
NEUROSCIENCE PRODUCT RESALE AGREEMENT

THIS PRODUCT RESALE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2022 (“Effective Date”) by and between NeuroScience (“NeuroScience”) and **[name of purchaser]** _____, a qualified healthcare provider (“HCP”).

WHEREAS, HCP desires to purchase various proprietary products manufactured and sold by NeuroScience (“Products”) for resale to HCP’s patients as otherwise defined herein (“Clients”); and

WHEREAS, Products are made available for retail sale solely and exclusively through qualified healthcare professionals who have been approved to maintain accounts with NeuroScience (“Accounts”); and

WHEREAS, HCP desires to sell Products to its Clients (“Sales”), including through HCP’s wholly-owned website (“Internet Sales”); and

WHEREAS, NeuroScience is willing to permit HCP to make Sales of Products to Clients, including Internet Sales, subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the forgoing and the covenants set forth herein, and other good and valuable consideration, the parties agree as follows.

I. Representations of HCP. HCP represents and warrants that:

- A. HCP is, and will remain at all times during the term of this Agreement, a duly licensed healthcare provider who is actively and directly engaged in the practice of healthcare. HCP shall provide NeuroScience with appropriate evidence of the foregoing promptly upon request, such as HCP’s current medical license, degree, or other certification as a qualified healthcare provider acceptable to NeuroScience.
- B. HCP has, and will maintain at all times during the term of this Agreement, either: (1) a "brick and mortar" office facility in which it directly treats patients; or (2) an approved remote medical platform through which the HCP is directly available for questions and comments from, and to provide guidance to, patients.
- C. HCP shall only sell Products to Clients in bona fide retail transactions, and shall not supply Products to anyone who HCP suspects, knows, or reasonably should know, intends to re-sell or re-distribute the Products. “Client” shall mean an individual client or patient of HCP purchasing Products for personal consumption, treatment, and use under HCP’s direct guidance and supervision. HCP shall provide Clients with appropriate guidance in connection with the use of Products, including all guidance that may be required or directed by NeuroScience from time-to-time.

- D. HCP is the bona fide purchaser of the Products for resale only to HCP's Clients, and is not otherwise "fronting" the agreement on behalf of or for the benefit of any third-party. HCP shall disclose to NeuroScience any third-party ownership, association, or beneficiary of any kind in connection with the Sales of Products.
- E. HCP shall abide by the same code of conduct that governs HCP's face-to-face interactions with Clients with respect to HCP's online activity with Clients. HCP shall at all times: (i) maintain appropriate boundaries with Clients in accordance with professional ethical guidelines; and (ii) comply with applicable law.

II. Payment Terms; Taxes; Delivery; Pricing.

- A. **Payment Terms.** Any outstanding amounts due shall accrue interest at the rate of one percent (1%) per month until paid-in-full and NeuroScience shall be entitled to recover its costs of collection, including reasonable legal fees.
- B. **Taxes.** Any taxes (excluding taxes on NeuroScience's income) imposed by any taxing authority arising from the sale of Products for which NeuroScience is ultimately responsible for collection or payment (whether on its own behalf or on behalf of the HCP) shall be paid by HCP to NeuroScience promptly upon demand.
- C. **Delivery.** NeuroScience will deliver Product by common carrier F.O.B. NeuroScience's warehouse. Title and risk of loss shall transfer from NeuroScience to HCP upon delivery of the Product by NeuroScience to a common carrier; provided that, until paid in full, NeuroScience retains, and HCP hereby grants NeuroScience, a purchase money security interest in the Product. HCP shall promptly perform all actions necessary for NeuroScience to effect and perfect such security interest.
- D. **MAP Pricing.** HCP shall comply with NeuroScience's minimum advertised pricing policy, as may be updated from time to time, otherwise incorporated into this Agreement. HCP acknowledges that failure to comply with the MAP Policy shall be deemed to be a material breach of this Agreement. HCP shall be responsible for ensuring that any of its advertisements for Products are updated promptly following any changes to the MAP Policy by NeuroScience. Any advertisements, discounts (including volume), rewards programs, coupons, special offers, and sales promotions must not be applicable to purchases of the Products, and shall explicitly state "Not valid on NeuroScience, Inc. products." NeuroScience shall have sole and exclusive control in unilaterally establishing the MAP Policy for the Products. It is NeuroScience's policy to discontinue sales of Products to qualified healthcare providers who sell Products below the suggested retail price.

III. Product Sales.

- A. **Limitation on Sales of Products and Prohibition on Resale.** HCP shall only sell Products: (i) to individual clients or patients in connection with a service in exchange for a service fee; and (ii) to individuals who HCP believes are purchasing the Products for personal use, in quantities that are reasonable for an individual's personal use. HCP shall not sell Products to parties that resell, or can reasonably be anticipated to resell, the Products.
- B. **Internet Sales.** HCP shall not advertise, list, offer for sale, sell or distribute any Product via the Internet, except through Reseller's wholly-owned website. Without limiting the generality of the foregoing, Reseller shall not sell Product via any third-party websites, mobile applications, or online marketplaces including, but not limited to, Amazon.com, Ebay.com, or Jet.com. NeuroScience prohibits the display of NeuroScience copyrighted material, including but not limited to products,

photos, logos, instructional materials, literature, sales brochures or materials on any third-party website without prior written approval from NeuroScience.

- C. **HCP Websites.** HCP must register any website on which HCP conducts Internet Sales with NeuroScience Products in advance of any Internet Sales. We may grant or deny permission to sell Products on any website or otherwise conduct Internet Sales in our sole and absolute discretion.

IV. Intellectual Property Rights.

- A. **Intellectual Property.** All trademarks, tradenames, service marks, copyrights and goodwill as they relate to the Products, and their packaging, image, merchandising and advertising materials (collectively, "Intellectual Property") remain the sole and exclusive property of NeuroScience. NeuroScience hereby grants HCP a limited, revocable, nonexclusive, royalty-free license during the term of this Agreement, conditioned upon compliance with the terms of this Agreement, to use its Intellectual Property to promote the goodwill and sale of the Products, subject to the approval of NeuroScience. NeuroScience may, in its sole discretion, terminate HCP's limited license to use the Intellectual Property at any time upon written notice, and all licenses shall automatically terminate upon termination of this Agreement.
- B. **Use of Intellectual Property, Generally.** HCP shall not use or affix any Intellectual Property to any product or other material sold or otherwise conveyed to any Client or other third-party except in accordance with this Agreement. HCP shall indicate NeuroScience's ownership by its trademarks, service marks and copyrights by using ©, ™, SM or ®, as applicable. HCP shall not use the Intellectual Property of NeuroScience in a manner that is likely to cause confusion between NeuroScience and HCP. HCP shall display on each page of its website that references any Product or Intellectual Property a statement substantially as follows: "This site is not owned, operated, or endorsed by NeuroScience."
- C. **Use of NeuroScience's Name.** HCP shall not use NeuroScience's name, or any facsimile thereof, or the name(s) of the Products, testing names, designations or trade dress as part of HCP's online store, domain, or email names without prior approval from NeuroScience, or use any of NeuroScience's corporate, product, or testing names to redirect individuals to any site other than to a website maintained by NeuroScience.

V. Compliance.

- A. **Compliance with all Laws and Regulations.** HCP shall comply with all applicable laws and regulations relating to the advertising, promotion, sale, distribution and use of Products. If any part of this Agreement, in whole or in part, is deemed to be in violation of any state or federal law or regulation, the parties shall undertake to reform its terms to be in compliance or the Agreement shall terminate immediately.
- B. **No Off-Label Claims.** HCP shall not make any false or misleading representations regarding the Products nor make any representations or warranties with respect to the Products that are not contained within or consistent with NeuroScience's literature describing the Products.
- C. **Adverse Events.** HCP shall promptly notify NeuroScience of any complaint or adverse claim about any Product or its use of which HCP becomes aware and to provide reasonable assistance in the investigation of any such complaint or claim.
- D. **Quality Control.** HCP shall comply with all of NeuroScience's quality controls, protocols, instructions, and other documentation with respect to the Products, in order to maintain the quality

of the Product. Without limiting the foregoing, HCP shall observe the following storage and inspection requirements at all times: (i) store the Products at room temperature; (ii) keep the Products away from direct sunlight, extreme heat, and dampness; (iii) maintain Product containers and testers tightly closed at all times; and (iv) regularly inspect Products to ensure that Products are not expired or soon to be expired, tampered with, or damaged in any way, and that Product seals have not been broken.

VI. Breach/Liquidated Damages.

- A. **Injunctive Relief.** HCP acknowledges that its breach of this Agreement will irreparably harm NeuroScience's brand reputation and goodwill and that the harm caused may not be susceptible to measurement of money damages alone. Accordingly, NeuroScience will have the right to seek an injunction or other equitable relief to prevent a breach or threatened breach of this Agreement, without the necessity of posting a bond or other security.
- B. **Liquidated Damages.** HCP acknowledges that the terms of this Agreement set forth in Sections I.C, I.D II.D, III, and V.D (the "Restrictive Covenants") are necessary and proper in order to protect NeuroScience's brand reputation and goodwill, as well as to preserve the ability of NeuroScience's healthcare provider partners, including HCP, to make a reasonable margin on their sales of Products. The parties acknowledge and agree that if HCP fails to strictly comply with the Restrictive Covenants, NeuroScience will be damaged and that the amount of damage to NeuroScience will be difficult or impossible to determine. Accordingly, HCP agrees to pay liquidated damages in accordance with the calculations set forth below in Section VI.C (the "Liquidated Damages") to compensate NeuroScience for its damages resulting from any breach by HCP of the Restrictive Covenants of this Agreement. The parties have made advance provision for Liquidated Damages in order to avoid controversy, delay and expense in the event of HCP's breach of the Restrictive Covenants. Payment or assessment of Liquidated Damages will not release HCP from any obligations under this Agreement. HCP hereby waives any defense to NeuroScience's right to obtain Liquidated Damages on the basis that actual damages are calculable or that the liquidated damages do not represent a reasonable determination of NeuroScience's damages or otherwise constitute a penalty.
- C. **Calculation.** Liquidated Damages shall be an amount equal to \$500.00 for each separate breach of the Restrictive Covenants for each day that HCP remains in breach. Each breach of the Restrictive Covenants with respect to a Product shall be considered a separate breach for the purposes of this Section. For example, if HCP is in breach with respect to three different Products for a period of 10 days, HCP will be deemed to have committed 30 breaches and be subject to Liquidated Damages of \$15,000.00. The Liquidated Damages are estimated based on the various damages that NeuroScience expects to suffer upon any breach of the Restrictive Covenants, including but not limited to lost sales and lost business; the infringement of NeuroScience's trademarks and other intellectual property; the irreparable harm to NeuroScience's business, customer relationships, goodwill and quality control measures; and the costs of investigating any breaches. HCP agrees that the Liquidated Damages are not a penalty and are reasonably estimated in light of the anticipated or actual harm that would be caused by a breach and the difficulty of proving the amount of loss and otherwise providing an adequate remedy to NeuroScience. Nothing in this Section shall be intended to preclude NeuroScience from recovering, in addition to Liquidated Damages, any additional damages suffered as a result of HCP's breach of any of its other obligations pursuant to this Agreement or limit NeuroScience's right to injunctive relief with respect to any breach by HCP of the Restrictive Covenants.

VII. Recordkeeping and Audit.

- A. **Right to Investigate.** NeuroScience shall have the right to investigate HCP's sales procedures, records, compliance with the MAP Policy and the Restrictive Covenants, and any complaints from Clients who have purchased Products through HCP upon reasonable notice.
- B. **Records.** HCP shall maintain and preserve accurate books, records, documents and data (including but not limited to written and electronic records, books of account, correspondence, memoranda, receipts, and documentation of related systems and controls) in connection with the performance of its obligations under this Agreement during the term of the Agreement and for three (3) years following termination.
- C. **Audit.** NeuroScience may, during normal business hours upon reasonable advance notice, audit and inspect HCP's records and inventory, and interview HCP's employees for any of the following reasons: to review documents pertaining to the sale of Products; to ensure that only authorized Products of NeuroScience are held in HCP's inventory of Products; to ensure that no Products are marketed, sold, assigned, transferred, exported or otherwise conveyed in contravention of this Agreement; and to otherwise monitor HCP's compliance with the terms of this Agreement. NeuroScience shall provide a minimum of five (5) days prior written notice to HCP before conducting any audit and shall ensure that it conducts any audit in a manner that minimizes potential disruption to HCP's business.

VIII. Termination; Suspension; Survival. This Agreement, may be terminated by either party at any time by giving the other party written notice of such termination. In the event of termination all funds owed to NeuroScience for Products sent as of the termination date and received by HCP thereafter shall be immediately payable. In lieu of termination, NeuroScience may elect to suspend HCP for breach until HCP has cured such breaches to NeuroScience's satisfaction. Upon termination, HCP shall immediately cease all use of the Intellectual Property, as well as any use of a mark, symbol or device that in the sole discretion of NeuroScience is likely to be confused with any of the Intellectual Property. Upon termination, NeuroScience may, in its sole discretion, repurchase from HCP any Products in HCP's possession. Any such repurchase shall be at the price or prices paid for the relevant Product, minus (i) shipping and handling charges incurred when purchasing our Products, (ii) the cost of reshipping Products back to NeuroScience by common carrier, and (iii) a 20% restocking fee. NeuroScience may pay the purchase price of any repurchased Products by offsetting any monies due to HCP from NeuroScience. Following HCP's receipt of notice of NeuroScience's intent to repurchase any Products, HCP shall make arrangements to ship repurchased Products promptly and without undue delay, and in any event, within five business days. Title to and risk of loss with respect to any repurchased Products will pass on delivery to the address specified by NeuroScience in writing. NeuroScience reserves the right to reject any repurchased Product that is not in a resalable condition as determined by NeuroScience, in its sole and absolute discretion, upon receipt of the Product. Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive.

IX. Indemnification. HCP shall indemnify, defend and hold harmless NeuroScience and its affiliates, and their respective shareholders, members, officers, directors, employees, and agents, and any person or entity that controls any of them, from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, including costs of litigation and reasonable attorneys' fees, arising out of or attributable to HCP or its employees' or agents': (i) negligence or intentional acts or omissions; (ii) nonperformance or breach of this Agreement; or (iii) violation of applicable law.

- X. **DISCLAIMER OF WARRANTIES.** NEUROSCIENCE WARRANTS THAT THE PRODUCTS SHALL BE FREE FROM MATERIAL MANUFACTURING DEFECT UPON RECEIPT BY HCP. NEUROSCIENCE EXPLICITLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, NOT EXPRESSLY STATED IN THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, CORRECTNESS, COMPLETENESS, SAFETY, OR RELIABILITY, WHETHER ARISING BY LAW, COURSE OF DEALING, OR OTHERWISE.
- XI. **LIMITATION ON LIABILITY.** EXCEPT FOR A PARTY'S INDEMNIFICATION, INTELLECTUAL PROPERTY, OR LIQUIDATED DAMAGES OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS TO BE PROVIDED UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. NEUROSCIENCE'S LIABILITY FOR MONEY DAMAGES, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCT TO BE PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED THE PRICE OF THE PRODUCTS AT ISSUE, OR TO THE EXTENT NO PRODUCT IS AT ISSUE, THE TOTAL AMOUNT PAID BY HCP TO NEUROSCIENCE PURSUANT TO THIS AGREEMENT. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE LEGAL THEORY OF LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER THEORY WHATSOEVER.

XII. Additional Provisions.

- A. **Governing Law; Disputes.** The laws of Wisconsin, without giving effect to its principles of conflicts of law, govern any dispute arising in connection with this Agreement. Any proceeding arising out of this Agreement may be brought only in the state courts in Polk County, Wisconsin or federal courts in the Western District of Wisconsin, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. HCP shall pay NeuroScience's legal fees in connection with enforcing this Agreement.
- B. **Notices.** All notices hereunder shall be in writing and shall be deemed to have been given when delivered by registered or certified mail, to the address set forth on the Account application, or to such addresses as the parties shall designate.
- C. **Authority.** HCP represents that it has the power and authority to enter into this Agreement, and the Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.
- D. **Assignment.** HCP's rights and/or obligations under this Agreement may not be transferred or assigned in any manner, to any other person or entity, without the written consent of NeuroScience.
- E. **Representations.** HCP's representations made in the Account application and this Agreement are true and correct. HCP shall promptly advise NeuroScience if those representations are no longer true and correct.
- F. **Entire Agreement.** This Agreement, together with the HCP's Account application and any other documents expressly incorporated by reference, represents the entire understanding and agreement between the parties regarding the subject matter of this Agreement, and supersedes all previous agreements, understandings or representations regarding such subject matter.
- G. **Independent Contractors.** NeuroScience's relationship with HCP is that of an independent

contractor, and nothing in this Agreement is intended to create any partnership, agency, joint venture or employee relationship.

IN WITNESS WHEREOF, the parties have executed this Product Resale Agreement by their authorized representatives as of the Effective Date.

Print Name: _____

Signature: _____

Title: _____ Account#: _____

Date: _____

Website: _____

Phone: _____

Return Fax: 715-294-3921 Attn: New Accounts

No Internet Sales

Print Name: _____

Signature: _____

Title: _____ Account#: _____

Phone: _____