentation. If the above warranty is breached, Neural Magic will, at its option and at no cost to Customer, (a) provide remedial services necessary to enable the Software to conform to the warranty, or (b) replace any defective Software. If Neural Magic is unable to fix or replace the defective Software within thirty (30) days then Customer may terminate the applicable Sales Order and will receive a pro rata refund of the prepaid, unused Fees paid by Customer for the balance of the unexpired License Term. Customer will notify Neural Magic promptly in writing of any breach of warranty. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranties.

5.2   *No Other Warranty*. NEURAL MAGIC DOES NOT REPRESENT THAT THE SERVICES OR SOFTWARE WILL BE ERROR-FREE OR THAT THE SERVICES OR SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES OR SOFTWARE WILL BE CORRECTED. THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY NEURAL MAGIC. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES AND SOFTWARE ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

6.   **LIMITATION OF LIABILITY.**

6.1   *Consequential Damage Waiver*. Except for any violation by Customer of Neural Magic's intellectual property rights or use of the Software except as permitted herein, neither Party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the Software or the performance of the Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

6.2   *Limitation of Liability*. The total cumulative liability of Neural Magic to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed fees paid by Customer to Neural Magic under the Sales Order for the Services or Software which form the subject of the claim during the twelve (12) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the Parties. The pricing set forth in each Sales Order reflects this allocation of risk and the limitation of liability specified herein.

7.   **TERM**

7.1   *Term*. This Agreement will continue in effect from the date of Customer's acceptance of this Agreement until otherwise terminated in accordance with Section 7.2 below. The term of each Sales Order shall be set forth on the Sales Order.

7.2   *Termination*. Notwithstanding the foregoing, either Party may terminate this Agreement or any Sales Order (i) immediately in the event of a material breach of this Agreement or any such Sales Order by the other Party that is not cured within thirty (30) days of written notice thereof from the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a Sales Order shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Sales Orders. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Sales Orders then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Sales Order.

7.3   *Effect of Termination*. Upon any termination or expiration of this Agreement or any applicable Sales Order, Neural Magic shall no longer provide the applicable Services to Customer and Customer shall cease and cause its Users to cease using the Software. Customer shall also cease using the Software upon the expiration of the applicable License Term.   Except as expressly provided herein, termination of this Agreement by either Party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such Party.   Upon termination of this Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession.

8.   OWNERSHIP; RESTRICTIONS

8.1   *Software*. Ownership of the Software any related Documentation, copies, modifications and derivatives of the Software or Documentation (in whole or in part), and all related copyright, patent, trade secret and other proprietary rights, are and will remain the exclusive property of Neural Magic and/or its licensors. Neural Magic reserves all rights not expressly granted by it to Customer under this Agreement. There are no implied rights.

8.2   *Customer Data*. Customer retains ownership of all right, title and interest in and to all Customer Data. During the term of this Agreement, the Customer hereby grants to Neural Magic a worldwide, non-exclusive, non-transferable (except as set forth in Section 11.2), royalty-free right to use, display, transmit, and distribute the Customer Data solely as necessary to provide the Software (including the Software Portal) and Services to Customer. Neural Magic shall use commercially reasonable efforts to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data.

8.3   *Restrictions*.   Customer shall not and shall not allow any third party to decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Software or any portion thereof, or otherwise derive its source code; (ii) modify, translate, or create derivative works of the Software or Documentation; (iii) sell, resell, lease, license, sublicense, copy (except as permitted in Section 11.2 below), market or distribute the Software or Documentation; or (iv) use the Software for any timesharing, service bureau, subscription, rental or similar uses without the express prior written consent of Neural Magic in each instance or use the Software on behalf of any third party. Customer shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software. Unless otherwise expressly set forth on a Sales Order, the Software may only be accessed and used by Customer and its Users; provided, however, that Customer shall take appropriate action, by instruction or agreement, to ensure that the Software is being used by such Users in accordance with the terms and conditions of this Agreement. Customer shall be liable for any breach of this Agreement by any of its Users. The Customer is solely responsible for all Customer Data. Neural Magic does not guarantee the accuracy, integrity or quality of such Customer Data.   Neither the Customer nor its Users shall use the Software to: (a) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; or (d) violate any applicable law or regulation.

8.4   *Audit*. Neural Magic may, upon written notification to Customer, perform an audit, not more than once per twelve (12) month period, of Customer's use of the Software and Documentation and Customer's compliance with the provisions of this Agreement. Any such audit shall be made at Neural Magic's expense and shall occur during the Customer's normal business hours. Neural Magic shall notify Customer, in writing, ten (10) business days prior to such audit. Such audit shall not unreasonably interfere with Customer's business operations and Customer agrees to cooperate with Neural Magic in any such audit.

8.5   *Open Source Components.* Customer acknowledges that the Software may contain or be accompanied by certain third party embedded open source software components ("Open Source Components"). These Open Source Components, if any, are identified in, and subject to, special license notices, terms and/or conditions as set forth in the Sales Order, Documentation and/or in an installation or similar file accompanying the Software ("Open Source Notices"). The warranty set forth in Section 5.1 of this Agreement shall apply to the Open Source Components when such Open Source Components are used as integrated into the Software. No warranty is provided, however, by Neural Magic when the Open Source Components are used by Customer independently of the Software.

8.6   *Usage Data*. The parties acknowledge that the Software will transmit certain usage data relating to Customer's systems to the Software Portal for Customer's review and analysis (hereinafter "Usage Data"). The Customer retains ownership of all right, title and interest in and to such Usage Data. During the term of this Agreement, the Customer hereby grants to Neural Magic a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 11.2 below), royalty-free right to use, display, transmit, and distribute the Usage Data solely as necessary to provide the Software and Services to Customer. Notwithstanding the foregoing, Neural Magic shall have the right to collect, use and distribute aggregated information, analysis, machine learning, statistics, related benchmarking algorithms and other data generated by the Software or derived from the Customer's use of the Software (including Usage Data) provided, however, that Neural Magic shall not disclose any such data unless such data is in an aggregated, anonymized form that would not permit a third party to identify the data as associated with the Customer or any of its Users.

8.7   *Export; Government Restricted Rights*. Customer acknowledges that the export of any Software is subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. The Software and the Documentation have been developed at private expense and are sold commercially. They are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will

obtain only those rights specified in Neural Magic's standard commercial license. Thus, the Software referenced herein, and the Documentation provided by Neural Magic hereunder, which are provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations

9. INDEMNIFICATION.

9.1   <u>Neural Magic Indemnification</u>. Neural Magic will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the Software or Services infringe or misappropriate such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages (including reasonable attorney fees and costs) finally awarded against Customer as a result of, or for amounts paid by under a court-approved settlement of, a Claim Against Customer. If a Claim Against Customer is brought or is likely, in Neural Magic's sole opinion, to be brought, Neural Magic will, at its option and expense (A) obtain the right for Customer to continue using the Software and Services; (B) replace or modify the affected Software and Services so that they becomes non-infringing; or (C) upon notice to Customer, terminate this Agreement or Customer's use of the affected Software and Services, provided that in the case of (C) Neural Magic promptly refunds to Customer the prorated portion of any prepaid, unused Fees paid for the Software or Services.. Customer shall (i) promptly notify Neural Magic in writing of any claim, suit or proceeding for which indemnity is claimed; (ii) allow Neural Magic to solely control the defense of any claim, suit or proceeding and all negotiations for settlement and (iii) provide Neural Magic with reasonable cooperation and assistance in defending such claim (at Neural Magic's expense). Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Software or Services in violation of this Agreement or applicable law, (b) use of the Software or Services after Neural Magic notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Software or Services made other than by Neural Magic (where the claim would not have arisen but for such modification), (d) the combination, operation, or use of the Software with materials which were not provided by Neural Magic, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Neural Magic with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement.   The rights and remedies granted Customer under this Section 9.1 state Neural Magic's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

10. MAINTENANCE SERVICES.

10.1   <u>Maintenance Generally</u>. Maintenance Services are included during the License Term at no additional fee. Neural Magic's Maintenance Services are provided only for the standard version of the Software made generally available by Neural Magic. Maintenance services are not on-site services. If Customer needs or desires on-site maintenance services, such services are available at Neural Magic's standard time and material charges.

10.2   <u>Maintenance</u>. Customer will be delivered Updates and Upgrades as part of Maintenance Services. For purposes of the foregoing, "Updates" mean interim releases of the Software incorporating standard maintenance, improvements, patches, error corrections and enhancements that are provided by Neural Magic at no additional charge to all of its other customers covered by Maintenance Services. Updates are designated by all digit(s) to the right of the decimal point (e.g., 3.x.x), and the content and timing of all Updates shall be decided upon by Neural Magic in its sole discretion and "Upgrades" mean full product releases of the Software, which contain substantial functional enhancements that are provided by Neural Magic at no additional charge to all of its other customers covered by Maintenance Services. Upgrades are designated by the digit to the left of the decimal point (e.g., x.0), and the content and timing of all Upgrades shall be decided by Neural Magic in its sole discretion. Upgrades do not include any products that are marketed and priced separately by Neural Magic.

11. GENERAL PROVISIONS

11.1   <u>Entire Agreement and Controlling Documents</u>. This Agreement, including all Sales Orders, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Except as stated in Section 2.5 above, only a written instrument that refers to this Agreement or the applicable Sales Order and that are duly signed by the authorized representatives of both Parties may amend this Agreement or such Sales Order. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the order is accepted by Neural Magic. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

11.2   <u>Assignment</u>. This Agreement shall be binding upon and for the benefit of Neural Magic, Customer and their permitted successors and assigns. Either Party may assign this Agreement and all Sales Orders without consent of the other Party to an Affiliate of such party or as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets or business to which this Agreement relates provided that it gives the other Party prompt written notice of such assignment and the assignee is or otherwise agrees in writing to be bound by the terms and conditions of this Agreement. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. Neural Magic may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Neural Magic shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation

11.3   *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions.

11.4   *Headings*. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

11.5   *Relationship of the Parties*. Neural Magic and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

11.6   *Publicity*. The Customer hereby grants Neural Magic a non-exclusive license solely during the term of the Sales Order to list Customer's name and display the Customer's logo in the customer section of Neural Magic's website and to use Customer's name and logo in Neural Magic's customer lists but only to the extent that other customers of Neural Magic are also listed on such list. Any other use by Neural Magic of the Customer's name, logo or trademark requires the Customer's prior written consent.

11.7   *Force Majeure*. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

11.8   *Notices*. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges prepaid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth on the applicable Sales Order or (iv) when receipt is electronically confirmed, if transmitted by e-mail. Either Party may change its address by giving written notice of such change to the other Party.

11.9   *No Third-Party Beneficiaries*. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

11.10   *Waiver and Severability*. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.