

Terms and Conditions by and between Brainlab, Inc. and County of Ventura

These Terms and Conditions ("Terms") are by and between Brainlab, Inc., a Delaware corporation ("Brainlab") and County of Ventura, a political subdivision of the state of California ("Customer") are effective _____ ("Effective Date"). Brainlab Quotation Nos. QN-VCMCVC-MXW-180 ("Quote 1"), No. QN-VCMCVC-JWA-177 ("Quote 2"), and QN-VCMCVC-MXW-181 ("Quote 3") (collectively, the "Quotes") is hereby incorporated into these Terms. The Quotes and Terms are herein referred to as the "Agreement". The Terms shall replace and supersede the Brainlab Standard Terms and Conditions attached to the Quotes.

1. DEFINITIONS AND APPLICATION

- 1.1. "Acceptance" occurs on the date Customer signs Brainlab's acceptance protocol to verify acceptance or as otherwise defined in Section 9.
- 1.2. "Delivery" means delivery of all Products and Software at Customer's site.
- 1.3. "Products" means all Software and hardware products set out in the Quotes.
- 1.4. "Periodic Fees" shall be the annual fee for the purchased Software subscriptions.
- 1.5. "Services" means the services specifically set out in the Quotes or performed as part of or in connection with the Product purchase, such as, for example, installation and warranty services.
- 1.6. "Software" means software to be delivered or made otherwise available by Brainlab and set out in the Quotes.
- 1.7. "Term" means the time period set out in the Quotes for the provision of Software on a subscription basis.
- 1.8. All Products and Services are furnished only on these Terms, and the Product descriptions found in the Quotes.
- 1.9. These Terms are deemed to be accepted upon mutual execution.

2. QUOTE / ORDER CONFIRMATION

- 2.1. Intentionally Omitted.
- 2.2. Intentionally Omitted.
- 2.3. Intentionally Omitted.
- 2.4. A final and binding contract comes into force upon mutual execution of these Terms.
- 2.5. If Customer requests any changes to the configuration covered by the Agreement, Brainlab shall reasonably consider such request, however additional costs incurred due to the changes shall be borne by Customer.
- 2.6. Intentionally Omitted.

3. THIRD PARTY PRODUCTS

- 3.1. If Customer enters into any contracts with third parties that are technically related to the Products, Brainlab assumes no responsibility for such contracts with third parties or the products covered thereunder.
- 3.2. Brainlab warrants compatibility with third party products explicitly listed in the Product manual or other technical documentation.
- 3.3. Intentionally Omitted.
- 3.4. Customer shall make reasonable efforts to make third party products available during installation for any required acceptance or compatibility testing as reasonably required by Brainlab.
- 3.5. Intentionally Omitted.

4. PRICING / PRICE INCREASES

- 4.1. Unless otherwise indicated in the Quotes, prices as set forth in Brainlab's quotations are DDP (delivered duty paid). Insurance, freight, taxes and other charges are included in the total Quote price.
- 4.2. Intentionally Omitted.

5. PAYMENT TERMS

- 5.1. Intentionally Omitted.
- 5.2. Terms of invoice are as follows:
 - hardware and related installation, implementation, training and miscellaneous costs - line items 1-15, 18, 35-42 on Quote 1 and line items 1-2 on Quote 3: 90% invoiced following Delivery, 10% invoiced following Acceptance
 - software subscriptions - line items 16-17, 19-34 on Quote 1: invoiced annually, in advance, following Acceptance
 - service agreement for clinical consultation - line item 43 on Quote 1: invoiced annually, in advance, following Acceptance
 - service agreement for hardware support - line item 1 on Quote 2: invoiced annually, in advance, starting at warranty expirationInvoices are due net thirty (30) days from date of receipt of a valid invoice by Customer.

- 5.3. In the event Customer desires to pay the aggregate amount of the Periodic Fees (such amount being the Periodic Fee multiplied by the number of months in the Term) ("Aggregate Fee") in one lump-sum, Customer shall notify Brainlab of such intention and the Aggregate Fee shall be due according to the payment terms set forth in Section 5.2.

5.4. Intentionally Omitted.

- 5.5. In case of delay of execution of the acceptance protocol due to circumstances caused by or within the responsibility of Customer, (excluding any delays due to a force majeure type event, such as Acts of God or strike and excluding delays due to Product issues or Brainlab's actions), payment due upon acceptance of the Product shall be due and payable in full upon the earlier of (i) six months after Delivery or (ii) acceptance.

5.6. Intentionally Omitted.

5.7. Intentionally Omitted.

- 5.8. The first year of the applicable Periodic Fees shall be due and payable within thirty (30) days of execution of the acceptance protocol or first successful patient treatment, whichever occurs earlier. Thereafter, the Periodic Fees shall be due and payable annually.

- 5.9. Customer shall pay for applicable sales, use, or property taxes. In the event Customer is a tax exempt entity, Customer shall notify Brainlab in writing and provide written evidence of such status

5.10. Intentionally Omitted.

- 5.11. Customer shall not be entitled to offset claims without the prior written consent of Brainlab, which shall not be unreasonably withheld.

6. SITE PLANNING/ CUSTOMIZATION

- 6.1. Intentionally Omitted.

7. DELIVERY

- 7.1. Delivery shall occur no later than eight (8) weeks after Brainlab's receipt and confirmation of Customer's purchase order. Customer shall accept, and cannot refuse, Delivery of the Products provided that they are Delivered on or before the Delivery deadline set forth in this Section. Brainlab shall not make partial Delivery, and therefore will not deliver until all Products are ready for Delivery. If Brainlab does not Deliver on or before the Delivery deadline, Customer may cancel this Agreement and receive a refund of all amounts paid.

7.2. Intentionally Omitted.

7.3. Intentionally Omitted.

7.4. Intentionally Omitted.

- 7.5. Customer shall arrange for barrier-free transportation of Brainlab shipping crates as reasonably required from the Customer's receiving area (including adequate parking space for transportation vehicle) to the installation site or to the storage room, and, if applicable, from the storage room to the installation site. Unless otherwise agreed between the parties, Customer shall provide a loading dock with capabilities for non-power tailgate delivery.

8. TRANSPORTATION AND RISK OF LOSS

- 8.1. Brainlab shall insure the Products during transportation, such cost being included in the total Quote price. Appropriate means of transportation to Customer's site will be chosen by Brainlab.

8.2. Intentionally Omitted.

8.3. Intentionally Omitted.

9. INSTALLATION / ACCEPTANCE / ACCEPTANCE PROTOCOL

- 9.1. Installation will be performed by a Brainlab service engineer at an agreed upon date. On-site installation will generally require no more than two visits of a Brainlab engineer, unless otherwise specified by Brainlab. If one visit is sufficient, or if more than two visits will be required, Brainlab will notify Customer in advance.

- 9.2. If completion of the installation is delayed for more than six (6) months after Delivery due to circumstances caused by or within the responsibility of Customer (excluding any delays due to a force majeure type event, such as Acts of God or strike and excluding delays due to Product issues or Brainlab's actions), Brainlab shall no longer be obligated to perform the installation.

9.3. Intentionally Omitted.

9.4. Intentionally Omitted.

- 9.5. After complete installation and prior to final acceptance, one of Brainlab's service engineers will test the Products to evaluate

- their capability of functioning according to the specifications. At least one representative of Customer shall be present during this procedure. The acceptance test may also have an extended scope covering use of Products in conjunction with third party products.
- 9.6. After successful performance of the acceptance test, Customer shall accept the Product and sign Brainlab's acceptance protocol to verify Acceptance.
 - 9.7. Acceptance shall not be refused because of minor problems that, as mutually agreed, do not affect the suitability for safe clinical use. Acceptance shall be deemed to have occurred, and invoices issued upon Acceptance as described in Section 5, if Customer refuses acceptance due to such minor problems.
 - 9.8. The Product may not be used for patient treatment before the applicable acceptance test has been performed successfully and the acceptance protocol has been signed.
 - 9.9. If Customer performs any kind of patient treatment before signing the applicable acceptance protocol, the Product shall be deemed accepted and payment of the last installment shall be due.
 - 9.10. Customer shall be solely responsible for effectiveness, correctness, cost and timely implementation of any clinical and physics setup-procedures, including but not limited to sterilization of non-sterile surgical instruments or acquisition and documentation of radiation beam data, as applicable.
- 10. EXAMINATION AND NOTIFICATION OF DEFECTS**
- 10.1. Customer shall inspect the packaging and the Products immediately upon Delivery and shall report any visible damage to the shipping agent without delay.
- 11. TRAININGS / OR ASSISTANCE**
- 11.1. The Agreement includes a specified number of trainings / OR assistance sessions.
 - 11.2. After successful performance of training for Brainlab Products, the training acceptance protocol must be signed by an authorized representative of the Customer, if applicable.
 - 11.3. No Products may be used before the applicable training has been performed and any applicable training acceptance protocol has been signed.
 - 11.4. Customer warrants that the Products will be operated only by trained personnel.
- 12. WARRANTY**
- 12.1. Brainlab warrants that the Products are free from defects in material and workmanship under normal use and in substantial compliance with operational features of Brainlab's published specifications at the time of sale. The warranty period shall be one (1) year beginning upon the earlier of (a) successful treatment of the first patient; (b) Acceptance; or (c) in the event Customer delays Acceptance due to reasons or factors within its control, six (6) months after Delivery.
 - 12.2. In the event that any malfunction occurs, Customer shall immediately cease using the Product and inform Brainlab hereof without delay. Customer shall not resume use of the Product before Brainlab has given notice that the malfunction has been eliminated. Brainlab shall repair or replace malfunctioning Products within five (5) business days of receipt of written notice of such malfunction. In the event Brainlab does not repair or replace such malfunctioning Products during the five (5) day time period, Brainlab shall provide a loaner system to Customer to utilize until the Products are repaired.
 - 12.3. Brainlab will, at its own discretion, repair or replace defective parts or Products.
 - 12.4. Intentionally Omitted.
 - 12.5. The quality of Products is to be measured exclusively by the given specifications which are hereby incorporated in the contract.
 - 12.6. In the interest of conservation of scarce materials, Products, including repair or replacement parts or components, may contain remanufactured parts. Such parts are subject to the same high standards of quality control applied to other parts and are covered by this warranty.
 - 12.7. THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF AND EXPRESSLY EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, COMMERCIAL PRACTICE, USE, OR APPLICATION.
 - 12.8. Notwithstanding anything to the contrary contained here, Brainlab does not warrant that the Software will be error-free or bug-free and that the use of the Software will be uninterrupted. In addition, except as otherwise stated herein, the Software is provided without any additional warranties. Notwithstanding the foregoing, for Software provided on a subscription basis, Customer shall receive those services set forth in the Software description in the Quote.
 - 12.9. Notwithstanding the one (1) year warranty period referenced in Section 12.1, repair or replacement parts ("Spare Parts") provided during the warranty carry the same warranty set forth in Section 12.1 for the unexpired portion of the original warranty period. Spare Parts provided by Brainlab under a purchased service contract are covered for the unexpired portion of the service contract period.
 - 12.10. Brainlab shall be entitled to keep replaced or removed parts.
 - 12.11. Customer's claims are only valid when made in writing.
 - 12.12. Customer shall bear the costs for any disposable parts needed for use of the Products.
 - 12.13. Intentionally Omitted.
- 13. WARRANTY EXCLUSIONS AND PERFORMANCE OF SERVICE**
- 13.1. Any warranty is excluded and, further, Brainlab shall not be obligated to perform any Services in case of:
 - Accident not involving an error or omission by Brainlab personnel;
 - lack of proper care by parties other than Brainlab personnel;
 - use of Products that is not in compliance with Brainlab's manuals, instructions for use and a reasonable degree of care or failure to use Brainlab systems under normal or specified operating conditions and environment;
 - use of Products in combination with devices, parts of devices, or accessories that have not been expressly cleared by Brainlab for use with such Products;
 - maintenance or repair of Products that have not been authorized by Brainlab;
 - unauthorized modification or alteration of Products;
 - failure of Customer to promptly report any malfunction of a Product or continuous use of the Product after occurrence of any such malfunction;
 - faults, failures or damages caused by intentional or negligent behavior by parties other than Brainlab; or
 - circumstances beyond Brainlab's control, including but not limited to force majeure, acts of God, power and/or environmental failures.
 - 13.2. Customer shall allow Brainlab free access to the Products, including online access if Customer allows remote service to be performed. Customer shall offer a suitable workplace, including access to a telephone if needed. Brainlab shall use this telephone line exclusively to perform the Services.
 - 13.3. Customer shall ensure safe conditions at the location of the Products. Particularly, Customer shall inform Brainlab of existing safety regulations that are relevant for Brainlab personnel.
 - 13.4. Customer and Brainlab shall mutually agree on dates and times for Service visits at least 48 hours in advance.
 - 13.5. Brainlab will provide Services Monday through Friday from 8.00 am until 5.00 pm PST.
 - 13.6. In the event that a Service, installation or other appointment is cancelled due to reasons within Customer's responsibility (excluding any delays due to a force majeure type event, such as acts of God or strike), Customer shall inform Brainlab at least 24 hours in advance.
 - 13.7. Intentionally Omitted.
 - 13.8. Brainlab shall respond to Customer reports of malfunctioning Products by phone, fax or email within no more than 24 hours by phone call. If the malfunction cannot be eliminated by phone call, the dispatch of spare parts as well as maintenance and repair will normally be initiated within one working day after the problem analysis by phone, pending availability of personnel and material.
- 14. INTELLECTUAL PROPERTY, SOFTWARE LICENSES**
- 14.1. All rights to patents, trademarks, and any other intellectual property shall remain the property of Brainlab, its affiliates and/or its licensors, as applicable. Brainlab and/or its affiliates, suppliers and/or licensors presently owns and will continue to own all right, title, and interest in and to the Software and its source code, and any and all copyrights, trademarks, trade names, logos and other proprietary rights in and to the Software and any other materials provided to or otherwise made available to Customer hereunder, and all worldwide intellectual property rights embodied herein.
 - 14.2. Brainlab grants Customer a limited, non-exclusive, non-transferable license to use any Software. Software delivered with or integrated in hardware products may solely be used in conjunction with such hardware products and for its intended use. Software provided as a subscription is provided for the subscription Term; all other Software is provided as a perpetual license. The Software may be accessed and used worldwide in accordance with applicable law and export regulations.

14.3. Intentionally Omitted.

14.4. All title and interest to any Software provided to Customer shall remain with Brainlab, its affiliates and/or its licensors, as applicable. Customer shall not copy, modify or reverse engineer Software and shall prevent third party access to the Software.

14.5. Intentionally Omitted.

15. OWNERSHIP AND RETENTION OF TITLE

15.1. Brainlab shall retain title to the hardware Products until payment for such hardware Products is made in full.

15.2. Intentionally Omitted.

15.3. Intentionally Omitted.

15.4. Intentionally Omitted.

15.5. Customer shall not remove any labeling affixed to the Products.

15.6. Intentionally Omitted.

15.7. Without the prior written consent of Brainlab, Customer shall not make any alterations, additions or improvements to any Products, whether provided on a term basis or sold.

15.8. Intentionally Omitted.

15.9. Upon termination or expiration of the Term, the license for any subscription Software shall expire..

16. TERM AND TERMINATION

16.1. Intentionally Omitted.

16.2. The Software subscription Term shall commence upon Acceptance, or sixty (60) days after Delivery of the Software, whichever occurs first. At least sixty (60) days prior to the expiration of the Term, Brainlab shall notify Customer and request Customer provide Brainlab with written notice of its intent regarding the end of term options for the subscription based Software. Customer shall indicate in its notice of intent whether Customer desires to (i) allow the subscription to expire; or (ii) extend or renew the subscription. If Customer desires to renew or extend the subscription, the parties will meet together to negotiate the renewal term and renewal fees. Brainlab shall provide to Customer a twenty percent (20%) discount off of the then current list price of such subscription. If the parties are able to reach an agreement, (a) these Terms shall continue to apply; and (b) Term shall mean the initial Term plus the extension or renewal time period. If the parties are unable to come to an agreement, the subscription will not be renewed.

16.3. Intentionally Omitted.

16.4. Intentionally Omitted.

16.5. Intentionally Omitted.

16.6. Brainlab may terminate the provision of subscription based Software licenses if Customer's property becomes subject to levy of execution, seizure, or the like, or if Customer is in default of payment for more than one month and fails to cure such breach within thirty (30) days of the date of written notice from Brainlab.

16.7. Notwithstanding the foregoing, either party shall have the right to terminate the Agreement before its fulfillment in its entirety and with immediate effect if there is a breach by the other party not remedied within thirty (30) days of notice thereof.

16.8. If Brainlab terminates this Agreement under Sections 16.6. or 16.7, Brainlab shall have the right, to the extent permitted by applicable law, to do any one or more of the following: (i) declare the Agreement in default, whereupon an amount equal to the present value of the entire unpaid balance of the Periodic Fees (the Periodic Fee multiplied by the remaining periods) plus any other sums and or damages, is immediately due and payable, (ii) pursue any remedy at law, in bankruptcy or in equity, proceeding by court action or otherwise; and (iii) deactivate any subscription based Software licenses. If Customer terminates this Agreement under Section 16.7, Brainlab shall refund to Customer any amounts pre-paid to Brainlab for Products not delivered.

16.9. Intentionally Omitted.

16.10. Intentionally Omitted.

16.11. Intentionally Omitted.

16.12. Intentionally Omitted.

16.13. Intentionally Omitted.

16.14. Except as otherwise expressly stated herein, all rights and remedies of Brainlab and Customer hereunder shall be cumulative and not alternative.

17. LIMITATIONS OF LIABILITY; INDEMNIFICATION; INSURANCE

17.1. Brainlab and Customer shall not be liable for delays in performance due to acts of God, strike, regulatory difficulties, or due to unforeseen circumstances.

17.2. Except for damages related to claims of personal injury or death, the total liability of Brainlab and Customer to one another shall not exceed the value of this Agreement. The foregoing shall apply to any and all claims, including but not limited to tort claims.

17.3. In no event shall Brainlab or the Customer's liability to one another exceed the actual loss or damage sustained by the other

party. Neither party (nor its affiliates) shall be liable for any loss of use, revenue or anticipated profits, loss of business, , interruption of service, or for indirect, incidental, unforeseen, consequential, punitive, damages arising out of or in connection with this Agreement or the sale or use of the Products, whether in any action in warranty, contract, tort (including without limitation, negligence or strict liability) arising out of or in any connection with the use of, of the inability to use, the Products.

17.4. Brainlab shall not be liable for any damage caused by (i) the use of purchased goods before performance of the acceptance test according to Section 9 above; (ii) the use, operation, service, modification of Brainlab products contrary to relevant manuals, written warnings, automated warnings, or instructions in writing of Brainlab personnel; (iii) the use of Brainlab products in conjunction with third party products, unless this use has been expressly authorized in writing by Brainlab; and (iv) the use of any product supplied by Brainlab as a convenience to the Customer that is not manufactured by Brainlab and is not generally offered by Brainlab.

17.5.. Intentionally omitted

17.6. Each party shall be legally and financially responsible for the acts and omissions of itself and its employees, directors, officers, representatives or agents and will pay all losses and damages attributable to such acts or omissions for which it is legally liable. This Agreement shall not be construed to create a contractual obligation for one party to indemnify the other party for loss or damage resulting from any act or omission of such other party or its employees, directors, officers, representatives or agents, nor to constitute a waiver by either party of any rights to indemnification, contribution or subrogation that the party may have by operation of law.

17.7. Brainlab at its sole cost and expense, will obtain and maintain in full force during the term of the Agreement the following types of insurance:

1) commercial general liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury and property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations and broad form blanket contractual liability;

2) workers' compensation coverage, in full compliance with California statutory requirements, for all employees of Brainlab and employer's liability in the minimum amount of \$1,000,000;

3) if applicable, commercial automobile liability coverage in the minimum amount of \$1,000,000 CSL bodily injury and property damage, including owned, non-owned, and hired automobiles, and uninsured/underinsured motorists coverage in the minimum amount of \$100,000 when there are owned vehicles; and

4) cyber liability/security and privacy insurance coverage in the minimum amount of \$2,000,000 per occurrence and \$4,000,000 annual aggregate.

17.8. All insurance required will be primary coverage as respects Brainlab. With respect to workers' compensation, Brainlab agrees to waive all rights of subrogation against Customer, its boards, agencies, departments, officers, employees, agents and volunteers for losses arising from work performed by Brainlab under the terms of the Agreement, except to the extent of Customer's negligence in connection with any claim. Brainlab will utilize commercially reasonable efforts to provide notification to Customer in the event policies are to be canceled, non-renewed or reduced in scope of coverage. Brainlab agrees to provide Customer with the following insurance documents on or before the effective date of the Agreement: certificates of insurance for all required coverage, and waiver of subrogation endorsement (a.k.a.: waiver of transfer rights of recovery against others, waiver of our right to recover from others) for workers' compensation. Failure to provide these documents will be grounds for immediate termination or suspension of the Agreement.

18. EXPORT CONTROL

18.1. Brainlab shall not be liable for any delay in Delivery or any inability to deliver due to export restrictions. In the event export restrictions prevent Delivery, Brainlab may cancel the Agreement and shall not be liable for any damages arising out of or in connection with such cancellation.

18.2. Brainlab advises all customers that export regulations may apply to the resale of the delivered Products. In addition, Products delivered by Brainlab may contain US components (including but not limited to hardware, software, technology) in which case compliance with US regulations may be required. Customer shall

ensure compliance with all export regulations applicable to the re-export of the delivered Products.

19. CONFIDENTIALITY, REGISTRATION, DATA PROTECTION

19.1. Subject to Customer's obligations under the California Public Records Act and/or any other disclosures required by law, Customer shall keep in confidence all information, including but not limited to technical data, product descriptions, and any other information identified by Brainlab as confidential. For clarification only, confidential information may include but is not limited to information provided verbally. Such information shall not be disclosed to any third parties or employees, except for third parties, consultants, agents or employees who are directly involved in the operation or administration of the Products on a need to know basis or who require access to the information in the performance of their duties to Customer and, with respect to the disclosure of pricing to persons other than health care providers only, are under an obligation of confidentiality. Customer will promptly notify Brainlab of any requests for the disclosure of confidential information, subject to applicable law.

19.2. For the improvement of Products and customer support Brainlab shall be entitled to collect statistical data stored on the Products, excluding Personal Health Information as defined in the BAA (defined below). This data will be used exclusively for internal purposes.

19.3. Brainlab and Customer undertake to observe the applicable data protection regulations.

19.4. Customer agrees that Brainlab may remotely access the Products at Customer's site within the scope of this Agreement, and may process and store data in order to perform the remote Services, subject in all cases to Customer's network security protocols and any other reasonable requirements of Customer and the terms of the Business Associate Agreement between the parties dated August 31, 2016 (the "BAA"). For the avoidance of doubt, the parties agree that the BAA pertains to all Services.

19.5. Intentionally Omitted.

19.6. Intentionally Omitted.

20. PROTECTION OF ENVIRONMENT

20.1. Brainlab shall dispose of any Product packing free of charge and in compliance with applicable regulations.

20.2. Upon end of use, Customer shall dispose of the Products (other than Products which are returned to Brainlab) at its own costs pursuant to any applicable regulations. Brainlab shall not be required to take back the Products or third party products for disposal.

21. APPLICABLE LAW / ARBITRATION / PARTIAL INVALIDITY / ASSIGNMENT

21.1. Customer shall comply with all applicable local, state, national and foreign laws, treaties, regulations and third-party rights, including, without limitation, those related to data privacy (e.g. HIPAA), international communications, the transmission of technical or personal information, and government regulations.

21.2. The Agreement shall be governed by the laws of the State of California, USA excluding its choice of law rules. Any claim or controversy arising out of or relating to the Agreement shall be settled by arbitration in accordance with the arbitration rules of the American Arbitration Association. The dispute shall be heard and determined by one arbitrator, unless any party's claim exceeds US\$1,000,000, exclusive of interest and attorneys' fees, in which case the dispute shall be heard and determined by three arbitrators. Language of the arbitration shall be English. The arbitration tribunal shall not award punitive damages. The arbitration shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented between the parties, and may not be reviewed by or appealed to any court except for enforcement.

21.3. Nothing in this agreement shall prevent Brainlab from seeking injunctive relief or other legal remedy to prevent unauthorized copying, disclosure, use, retention, or distribution of Brainlab's intellectual property or confidential information.

21.4. In lieu of arbitration, Brainlab shall have the right to bring legal action for failure to pay for Products and Services. Additionally, in lieu of arbitration, Customer shall have the right to bring legal action for defective Products or Services, or for Products and Services that have not been provided as agreed.

21.5. If any part of these Terms is held void or unenforceable, such part will be treated as separable, leaving valid the remainder of these Terms. The invalid clause will be replaced by the valid clause that comes closest as legally feasible to the commercial intention of the invalid clause.

21.6. Neither party may assign this Agreement or its rights or obligations thereunder without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have caused these Terms to be executed by their duly authorized representatives.

Brainlab

BY: _____

NAME _____

TITLE _____

DATE _____

Customer

BY: _____

NAME _____

TITLE _____

DATE _____