



# Master Subscription Agreement Terms and Conditions

These Master Subscription Agreement Terms and Conditions (these “Terms and Conditions”) are entered into by and between NeuBird, Inc., a Delaware corporation (“NeuBird”), and the counterparty identified as the customer in the applicable Order Form (“Customer”). These Terms and Conditions, together with all Order Forms (as defined below), constitute this “Agreement”. If you are accepting these Terms and Conditions or an Order Form on behalf of your employer or another entity (which will be deemed to the case if you sign up for a NeuBird Product (as defined below) using an email address from your employer or such entity), then the “Customer” under this Agreement will be such employer or other entity, and you represent and warrant that (a) you have read and understand this Agreement, (b) you have full legal authority to bind your employer or such entity to this Agreement and (c) you agree to this Agreement on behalf of your employer or such entity.

## 1. Definitions

1.1 The following terms, when used in this Agreement will have the following meanings:

“Affiliate” means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition, “Control” means beneficial ownership of 50% or more of the voting power or equity in an entity.

“Confidential Information” means any information disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, “Confidential Information” will not include any information that (a) is in the public domain through no fault of the receiving party; (b) was properly known to the receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to the receiving party, without restriction, by another person with the legal authority to do so; or (d) is



independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

"Customer Materials" means the IT telemetry data and information that Customer submits to the NeuBird Product for processing.

"Documentation" means NeuBird's then-current standard usage documentation for the NeuBird Product.

"Effective Date" means the date of the initial Order Form entered into between Customer and NeuBird.

"Order Form" means an ordering document or online order entered into between Customer and NeuBird, or online ordering flow completed by Customer, in each case that sets forth the applicable NeuBird Product to which Customer is subscribing, pricing therefor and subscription term, and that references these Terms and Conditions.

"NeuBird Product" means the artificial intelligence (AI)-based information technology (IT) operations cloud platform developed by NeuBird, as further described in the applicable Order Form.

"Third Party Platform" means any product, add-on or platform not provided by NeuBird that Customer elects to use with the NeuBird Product.

"User" means anyone that Customer allows to use its accounts for the NeuBird Product, consisting of Customer's employees and contractors (solely for purposes of providing services to Customer).

## **2. NeuBird Product**

**2.1 Provision of NeuBird Product.** Subject to this Agreement, NeuBird will make the NeuBird Product available to Customer pursuant to this Agreement, the applicable Order Form and the service level agreement located at <https://neubird.ai/sla>, and hereby grants Customer a non-exclusive right to access and use the NeuBird Product for its internal business purposes during the applicable subscription term. Customer may permit Users to use the NeuBird Product on its behalf. Customer is responsible for



provisioning and managing its User accounts, its Users' actions through the NeuBird Product and their compliance with this Agreement.

**2.2 Data Security.** NeuBird will maintain a security program materially in accordance with industry standards that is designed to (i) ensure the security and integrity of Customer Materials; (ii) protect against threats or hazards to the security or integrity of Customer Materials; and (iii) prevent unauthorized access to Customer Materials. In furtherance of the foregoing, NeuBird will maintain the administrative, physical and technical safeguards to protect the security of Customer Materials that are described in the NeuBird security page located at <https://neubird.ai/security> (the "Security Page") posted as of the Effective Date (and as the Security Page may be updated by NeuBird in a manner that does not materially decrease the applicable protections).

### **2.3 Customer Responsibilities.**

(a) Customer acknowledges that NeuBird's provision of the NeuBird Product is dependent on Customer providing all reasonably required cooperation, and Customer will provide all such cooperation in a diligent and timely manner. Customer will (i) use commercially reasonable efforts to prevent unauthorized access to or use of the NeuBird Product and notify NeuBird promptly of any such unauthorized access or use or any other known or suspected breach of security or misuse of the NeuBird Product and (ii) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the NeuBird Product, including as set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services, and NeuBird will have no liability for such failure (including under any service level agreement). As between the parties, Customer is responsible for the content and accuracy of Customer Materials.

(b) The NeuBird Product is not designed or developed for use in high-risk, hazardous environments requiring fail-safe performance, including in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the NeuBird Product could lead to severe physical or environmental damages ("High Risk Activities"). Customer will not use the NeuBird Product for High Risk Activities. In addition, the NeuBird Product is not intended to be used to analyze and process personal data, and Customer agrees not to knowingly include any personal data in any of its Customer Materials.



**2.4 Affiliates.** Any Affiliate of Customer will have the right to enter into an Order Form and this Agreement will apply to each such Order Form. With respect to any such Order Form, such Affiliate becomes a party to this Agreement and references to Customer in this Agreement are deemed to be references to such Affiliate. Each Order Form is a separate obligation of the Customer entity that enters into such Order Form, and no other Customer entity has any liability or obligation under such Order Form.

### **3. Fees**

**3.1 Fees.** Customer will pay NeuBird the fees set forth in the applicable Order Form. Customer will pay those amounts due and not disputed in good faith within thirty (30) days of the date of receipt of the applicable invoice (the "Payment Period"), unless a specific date for payment is set forth in such Order Form, in which case payment will be due on the date specified. Except as otherwise specified herein or in such Order Form, payment obligations are non-cancelable and non-pro-ratable for partial months, and fees paid are non-refundable. If Customer disputes an invoice in good faith, it will notify NeuBird within the Payment Period and the parties will seek to resolve the dispute as soon as reasonably practicable. NeuBird may provide Customer with written notice of a change or increase in pricing for such Order Form at least sixty (60) days prior to the end of the then-current subscription term, and such modified pricing will become effective thereafter at the time of the renewal.

**3.2 Late Payment.** NeuBird may suspend access to the NeuBird Product immediately upon notice if Customer fails to pay any amounts hereunder at least five (5) days past the applicable due date. If NeuBird has not received payment within five (5) days after the applicable due date, interest will accrue on past due amounts at the rate of one percent (1%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by NeuBird.

**3.3 Taxes.** All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "Taxes"). Customer will be solely responsible for payment of all Taxes, except for those taxes based on the income of NeuBird. Customer will not withhold any taxes from any amounts due to NeuBird.

### **4. Proprietary Rights and Confidentiality**



**4.1 Proprietary Rights.** As between the parties, NeuBird exclusively owns all right, title and interest in and to the NeuBird Product, System Data and NeuBird's Confidential Information, and Customer exclusively owns all right, title and interest in and to the Customer Materials, output produced specifically for Customer via the use of the NeuBird Product by Customer (which will constitute Customer Materials for purposes hereof, notwithstanding anything herein) and Customer's Confidential Information. "SystemData" means data collected by NeuBird regarding the NeuBird Product that may be used to generate logs, statistics or reports regarding the performance, availability, usage, integrity or security of the NeuBird Product.

**4.2 Feedback.** Customer may from time to time provide NeuBird suggestions or comments for enhancements or improvements, new features or functionality or other feedback ("Feedback") with respect to the NeuBird Product. NeuBird will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality. NeuBird will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services. All Feedback is provided "AS IS" and NeuBird will not publicly identify Customer as the source of Feedback without Customer's permission.

**4.3 Metadata; Product Improvements.** Customer agrees that, notwithstanding anything herein, NeuBird is hereby granted the right to collect, retain and analyze anonymized metadata resulting from Customer's use of the NeuBird Product to improve NeuBird's products and services during and after the term hereof.

## **5. Confidentiality; Technology Restrictions**

**5.1 Confidentiality.** Each receiving party agrees that it will use the Confidential Information of the disclosing party solely in accordance with the provisions of this Agreement and it will not disclose the same to any third party without the disclosing party's prior written consent, except as otherwise permitted hereunder. However, the receiving party may disclose such Confidential Information



(a) to its employees and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and

(b) as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law).

Neither party will disclose the terms of any Order Forms to any third party, except that either party may confidentially disclose such terms to actual or potential lenders, investors or acquirers.

## **5.2 Technology Restrictions.** Customer will not directly or indirectly:

(a) reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the NeuBird Product;

(b) attempt to probe, scan or test the vulnerability of the NeuBird Product, breach the security or authentication measures of the NeuBird Product without proper authorization or wilfully render any part of the NeuBird Product unusable;

(c) use or access the NeuBird Product to develop a product or service that is competitive with NeuBird's products or services or engage in competitive analysis or benchmarking;

(d) transfer, distribute, resell, lease, license, or assign the NeuBird Product or otherwise offer the NeuBird Product on a standalone basis; or

(e) otherwise use the NeuBird Product in violation of applicable law (including any export law) or outside the scope expressly permitted hereunder and in the applicable Order Form.

## **6. Warranties and Disclaimers**

### **6.1 Mutual.** Each party warrants that



- (a) it has the legal power and authority to enter into this Agreement and
- (b) it will use industry-standard measures to avoid introducing viruses or other malicious code into the NeuBird Product.

**6.2 NeuBird.** NeuBird warrants that the NeuBird Product will perform materially as described in the Documentation and NeuBird will not materially decrease the overall functionality of the NeuBird Product during the applicable subscription term (the “Performance Warranty”). NeuBird will use reasonable efforts to correct a verified breach of the Performance Warranty reported by Customer. If NeuBird fails to do so within 30 days after Customer’s warranty report, then either party may terminate the applicable Order Form as it relates to the non-conforming NeuBird Product, in which case NeuBird will provide Customer a pro rata refund of any prepaid subscription fees corresponding to the terminated portion of the applicable subscription term (for the Performance Warranty). To receive these remedies, Customer must report a breach of warranty in reasonable detail within 30 days after discovering the issue in the NeuBird Product. These procedures are Customer’s exclusive remedies and NeuBird’s sole liability for breach of the Performance Warranty.

**6.3 Customer.** Customer warrants that it has all rights necessary to provide any information, data or other materials that it provides hereunder, and to permit NeuBird to use the same as contemplated hereunder.

**6.4 DISCLAIMERS.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NEUBIRD DOES NOT REPRESENT OR WARRANT THAT THE NEUBIRD PRODUCT WILL BE ERROR-FREE AND CUSTOMER ACKNOWLEDGES THAT THE OUTPUTS AND INSIGHTS PROVIDED BY THE NEUBIRD PRODUCT DO NOT CONSTITUTE PROFESSIONAL ADVICE. NEUBIRD IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY PLATFORMS.

**6.5 No-Charge Products.** NeuBird may offer certain NeuBird Products at no charge, including free accounts, trial use and pre-release, alpha or beta versions or features (collectively, “No-Charge Products”). Customer’s use of No-Charge Products is subject to any additional terms that NeuBird may specify. Except as otherwise set forth in this





Section, these Terms and Conditions apply to No-Charge Products. NeuBird may modify or terminate Customer's right to use No-Charge Products at any time.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEUBIRD DISCLAIMS ALL OBLIGATIONS, WARRANTIES AND LIABILITIES WITH RESPECT TO NO-CHARGE PRODUCTS, INCLUDING ANY SERVICE LEVEL OR INDEMNITY OBLIGATIONS, AND NEUBIRD'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF NO-CHARGE PRODUCTS WILL BE US\$100.

## **7. Indemnification**

**7.1 Indemnity by NeuBird.** NeuBird will defend Customer against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer by a third party alleging that the use of the NeuBird Product as permitted hereunder infringes or misappropriates a United States patent, copyright or trade secret and will indemnify Customer for any damages finally awarded against Customer (or any settlement approved by NeuBird) in connection with any such Claim; provided that (a) Customer will promptly notify NeuBird of such Claim, (b) NeuBird will have the sole and exclusive authority to defend and/or settle any such Claim (provided that NeuBird may not settle any Claim without Customer's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Customer of all related liability) and (c) Customer reasonably cooperates with NeuBird in connection therewith. If the use of the NeuBird Product by Customer has become, or in NeuBird's opinion is likely to become, the subject of any claim of infringement, NeuBird may at its option and expense (i) procure for Customer the right to continue using and receiving the NeuBird Product as set forth hereunder; (ii) replace or modify the NeuBird Product to make it non-infringing (with comparable functionality); or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate the applicable Order Form and provide Customer a pro rata refund of any prepaid subscription fees corresponding to the terminated portion of the applicable subscription term. NeuBird will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by (A) designs, guidelines, configurations, plans or specifications provided by Customer; (B) use of the NeuBird Product by Customer not in accordance with this Agreement; (C) modification of the NeuBird Product by or on behalf of Customer; (D) Customer Materials, or (E) the combination, operation or use of the NeuBird Product with other products or services where the NeuBird Product would not by itself be infringing (clauses (A) through (E), "Excluded





Claims”). This Section states NeuBird’s sole and exclusive liability and obligation, and Customer’s exclusive remedy, for any claim of any nature related to infringement or misappropriation of intellectual property.

**7.2 Indemnification by Customer.** Customer will defend NeuBird against any Claim made or brought against NeuBird by a third party arising out of any Excluded Claims, and Customer will indemnify NeuBird for any damages finally awarded against NeuBird (or any settlement approved by Customer) in connection with any such Claim; provided that (a) NeuBird will promptly notify Customer of such Claim, (b) Customer will have the sole and exclusive authority to defend and/or settle any such Claim (provided that Customer may not settle any Claim without NeuBird’s prior written consent, which will not be unreasonably withheld, unless it unconditionally releases NeuBird of all liability) and (c) NeuBird reasonably cooperates with Customer in connection therewith.

## **8. Limitation of Liability**

EXCEPT FOR A PARTY’S INDEMNIFICATION OBLIGATIONS OR BREACH OF SECTION 5, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOSS OF USE, LOST PROFITS OR INTERRUPTION OF BUSINESS, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE, OR (B) EXCLUDING CUSTOMER’S PAYMENT OBLIGATIONS, ANY AGGREGATE LIABILITY IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

## **9. Termination**

**9.1 Term.** The term of this Agreement will commence on the date of the initial Order Form and continue until terminated as set forth below. The initial term of each Order Form will begin on the start date indicated in such Order Form and will continue for the subscription term set forth therein. Except as set forth in such Order Form, the term of such Order Form will automatically renew for successive renewal terms equal to the length of the initial term of such Order Form, unless either party provides the other party



with written notice of non-renewal at least thirty (30) days prior to the end of the then-current term. If Customer does not agree to automatic renewals, Customer may opt-out of automatic renewals by providing written notice to NeuBird within fourteen (14) days of the date of the initial Order Form.

**9.2 Termination.** Each party may terminate this Agreement upon written notice to the other party if there are no Order Forms then in effect. Each party may also terminate this Agreement or the applicable Order Form upon written notice in the event (a) the other party commits any material breach of this Agreement or the applicable Order Form and fails to remedy such breach within thirty (30) days after written notice of such breach or (b) subject to applicable law, upon the other party's liquidation, commencement of dissolution proceedings or assignment of substantially all its assets for the benefit of creditors, or if the other party become the subject of bankruptcy or similar proceeding that is not dismissed within sixty (60) days.

**9.3 Survival.** Upon expiration or termination of this Agreement (a) all rights and obligations will immediately terminate except that any terms or conditions that by their nature should survive such expiration or termination will survive, including the terms and conditions relating to proprietary rights and confidentiality, technology restrictions, disclaimers, indemnification, limitations of liability and termination and the general provisions below, and (b) each receiving party will return or destroy, at the disclosing party's option, any Confidential Information of such disclosing party in the receiving party's possession or control.

## **10. General**

**10.1 Insurance.** NeuBird will, during the term of this Agreement, maintain in force the following insurance coverage at its own cost and expense:

(a) Statutory Worker's Compensation and Employer's Liability as required by state law with a minimum limit of \$1,000,000 each accident / \$1,000,000 each disease / \$1,000,000 policy limit per occurrence, Disability and Unemployment Insurance, and all other insurance as required by law, including Employer's Liability Insurance with limits of no less than \$1,000,000 per occurrence, or any amount required by applicable law, whichever is greater;



(b) Commercial General Liability, on an occurrence basis, including premises-operations, product completed-operations, broad form property damage, contractual liability, independent contractors and personal liability, with a minimum combined single limit of \$1,000,000 per occurrence; and

(c) Professional Errors and Omissions and Cyber Liability coverage covering the NeuBird Product, with coverage limits of not less than \$2,000,000 per claim or per occurrence/\$2,000,000 aggregate, placed either on an “occurrence” basis or on a “claims made” basis.

**10.2 Publicity.** Customer agrees that NeuBird may refer to Customer’s name and trademarks in NeuBird’s marketing materials and website; however, NeuBird will not use Customer’s name or trademarks in any other publicity (e.g., press releases, customer references and case studies) without Customer’s prior written consent (which may be by email). If Customer does not agree to NeuBird’s use of Customer’s name or trademark in NeuBird’s marketing materials, Customer may opt-out of such use by providing written notice to NeuBird within fourteen (14) days of the date of the initial Order Form.

**10.3 Assignment;Delegation.** Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party’s prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of its assets or business related to this Agreement. Any attempted assignment,delegation,ortransferbyeitherpartyinviolationhereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

**10.4 Amendment.** NeuBird reserves the right in its sole discretion and at any time and for any reason to modify these Terms and Conditions. With respect to each Order Form, any modifications to these Terms and Conditions will become effective upon the date of Customer’s next renewal of such Order Form. It is Customer’s responsibility to review these Terms and Conditions from time to time for any changes or modifications. If Customer does not agree to the modified Terms and Conditions, Customer may provide notice of Customer’s non-renewal at any point prior to the Customer’s next renewal. Except as set forth in this Section, no amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both parties.



**10.5 Waiver.** No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

**10.6 Relationship.** Nothing contained here in will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

**10.7 Unenforceability.** If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms.

**10.8 Governing Law.** This Agreement will be governed by the laws of the State of California, exclusive of its rules governing choice of law and conflict of laws. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**10.9 Notices.** Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, or by overnight delivery. Notices to the Customer may be sent to the address listed on the Customer's applicable Order Form or email address provided by Customer when Customer creates its NeuBird Product account. Notices to NeuBird must be sent to the following:

**NeuBird, Inc.**

**155 Bovet, Suite 400 San Mateo, CA 94402 Attn: Legal**



**10.10 Entire Agreement.** This Agreement (consisting of these Terms and Conditions and each Order Form) comprises the entire agreement between Customer and NeuBird with respect to its subject matter, and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements (oral and written). No oral or written information or advice given by NeuBird, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement. In the event of a conflict between these Terms and Conditions and an Order Form, the terms of the Order Form will control.

**10.11 Force Majeure.** Neither party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control ("Force Majeure Event"), including earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared), cyber attacks (e.g., denial of service attacks), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

**10.12 Interpretation.** For purposes hereof, "including" means "including without limitation". Upon expiration or termination of this Agreement

(a) all rights and obligations will immediately terminate except that any terms or conditions that by their nature should survive such expiration or termination will survive, including the terms and conditions relating to proprietary rights and confidentiality, technology restrictions, disclaimers, indemnification, limitations of liability and termination and the general provisions below, and

(b) each receiving party will return or destroy, at the disclosing party's option, any confidential information of such disclosing party in the receiving party's possession or control.