

TERMS OF USE

Last Updated: January 10, 2020

These Terms of Use (“**Terms**”) are entered into between Neon Therapeutics, Inc. (“**Neon**”) and Licensee (defined below) and govern Licensee’s use of Neon’s proprietary web-based software application for analyzing data using major histocompatibility complex class II alleles (“**Software**”). As used in these Terms: (1) “**Licensee**” means: (a) in the case of an individual who accepts these Terms or otherwise accesses the Software on his or her own behalf, such individual; or (b) in the case of an individual who accepts these Terms or otherwise accesses the Software on behalf of a company or other legal entity, the company or legal entity; and (2) “**Party**” refers to Licensee or Neon individually and “**Parties**” refers to Neon and Licensee collectively.

BY ACCEPTING THESE TERMS THROUGH THE REQUIRED PROCESS OR OTHERWISE ACCESSING THE SOFTWARE, LICENSEE AGREES THAT LICENSEE HAS READ, UNDERSTOOD AND AGREES TO BE BOUND BY THESE TERMS. IF LICENSEE DOES NOT AGREE TO THESE TERMS, THEN LICENSEE MAY NOT USE THE SOFTWARE.

AS FURTHER DESCRIBED IN THESE TERMS, THE SOFTWARE WILL ENABLE LICENSEE TO GENERATE RESULTS (DEFINED IN SECTION 1(a)(i)). WITHOUT LIMITING ANY OTHER TERMS SET FORTH IN THESE TERMS, LICENSEE MAY ONLY USE RESULTS FOR ITS INTERNAL RESEARCH PURPOSES AND MAY NOT (1) USE RESULTS IN CONNECTION WITH ANY CLINICAL TRIAL OR THE DEVELOPMENT OF ANY PRODUCT FOR THE TREATMENT OR EVALUATION OF DISEASE OR (2) IMPLEMENT OR USE ANY RESULTS IN ANY PRODUCT OR SERVICE THAT IS DISTRIBUTED OR COMMERCIALIZED OR PROPOSED OR CONTEMPLATED TO BE DISTRIBUTED OR COMMERCIALIZED.

AS FURTHER DESCRIBED IN SECTION 8, AND WITHOUT LIMITING ANY TERMS IN THAT SECTION, DISPUTES BETWEEN THE PARTIES WILL BE RESOLVED BY BINDING INDIVIDUAL ARBITRATION, AND BY ACCEPTING THESE TERMS THROUGH THE REQUIRED PROCESS, EACH PARTY WAIVES ITS RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

1. General.

(a) Overview.

(i) The Software is designed to allow Licensee to: (1) select one or more major histocompatibility complex class II alleles from a drop-down list; (2) enter one or more newline-separated peptides through text or file input (such data in the preceding clause (2), “**Licensee Data**”); (3) evaluate those allele-peptide combinations; and (4) obtain the results of such evaluations (“**Results**”) via electronic mail sent to the email address that Licensee provides to Neon during the registration process described in Section 1(c). The allele-peptide combinations described in the preceding (1) and (2) that Licensee may submit to the Software for evaluation are referred to in these Terms as “**Queries.**” The number of Queries that Licensee may submit to the Software will be uncapped.

(ii) Neon, in its sole discretion, may publish and disclose all Queries submitted to the Software, along with certain related information that may identify the person who submitted each Query to the Software. The information that Neon may publish and disclose may include, without limitation, the following: peptide, allele, organization or individual name, email domain or server name and date of the Query.

(b) Eligibility. **THE PERSON WHO ACCEPTS THESE TERMS OR OTHERWISE ACCESSES THE SOFTWARE MUST BE AT LEAST 18 YEARS OF AGE AND OTHERWISE HAVE THE LEGAL CAPACITY TO ENTER INTO A BINDING CONTRACT. IF SUCH PERSON IS NOT AT LEAST 18 YEARS OF AGE AND DOES NOT OTHERWISE HAVE SUCH LEGAL CAPACITY, THEN SUCH PERSON CANNOT ACCEPT THESE TERMS OR OTHERWISE ACCESS THE SOFTWARE.**

(c) Accounts. To obtain access to the Software, Licensee must register an account (“**Account**”) with Neon on the website located at www.neonmhc2.org. During the Account registration process, Licensee may be required to provide Neon with certain information that will enable Neon to identify Licensee and track the number of Accounts associated with Licensee. Licensee must register with an email address associated with a company or an academic or scientific institution. If Licensee is unable to provide an email address associated with a company or an academic or scientific institution that is recognized by Neon, then Licensee may email Neon at support@neonmhc2.org with a detailed description of any present affiliation with a company or an academic or scientific institution that will enable Neon to verify Licensee’s identity, and Neon will determine Licensee’s eligibility for an Account in its sole discretion. No more than one (1) Account may be created by or on behalf of Licensee. Following Account registration, Neon will issue to Licensee credentials for Licensee’s Account. Licensee may not share these credentials with any third party (except Authorized Users (defined in Section 2(c)), if applicable). Licensee is solely responsible for the security of Licensee’s Account and all use of the Software attributable to Licensee’s Account. Licensee must notify Neon immediately at support@neonmhc2.org if Licensee suspects or knows of any unauthorized use of Licensee’s Account. Neon has the right to monitor use of Licensee’s Account to ensure compliance with these Terms. When creating an Account, Licensee will provide true, accurate, current, and complete information in accordance with Neon’s requirements. Licensee will update such information promptly and as necessary to keep it current and accurate. If messages sent to the e-mail address Licensee provides are returned as undeliverable or if Licensee breaches these Terms, then Neon may terminate Licensee’s Account immediately without notice or liability to Licensee.

(d) Privacy and Communications. Licensee’s use of the Software is also subject to Neon’s [Privacy Policy](#). By using the Software, Licensee consents to receiving certain electronic communications from Neon as further described in the [Privacy Policy](#). Please read the [Privacy Policy](#) to learn more about Licensee’s choices regarding Neon’s electronic communications practices. Licensee agrees that any notices, agreements, disclosures, or other communications that Neon sends to Licensee electronically will satisfy any legal communication requirements, including, without limitation, that such communications be in writing.

(e) Consideration. Neon currently provides access to the Software for free. In return for enjoying this free access, Licensee acknowledges and agrees that Neon may generate revenues, increase goodwill or otherwise increase the value of Neon in connection with Licensee’s use of the Software, and Licensee will have no right to share in any such revenues, goodwill or value whatsoever. Neon, in its sole discretion, may eventually charge fees to access the Software. Neon will provide advance notice of any such fees before they take effect.

(f) Support. Licensee may request that Neon provide commercially reasonable support services in an effort to correct any reproducible malfunctions with the Software by emailing Neon at support@neonmhc2.org. Neon has no obligation to provide such support services. Neon may decide to provide support services, on a case-by-case basis, in its sole discretion and on terms to be dictated solely by Neon. Neon providing support services in one instance does not entitle Licensee to support services in any other instance.

2. Proprietary Rights.

(a) Software and Results. Subject to Licensee’s complete and ongoing compliance with these Terms, Neon hereby grants to Licensee during the Term (defined in Section 4(a)) a non-exclusive, non-transferable (except pursuant to Section 9(c)), non-sublicensable, worldwide, royalty-free and revocable license (exercisable through Authorized Users, if applicable) to: (i) access and use the Software; and (ii) access and use Results, and create a reasonable number of copies of the Results, in the case of both (i) and (ii), solely for Licensee’s internal research or evaluation purposes (“**Authorized Purpose**”).

(b) Restrictions. Licensee (and its Authorized Users, if applicable) may not do or attempt to do any of the following: (i) **USE RESULTS FOR ANY PURPOSE OTHER THAN THE AUTHORIZED PURPOSE, USE RESULTS IN CONNECTION WITH ANY CLINICAL TRIAL OR THE DEVELOPMENT OF ANY PRODUCT FOR THE TREATMENT OR EVALUATION OF DISEASE;** (ii) **IMPLEMENT OR USE ANY RESULTS IN ANY PRODUCT OR SERVICE THAT IS DISTRIBUTED OR COMMERCIALIZED OR PROPOSED OR CONTEMPLATED TO BE DISTRIBUTED OR COMMERCIALIZED;** (iii) reverse engineer, decompile, disassemble or otherwise

attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Software or Results; (iv) modify the Software or Results, or sell, lease, license or otherwise commercialize or distribute the Software or Results; (v) interfere with or disrupt the performance of the Software; (vi) gain unauthorized access to the Software or its related systems or networks; (vi) frame or link to the Software or any content or material thereon; (viii) provide any false, incorrect or outdated information to Neon in connection with Licensee's use of the Software or Licensee's establishment or maintenance of an Account; (ix) use any portion of the Software or Results to develop a competitive product or service to those being developed by Neon; (x) remove, alter, or obscure in any way any proprietary rights notices of Neon or its suppliers on or within the Software or Results; (xi) transmit to the Software any virus, worm, spyware or other software code, file or program intended to impair, alter or damage the operation of the Software or its related systems or networks; and (xii) use the Services or Results in any manner that violates any applicable laws, rules or regulations or infringes any third party rights.

(c) Authorized Users. If Licensee is a company or other legal entity, then it: (i) may authorize its employees and consultants to use the Software on its behalf strictly in accordance with these Terms (collectively, "**Authorized Users**"); (ii) will be liable for any breach of these Terms by any Authorized User; and (iii) will provide Neon with a list of all Authorized Users promptly upon Neon's request.

(d) Licensee Data and Queries. Licensee hereby grants to Neon and its Affiliates a non-exclusive, perpetual, irrevocable, transferable, sublicensable (through multiple tiers), royalty-free and worldwide right to: (i) host, store, reproduce, display and otherwise use and exploit Licensee Data to provide and improve their current and future products, services, resources, systems, tools, and businesses; and (ii) publish and disclose the Queries as described in Section 1(a)(ii). As used in these Terms, "**Affiliates**" means any entity that currently or in the future controls, is controlled by or is under common control with Neon, where "control" means ownership of more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of directors or other managing authority of Neon.

(e) Ownership. As between the Parties: (i) Neon owns and exclusively retains all right, title and interest in and to the Software, the Results and Queries (subject to Licensee's rights to any Licensee Data that underlies any Query), except to the extent of the license granted in Section 2(a)(i); and (ii) Licensee exclusively owns and retains all right, title and interest in and to Licensee Data and Feedback (defined in Section 2(f)), except to the extent of the licenses granted in Sections 2(d) and 2(f). Each Party retains and reserves all rights that it does not expressly grant to the other in these Terms and does not grant to the other any implied license in these Terms.

(f) Feedback. If Licensee (or any Authorized User, if applicable) makes available to Neon, directly or indirectly, feedback, analysis, suggestions and/or comments about any aspect of the Software or Results (collectively, "**Feedback**"), then Licensee hereby grants to Neon and its Affiliates a perpetual and irrevocable right to use, exploit and disclose such Feedback to provide and improve their current and future products, resources, systems, tools, services and businesses without any restrictions whatsoever or obligation to provide Licensee with any compensation or credit.

3. Confidentiality.

(a) Definition. "**Confidential Information**" means the Software, Results and any other information or materials made available to Licensee in connection with these Terms regarding the products, services or businesses of Neon or any of its Affiliates. Confidential Information does not include any information that Licensee can establish: (1) is or becomes generally known and available to the public through no act of Licensee; (2) was already in Licensee's possession without a duty of confidentiality owed to Neon at the time of Neon's disclosure; or (3) is lawfully obtained by Licensee from a third party who has the express right to make such disclosure. For clarity, Queries are not Confidential Information under these Terms.

(b) Obligations. Licensee may not use the Confidential Information except as necessary to exercise its rights under these Terms. Licensee may not disclose the Confidential Information except, in the case of any Licensee that is a company or legal entity, to such Licensee's employees and consultants who require access to such information to exercise rights under these Terms and who agree to comply with this Section 3. Licensee must use at least reasonable efforts to protect the Confidential Information from unauthorized access, use and

disclosure. Licensee will promptly inform Neon in writing of any actual or suspected unauthorized access to, use or disclosure of the Confidential Information. The obligations in this Section 3 will survive any termination of these Terms for two (2) years.

4. Term and Termination.

(a) Term. These Terms commence upon the first to occur of: (i) Licensee accepting these Terms through the required process; or (ii) the first occasion when Licensee accesses the Software, and will continue until the termination of these Terms ("Term").

(b) Termination. Licensee may terminate these Terms by deleting Licensee's Account. Neon reserves the right, in its sole discretion, to restrict or suspend Licensee's access to the Software at any time without prior notice or liability if Licensee breaches any provision of these Terms. Neon may further terminate Licensee's Account or these Terms immediately for any or no reason with or without notice to Licensee. Neon reserves the right to change, suspend or discontinue all or any part of the Software at any time without prior notice or liability.

(c) Effect of Termination; Survival. Upon termination of these Terms for any reason: (i) the license granted in Section 2(a)(i) will automatically terminate; (ii) the license granted in Section 2(a)(ii) will survive for so long as Licensee exercises such rights in accordance with these Terms; (iii) subject to the foregoing (ii), Licensee must destroy all Confidential Information within its possession or control; and (iv) the following Sections, and any defined terms and provisions required to interpret or enforce those Sections (but only to the extent required for such interpretation or enforcement), will survive: 1(a)(ii), 1(b), 1(c), 1(d), 1(e), 2(b), 2(c), 2(d), 2(e), 2(f), 3, 4(c), 5, 6, 7, 8 and 9.

5. Representations and Warranties. Licensee represents and warrants that:

(a) Licensee will use the Software and Results in compliance with all applicable laws, rules and regulations and is solely responsible for the same;

(b) Licensee will only use the Software and Results for the Authorized Purpose;

(c) Licensee Data and Feedback do not, and the use or exploitation of the same as contemplated in these Terms, will not, infringe, misappropriate or violate the privacy rights, publicity rights, intellectual property or other rights of any third party, or any applicable laws, rules or regulations;

(d) Licensee has and will have the necessary rights and consents to allow Neon to identify Licensee as the source of a Query;

(e) all information provided by Licensee in connection with establishing and maintaining Licensee's Account is and shall remain true, accurate, current and complete;

(f) entering into these Terms and performing Licensee's obligations under these Terms do not, and will not, breach or otherwise conflict with Licensee's obligations to any third party;

(g) Licensee has had the opportunity to consult with independent legal counsel prior to accepting these Terms even if Licensee has chosen not to do so;

(h) if Licensee is an individual, then such individual is at least 18 years of age and otherwise has the legal capacity to enter into these Terms; and

(i) if Licensee is a company or other legal entity, then it has all required authority to enter into these Terms.

6. Limitations on Liability and Disclaimers. Without limiting any terms set forth elsewhere in these Terms, the following terms in this Section 6 apply to the fullest extent permitted by law:

(a) **NEITHER NEON NOR ANY OF ITS AFFILIATES, LICENSORS OR SUPPLIERS REPRESENT OR WARRANT THAT: (I) THE SOFTWARE OR RESULTS WILL MEET ANY REQUIREMENTS OR NEEDS LICENSEE MAY HAVE OR WILL OPERATE ERROR FREE OR IN AN UNINTERRUPTED FASHION; OR (II) ANY DEFECTS OR ERRORS IN THE SOFTWARE OR RESULTS WILL BE CORRECTED. THE SOFTWARE AND RESULTS ARE PROVIDED "AS IS"**

AND NEON, ITS AFFILIATES AND THEIR RESPECTIVE SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL IMPLIED WARRANTIES IN CONNECTION WITH THE SAME, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

(b) EXCEPT FOR ANY AMOUNTS AWARDED UNDER SECTION 8, IN NO EVENT WILL THE TOTAL LIABILITY OF NEON AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THESE TERMS EXCEED ONE HUNDRED DOLLARS (\$100). IN NO EVENT WILL NEON OR ANY OF ITS AFFILIATES HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING FOR LOST PROFITS, DATA OR OTHER BUSINESS OPPORTUNITIES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

(c) ANY DISPUTE THAT LICENSEE HAS WITH ANY PARTY OTHER THAN NEON OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE SOFTWARE OR RESULTS IS SOLELY BETWEEN LICENSEE AND ANY SUCH PARTY. ACCORDINGLY, LICENSEE HEREBY IRREVOCABLY RELEASES NEON AND ITS AFFILIATES FROM ANY AND ALL CLAIMS, DEMANDS AND DAMAGES OF EVERY KIND AND NATURE, WHETHER KNOWN OR UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

7. Indemnification. To the fullest extent permitted by law, Licensee agrees to defend, indemnify and hold harmless Neon and its Affiliates, and their respective officers, directors, employees, consultants, agents, advisors, vendors and suppliers, from and against all expenses, losses or other liabilities incurred in connection with any third party claim (each, a "**Claim**") arising from or relating to: (a) any use or misuse of the Software by Licensee; (b) Licensee Data; (c) any breach of these Terms by Licensee; and/or (d) any alleged issue or problem arising from any use of Results by Licensee. Neon will provide notice to Licensee of any Claim. Neon reserves the right to assume the exclusive defense and control of any Claim if Neon determines, in its sole discretion, that Licensee is unwilling or incapable of sufficiently defending Neon's interests in connection with the Claim. Under such circumstances, Licensee agrees to cooperate with Neon to assist in the defense of the applicable Claim at Licensee's sole expense.

8. Dispute Resolution.

(a) General. In the interest of resolving disputes between Licensee and Neon in the most expedient and cost effective manner, Licensee and Neon agree that any dispute arising out of or in any way related to these Terms or Licensee's use of the Software will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or in any way related to these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. **LICENSEE UNDERSTANDS AND AGREES THAT, BY ENTERING INTO THIS TERMS, LICENSEE AND NEON ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION AND THAT THESE TERMS SHALL BE SUBJECT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT.**

(b) Exceptions. Notwithstanding Section 8(a), nothing in these Terms will be deemed to waive, preclude or otherwise limit the right of either Party to: (i) bring an individual action in small claims court; (ii) pursue an enforcement action through the applicable federal, state or local agency if that action is available; (iii) seek injunctive relief in aid of arbitration from a court of competent jurisdiction; (iv) to file suit in a court of law to address an intellectual property infringement claim; or (v) with respect to Neon only, to seek injunctive relief in any court of competent jurisdiction for any breach or threatened breach of these Terms as any such breach or threatened breach may cause irreparable injury to Neon.

(c) Arbitrator. Any arbitration between Licensee and Neon will be governed by the Federal Arbitration Act and the Commercial Dispute Resolution Procedures and Supplementary Procedures for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, or by calling the AAA at 1-800-778-7879. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of this binding arbitration agreement.

(d) Notice; Process. A Party who intends to seek arbitration must first send a written notice of the dispute to the other Party by U.S. Mail (“**Notice**”). Neon’s address for Notice is: 40 Erie Street, Suite 110, Cambridge, MA 02139, Attention: General Counsel. The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (“**Demand**”). The Parties will make good faith efforts to resolve the claim directly, but if the Parties do not reach an agreement to do so within 30 days after the Notice is received, Licensee or Neon may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Licensee or Neon must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in Licensee’s favor with a monetary award, then Neon will pay Licensee the highest of the following: (1) the amount awarded by the arbitrator, if any; (2) the last written settlement amount offered by Neon in settlement of the dispute prior to the arbitrator’s award; or (3) \$1,000.

(e) Fees. Any arbitration hearing will take place at a location to be agreed upon in Boston, Massachusetts, but if the claim is for \$10,000 or less, Licensee may choose whether the arbitration will be conducted: (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephone hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of Licensee’s billing address. If the arbitrator finds that either the substance of Licensee’s claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, Licensee agrees to reimburse Neon for all monies previously disbursed by it that are otherwise Licensee’s obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. Each Party agrees that such written decision, and information exchanged during arbitration, will be kept confidential except to the extent necessary to enforce or permit limited judicial review of the award. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either Party made within 14 days of the arbitrator’s ruling on the merits.

(f) No Class Actions. **LICENSEE AND NEON AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both Licensee and Neon agree otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding.

(g) Modifications to this Arbitration Provision. If Neon makes any future change to this arbitration provision, other than a change to Neon’s address for Notice, Licensee may reject the change by sending written notice within 30 days of the change to Neon’s address for Notice, in which case these Terms and Licensee’s right to access the Software will automatically terminate, and this arbitration provision, as in effect immediately prior to the changes Licensee rejected, will continue to govern any disputes between Licensee and Neon.

(h) Enforceability. If Section 8(f) is found to be unenforceable or if the entirety of this Section 8 is found to be unenforceable, then the entirety of this Section 8 will be void, and, in that case, the Parties agree that the exclusive jurisdiction and venue described in Section 9(a) will govern any action arising out of or related to these Terms.

9. Miscellaneous.

(a) Governing Law; Venue. If Section 8 is void as described in Section 8(h), then all disputes arising under or in connection with these Terms will be: (i) governed by the laws of the Commonwealth of Massachusetts, excluding its conflicts of laws principles; and (ii) heard exclusively in courts of competent jurisdiction in Boston, Massachusetts, and each Party waives all rights to challenge such venue on any theory.

(b) Federal Government End Use Provisions. Neon provides the Software and Results, and all related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software and Results include only those rights customarily provided to the public as specified in these Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, then it must negotiate with Neon to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in the applicable agreement.

(c) Assignment. These Terms bind and are for the benefit of the successors and permitted assigns of each Party. Licensee may not assign these Terms to any third party without Neon's prior express written consent, which Neon may withhold in its sole discretion. "Assign" as used in the prior sentence includes any changes of control or sale of stock or assets of Licensee. Neon may assign these Terms in its sole discretion. Any attempt to assign these Terms other than as permitted in this Section 9(c) will be void.

(d) Severability. If any provision in these Terms is held by a court of competent jurisdiction to be unenforceable, then: (i) it will be severed from these Terms; (ii) the court of competent jurisdiction will replace the severed provision with another provision that most closely reflects the Parties' original intent to the fullest extent permitted by law; and (iii) these Terms will remain in full force and effect.

(e) Entire Terms; Order of Precedence. These Terms constitute the entire agreement between the Parties with respect to the subject matter set forth in these Terms and supersede any previous or contemporaneous communications, whether oral or written, express or implied.

(f) Waivers; Amendments. All waivers of rights arising under these Terms must be made in writing by the Party waiving rights. Licensee understands and agrees that Neon may change these Terms at any time without prior notice. Neon will endeavor to provide Licensee with prior notice of any material changes to these Terms. Licensee may read a current, effective copy of these Terms at any time by selecting the appropriate link on the website where these Terms appear. The revised Terms will become effective at the time of posting on the Software, and Licensee's use of the Software after such time will constitute Licensee's acceptance of the revised Terms. If any change to these Terms is not acceptable to Licensee, then Licensee's sole remedy is to stop using the Software and to cancel Licensee's Account as described in Section 4(b). Notwithstanding the preceding sentences of this Section 9(f), no revisions to these Terms will apply to any dispute between Licensee and Neon that arose prior to the effective date of those revisions.

(g) Notices. All notices required or permitted under these Terms will be in writing and will be effective upon: (i) personal delivery; (ii) the second business day after mailing; or (iii) in the case of Neon providing Licensee with notice, the day an electronic mail was sent. All notices to Neon will be sent to 40 Erie Street, Suite 110, Cambridge, MA 02139, Attention: General Counsel. All notices to Licensee will be sent pursuant to the contact information provided to Neon during Account registration. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section.

(h) Interpretation. Unless a clear contrary intention appears: (i) any term defined in the singular includes the plural when required by the applicable context; (ii) all references in these Terms to "Sections" are intended to refer to Sections in these Terms; and (iii) the headings in these Terms are for convenience of reference only, will not be deemed to be a part of these Terms, and will not be referred to in connection with the construction or interpretation of these Terms.

(i) Third Party Beneficiaries. There are no third party beneficiaries under these Terms except as contemplated under Section 7.

(j) Relationship of the Parties. The Parties are independent contractors, and these Terms does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between them.