

**THIS AGREEMENT** (the “**Agreement**”) sets forth the terms and conditions governing the sale and purchase of the Nevro® Senza Spinal Cord Stimulation System and related individual components or accessories (“**Products**”) by **NEVRO CORP.**, a Delaware corporation with a business office located at 1800 Bridge Parkway, Redwood City, CA 94065 (“**Nevro**” or “**Nevro**”) to the Customer listed on a Quote provided by Nevro (“**Customer**”) (“**Nevro**” and “**Customer**” each referred as a “**Party**” and, collectively, the “**Parties**”).

## 1. GENERAL

1.1 **Applicability of this Agreement.** The offer and sale of the Products, as such Products are described in the applicable quote or similar document provided by Nevro (the “**Quote**,”) is conditioned upon the acceptance by Customer of the terms and conditions set forth in this Agreement, and Customer hereby rejects all other terms and conditions (including any terms set forth on any purchase order or similar document provided by Customer). Customer must sign a Quote (e.g., a DBRF or PO Request Sheet) at the time of product acceptance to validate proof of delivery.

1.2 **Purchase Orders; Acceptance.** Customer agrees to purchase the quantity of the Products specified in purchase orders issued by Customer in connection with a Quote and that are accepted by Nevro as set forth below (each, a “**Purchase Order**.”) Purchase Orders may be submitted via fax, email or mail to Nevro. Nevro may accept or reject Purchase Orders in its sole discretion. A Purchase Order will only be deemed accepted by Nevro (and thereby become a Purchase Order) if Nevro delivers a signed Purchase Order or other written confirmation to Customer within fifteen (15) calendar days after receipt of such Purchase Order. No terms on any Purchase Order other than the description and quantity of Products ordered will apply to the transactions under this Agreement and are hereby rejected. If personnel present at the time of Product delivery are not authorized to sign the Quote, Customer hereby agrees that submission of the Purchase Order is confirmation of proof of delivery of Products listed in the Quote. The terms of this Agreement shall govern and supersede any different or inconsistent terms in a Purchase Order.

1.3 **IP; Authorized Use.** Nevro retains all, and Customer shall have no, right, title, and interest to the intellectual property that comprises the Products and any improvements or derivative products thereof. Customer shall not reverse engineer, decompile, disassemble, translate, copy, redistribute, resell, remove any markings on the Products, or provide a service bureau or time share, related to the Products. Customer shall not use the Products for the benefit of third parties that are not affiliated with or patients of Customer. Customer may not attempt to do any of the foregoing, or assist any third-party to do so. Customer further agrees to the terms of any license that accompanies any software included with or embedded within the Products.

1.4 **Termination.** At any time, Nevro may terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. Either Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party if the other Party breaches this Agreement and does not cure such breach within such 30-day period. In the event of expiration of this Agreement or Nevro's termination of this Agreement for convenience, Nevro will fulfill and Customer shall pay any amounts that come due under any accepted Purchase Orders that are outstanding at the time of such termination or expiration. All Customer's purchases are subject to this Agreement; if this

Agreement is terminated no further Purchase Orders will be honored by Nevro.

## 2. DELIVERY, RISK OF LOSS, CUSTOMER ACCEPTANCE

2.1 **Delivery Date.** The requested delivery date for the Products shall be set forth by Customer in the applicable Purchase Order. Nevro will provide an estimated delivery date to Customer at the time of Nevro's acceptance of the Purchase Order. Nevro will use reasonable efforts to meet the delivery dates as quoted but will not be liable for any failure to meet such dates. Partial shipments may be made and invoiced and Nevro will use reasonable efforts to notify Customer in advance of any partial shipment.

2.2 **Acceptance; Risk of Loss; Title.** Nevro shall deliver the Products to Customer EXW Origin and the delivery point shall be Nevro's facility (or such other delivery point of which Nevro may notify Customer in Nevro's discretion). Shipment shall occur, and title to the Products (excluding software, which is licensed) and all risk of loss, damage to or destruction of the Products shall pass to Customer, at the delivery point. The Products shall be deemed accepted by the Customer upon shipment by Nevro. To secure Customer's payment for all Products ordered under this Agreement, Customer hereby pledges and grants to Nevro a lien on and a security interest in such Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this Section 2.2 constitutes a purchase-money security interest under Division 9 of the California Uniform Commercial Code or other applicable law. Customer agrees that it shall not provide any third party with a security interest in any Products or otherwise pledge or encumber such Products until the Products are paid in full. Except as may be provided under an applicable Limited Warranty (as defined below), Customer may not return any Products.

## 3. PRICING, TERMS OF PAYMENT, TAXES

**Pricing.** The prices payable for the Products are listed on the Quote. Except as otherwise specified herein, (i) prices are quoted by Nevro and payable by Customer in United States dollars; (ii) accepted Purchase Orders and payment obligations are non-cancelable and amounts paid are non-refundable; and (iii) Nevro reserves the right to revise the prices as specified on the Quote. The Parties acknowledge and agree that all discounts, rebates, credits, or other reductions in price (each a “**Price Concession**”) made available under this Agreement are “discounts and other reductions in price” as defined under the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (“**AKS**”). Customer is hereby advised that the terms of any Price Concession made available under this Agreement are set forth in Exhibit A and will be reflected on the invoices or other statements provided by Nevro to Customer. Where the Price Concession provided by Nevro to Customer may not be determined at the time of sale, Nevro hereby informs Customer that, when known, Nevro will provide Customer with documentation of the calculation of the Price Concession identifying the specific items purchased to which the Price Concession will be applied.

3.1 **Pricing Disclosure.** (a) Customer is advised of Customer's obligations to comply with the AKS discount safe harbor (42 C.F.R. § 1001.952(h)), including the obligation to fully and accurately disclose, in any cost reports or claims for reimbursement submitted to Medicare, Medicaid, or other health care programs, the net cost (including Price Concessions or any other price reductions) of any Products purchased under this Agreement or any amounts paid pursuant to any Purchase Order or Quote, and, on request, provide to the U.S. Department of Health and Human Services and any state agencies, any invoices, coupons,

statements, and other documentation provided by Nevro to Customer under this Agreement; (b) Customer shall not seek reimbursement for any items provided by Nevro to Customer at no cost, including those items provided as a sample, demonstration product, or other loaned product; (c) Customer shall retain a copy of this Agreement and any other documentation provided by Nevro regarding any Price Concessions provided under this Agreement or any Purchase Orders for Products, and upon Customer's reasonable request in writing, Nevro shall provide reasonable additional information to Customer if and to the extent required to assist Customer to meet its reporting or disclosure obligations under this Section 3.2; and (d) Customer represents and warrants that all Products purchased under this Agreement, including any Products obtained via a credit, will be used only in the same site of service setting, and Customer further represents and warrants that it will only seek reimbursement from third party payors, including federal healthcare programs, for use of such Products under the methodology for this setting.

**3.2 Invoicing and Payment.** Unless otherwise agreed to in writing by Nevro and Customer, invoices will be generated by Nevro and mailed electronically to Customer upon Nevro's acceptance of each Purchase Order in accordance with Section 1.2. Invoiced charges are payable thirty (30) days after the invoice date. Customer is responsible for timely payment of all invoiced charges and for maintaining complete and accurate billing and contact information on file with Nevro.

**3.3 Disputes.** Nevro must receive written notice of any disputed charges from Customer within fifteen (15) days after the invoice date or Customer shall be deemed to have waived its right to dispute charges. Notwithstanding any dispute, Customer shall pay any undisputed amount of the invoice on or before the due date. The dispute notice shall set forth in reasonable detail the information concerning the disputed charges. Nevro and Customer shall use best efforts to promptly resolve any disputed charges. Customer may not set off any amounts due hereunder.

**3.4 Late Payment.** Any amounts not paid when due may accrue interest at the rate of 18% per annum, compounded monthly, or the maximum rate permitted by law, whichever is lower. In addition, if Customer fails to make any payment to Nevro when due, then Nevro will have no obligation to continue performance under this or any agreement with Customer.

**4. LEGAL COMPLIANCE.** The parties agree to abide by all applicable laws. Specifically, Customer will comply with all applicable federal and state laws and regulations with respect to the Products, including, but not limited to, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.); the AKS, (42 U.S.C. § 1320a-7b(b)) and all applicable exceptions and safe harbors to the AKS; all export laws; and the Federal Food, Drug and Cosmetic Act. Customer represents that it has not been excluded from participating in any "federal health care program," as defined in 42 U.S.C. § 1320a-7b(f), or otherwise debarred, suspended, declared ineligible, or voluntarily excluded by any other federal or state government program or agency, and that it is eligible to participate in the foregoing programs. If Customer is excluded or becomes otherwise ineligible to participate in any such program during the term of this Agreement, Customer will notify Nevro of that event within thirty (30) days. Upon occurrence of that event, whether or not such notice is given, Nevro may terminate this Agreement effective upon written notice to Customer. Customer further represents that it will not purchase any quantity of Products beyond the amount that it reasonably expects to utilize.

## **5. LIMITED WARRANTY**

5.1 Nevro provides a limited warranty with the Products solely to and for the benefit of the end-user (the "User"), as set forth and in accordance with the terms and conditions of the limited warranty accompanying the Product (the "Limited Warranty"). Nevro's sole liability and obligation, and Customer's sole remedy, related to a breach of the Limited Warranty shall be for Nevro to either repair or replace the Product(s) that do not meet the Limited Warranty requirements. EXCEPT FOR THE LIMITED WARRANTY, NEVRO MAKES NO EXPRESS WARRANTY TO CUSTOMER (FOR CLARITY, INCLUDING WITH RESPECT TO ANY PRODUCTS NOT ACCOMPANIED BY A LIMITED WARRANTY), AND NEVRO DISCLAIMS ALL IMPLIED WARRANTIES AND ANY OTHER WARRANTIES OR REPRESENTATIONS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, WHETHER ARISING FROM COMMON LAW, CUSTOM, USAGE OF TRADE, OR OTHERWISE, AND THE PRODUCTS ARE PROVIDED "AS IS." THE FOREGOING DISCLAIMER SHALL NOT APPLY TO ANY WARRANTIES THAT ARE NOT WAIVABLE AS A MATTER OF LAW.

**6. LIMITATIONS OF LIABILITY.** THE TOTAL LIABILITY OF NEVRO, TOGETHER WITH THAT OF ITS AFFILIATES, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND SUPPLIERS, FOR ANY AND ALL CLAIMS, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT OR UNDER ANY PURCHASE ORDER, QUOTE, OR OTHER AGREEMENT RELATED HERETO OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT RELATING THERETO, SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PURCHASE ORDER OR QUOTE WHICH DIRECTLY GIVES RISE TO THE CLAIM. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT) OR OTHERWISE, SHALL NEVRO, OR ITS AFFILIATES, EMPLOYEES, AGENTS, SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF OR ACCESS TO THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE OR DATA, COST OF CAPITAL, COST OF FACILITIES, SERVICES OR REPLACEMENT POWER OR DOWNTIME COSTS FOR SUCH DAMAGES, OR FOR DAMAGES RELATED TO USE OF THE PRODUCTS OUTSIDE THE INSTRUCTIONS FOR USE, OR FOR OFF LABEL USE OF THE PRODUCTS, EVEN IF NEVRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM. CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEVRO WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. CUSTOMER IS SOLELY RESPONSIBLE FOR ALL CLINICAL AND MEDICAL TREATMENT, AND ALL DIAGNOSTIC DECISIONS ARE THE RESPONSIBILITY OF CUSTOMER AND ITS PROFESSIONAL HEALTHCARE PROVIDERS. THESE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SHALL APPLY EVEN IF THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

**7. FORCE MAJEURE.** Nevro will use reasonable efforts to complete shipment of Products in accordance with the delivery dates, described in section 2.1, but will not be liable for any loss or damage for delay in delivery, inability to implant or any other failure of the Products, or for any other act or omission, in each case, due to causes beyond its reasonable control including acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil commotion, blockades, embargos, calamities, floods, fires, earthquakes, explosions, storms, strikes, lockouts, labor disputes, or

unavailability of labor, raw materials, power, the Internet, or supplies.

**8. CONFIDENTIAL INFORMATION.**

8.1 Customer shall hold the following information in strict confidence and not disclose the same to any other person or entity, including any affiliated entity, except as provided herein: all information, pricing and terms relating to or contained in this Agreement, including any Purchase Orders or any Quotes; all data, trade secrets, financial data, pricing, business plans or any other information disclosed by Nevro in connection with this Agreement (collectively, "**Confidential Information**"). Notwithstanding the above, Customer may disclose Confidential Information: (i) to the personnel within its organization and its legal and accounting advisors that require the Confidential Information in connection with the Party's rights and obligations under this Agreement, provided that the disclosing Party requires any such recipient to use the information solely for these purposes and to keep it strictly confidential; (ii) as required by law, provided that Customer provides reasonable prior notice to Nevro to enable Nevro to attempt to prevent or limit the disclosure and Customer assists Nevro upon request in seeking relief from or limiting the disclosure; and (iii) with the prior written consent of Nevro.

9. 8.2 Nevro agrees to maintain the confidentiality of any patient information received from Customer to the extent required by applicable law, and in accordance with Nevro's Privacy Policy (available at [www.nevro.com/privacy](http://www.nevro.com/privacy)). Additionally, Nevro will take steps to ensure the confidentiality, integrity and availability of all electronic patient information received from Customer and to protect against reasonably anticipated threats and unauthorized use or disclosure of such data using methods consistent with applicable industry standards.

**10. GENERAL.** Customer may not assign, sell, transfer, delegate or otherwise dispose of this Agreement or any rights or obligations under this Agreement, whether voluntarily or involuntarily, by operation of law, merger, acquisition, sale, or otherwise without the prior written consent of Nevro. Any purported assignment, transfer or delegation by Customer shall be null and void. Nevro shall have the right to assign this Agreement and/or delegate any or all of its obligations hereunder without Customer's consent and without prior notice to Customer. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party; and no other act, document, usage or custom shall be deemed to amend or modify this Agreement. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California without regard to any conflict of law provisions thereof that would cause the applications of the laws of another jurisdiction. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded. Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California in connection with any claim, action, suit, or proceeding relating to this Agreement, except that either Party may seek injunctive, equitable or similar relief from any court of competent jurisdiction. THE PARTIES WAIVE ANY RIGHT TO A JURY. If any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the

extent possible, consistent with the stated intention of the Parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect. The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. Notices sent to either Party shall be deemed fully and completely given (i) when delivered in person to the Party to be notified, (ii) when sent by confirmed electronic mail or facsimile, (iii) one (1) business day after being sent by overnight courier, or (iv) two (2) business days after being sent by first class mail postage prepaid. All communications shall be sent to the respective parties at the address as set forth in the signature block of this Agreement or to such updated address as either Party may provide from time to time in compliance with this Section 9. Sections 1.3, 2.2, 3, 4, 5 (related to warranty disclaimers), 6 through 9, and any other provision which by its nature should survive termination or expiration of this Agreement shall survive such termination or expiration. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. In the event of any conflict or inconsistency between this Agreement and any Purchase Orders, acknowledgments, or similar documents, the terms of this Agreement shall govern.