

Terms of Use

The following information provides important considerations for your use of Cochlear Foundation website.

Website Terms of Use

Cochlear Foundation (“we”, “us” and “our”) welcomes you (“you”) to its website (“our Website”). These Website Terms of Use (“Terms of Use”) govern your use of our Website.

Your Consent

Please review these Terms of use carefully. By accessing or our Website, you are agreeing to comply with and be bound by these Terms of Use. If you do not agree to these Terms of Use, you may not use our Website.

Changes to These Terms of Use

As we add new features and functionality to our Website, we may need to update or revise these Terms of Use. We therefore reserve the right to update or revise these Terms of Use at any time by posting the revised version on our Website. These changes will be effective as of the date we post as the effective date of the revised version on our Website. Whenever reasonably possible, we will provide you with advance notice when we make material changes to these Terms of Use that will have an adverse impact on the use of our Website.

You may access the current version of these Terms of Use at any time by clicking on the link marked "Terms of Use" at the bottom of each page of our Website.

These Terms of Use were last updated on 20 September 2021.

Click-Through Agreements

These Terms of Use may be supplemented or amended by the terms of a "click-through" or "online" agreement between you and us. Special terms may also apply if you choose to participate in certain promotional activities or initiatives available through our Website. If special terms and conditions apply, you will be asked to expressly consent to them, for example, by checking a box or clicking a button marked "I agree." The terms and conditions of any such "click-through agreement" will supplement and amend these Terms of Use, but only with respect to the subject matter of the "click-through agreement."

The Content of Our Website Is Not Medical Advice

Our Website contains information about Cochlear Foundation which may relate to medical products and services, and hearing health and wellness. None of our Website is, however, intended to be or to be used in place of medical advice. Please read this important notice carefully:

The content of our Website, including all text, photographs, images, illustrations, graphics, audio, video and audio-video clips, and other materials (collectively, "Content"), whether provided by us or by other third parties, is not intended to be and should not be used in place of (a) the advice of your physician or other medical professionals, (b) a visit, call or consultation with your physician or other medical professionals, or (c) information contained on or in any product packaging or label. Our Content does not constitute medical advice. Should you have any healthcare related questions, please call or see your physician or other healthcare provider promptly. Should you have an emergency, call you physician or dial your local emergency services immediately. You should never disregard medical advice or delay in seeking medical advice because of any Content presented on this Website, and you should not use our Content for diagnosing or treating a health problem. Additionally, the transmission and receipt of our Content, in whole or in part, or communication via the internet, e-mail or other means does not constitute or create a doctor-patient, therapist-patient or other healthcare professional relationship between you and us.

Your Feedback

We welcome your comments, feedback, suggestions, and other communications regarding this Website and the information and services we make available through this Website (collectively, "Feedback"). Any Feedback you provide to us through our Website and through email, verbal communications and feedback forums will be and remain the exclusive property of Cochlear Foundation, and Cochlear Foundation may use such Feedback in any manner it deems appropriate without providing notice or compensation to you, and without seeking your permission. By providing Feedback, you are deemed to have waived any confidentiality in your Feedback and assigned to Cochlear Foundation all worldwide rights, title and interests in your Feedback, including all copyrights and other intellectual property rights in your Feedback. This means, for example, that we can use your comment or idea to modify or improve our Website or in any other way we want without restriction, and we do not have to compensate you. For this reason, you must not provide us with any Feedback that you do not wish us to use.

Our Privacy Notice

Our Privacy Notice describes how we protect your privacy when you use our Website. To review our Privacy Notice, click [here](#).

Your Content

Our Website may provide ways for our users to post, upload, transmit through or otherwise make available ("post") text, images, illustrations, graphics, audio, video or audio-video clips, or other materials on or through our Website. The Content our users post is referred to as "User Content" in these Terms of Use. The Content that you post is referred to as "your Content" in these Terms of Use.

You are responsible for ensuring the accuracy or quality of your Content. If you want, but are unable, to update, or edit any of your Content which is no longer accurate you can contact us at: contact@cochlearfoundation.org.

Prohibited Content. You may not post Content or otherwise do any act on or through our Website that:

- is patently offensive and/or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- harasses or advocates harassment of another person;
- exploits people in a sexual or violent manner;
- contains nudity, violence, or offensive subject matter;
- provides any telephone numbers, street addresses, last names, email addresses or other personal identifying information of anyone except yourself without their consent;
- promotes information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libellous;
- violates any intellectual property or other proprietary right of ours or any third party, including Content that promotes an illegal or unauthorised copy of a copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacture-installed copy-protect devices, or providing pirated music or links to pirated music files;
- involves the transmission of "junk mail", "chain letters", or unsolicited mass mailing, instant messaging, "spimming" or "spamming";
- contains restricted or password only access pages or hidden pages or images (those not linked to or from another accessible page);
- furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- solicits passwords or personal identifying information for commercial or unlawful purposes from other members;
- involves commercial activities and/or sales without our prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- includes a photograph of another person that you have posted without that person's consent or, in the case of minors, parental consent, or otherwise constitutes an invasion of an individual's privacy or infringement of publicity rights;
- contains a virus or other harmful component;
- restricts or inhibits any other user from using and enjoying our Website;
- places an unreasonably large load on our Website's infrastructure;
- is in violation of applicable laws, including export/import control, espionage or national security laws; or
- promotes an off-label use, or a use not approved by the relevant regulatory body in your country, of any medical device or other medical product.

Responsibility for User Content. You are entirely responsible for your Content. Our Website may permit you to adjust the settings affecting how others may view your Content. You are solely responsible for adjusting these settings. Posting Content via the Internet inherently poses the risk of unintended disclosure and access by third parties to your Content. To the extent permitted by law, we will make reasonable efforts to secure your Content and prevent your Content from disclosure beyond the settings you select, but we cannot guarantee these settings will prevent your Content from being viewed or accessed by unintended third parties. Due to the characteristics of the Internet network, you acknowledge that the confidentiality of any User Content cannot be ensured when posting on our Website. You must prevent and refrain from posting any confidential Content on our Website, and you acknowledge that we will not be responsible for any breach of the confidentiality of User Content. You understand that by using our Website, on which users may post User Content, you may be exposed to User Content that you deem offensive, indecent or objectionable. In such event, you can notify us at contact@cochlearfoundation.org of any inappropriate content and, where justified and to the extent permitted by law, we will remove or edit such inappropriate content. To the extent permitted by law, you agree we will not be liable in any way for any User Content, including, but not limited to, any errors or omissions in any User Content, settings, viewing errors, or any loss or damage of any kind incurred as a result of the use of any User Content posted on or through our Website.

Rejection/Removal of Your Content. You acknowledge that we are not obliged to pre-screen User Content posted on our Website, but that we have the right to edit or remove any User Content or portion thereof that is available via our Website, if we deem this content to be manifestly unlawful or where such content is reported as inappropriate by another User or a third-party. Without limiting the foregoing, we have the right to disclose any information as necessary to satisfy any law, regulation or governmental request, and to remove from our Website any User Content that violates these Terms of Use or is otherwise objectionable, or to restrict, suspend, or terminate your access to all or any part of our Website at any time, for any or no reason, and without liability. Where reasonably possible without risking legal liability for Cochlear Foundation, we will notify you in advance of our actions. If you become aware of misuse of any of our Website by any person, please contact us contact@cochlearfoundation.org

Ownership of Your Content. We do not claim ownership rights in your Content. Subject to the non-exclusive license contained in the following paragraph, as between us and you, you own and will retain any and all intellectual property rights that you may have in your Content.

License to Use Your Content. So that we may conduct the activities described on our Website, you must grant a license to us to use and distribute your Content through our Website. Accordingly, by posting your Content on or through our Website, you hereby grant to us a non-exclusive, royalty-free, perpetual (for so long as the intellectual property rights exist), irrevocable, worldwide license (including the right to sublicense) to use, copy, publicly perform, publicly display, distribute, communicate online, modify, adapt, create derivative works based on, and otherwise exploit your Content for legitimate purposes. If you wish to remove any of your Content from our Website, you may contact us at contact@cochlearfoundation.org. Generally, we will try to remove Content at your request, but our ability to do so will depend on the type and locations of your Content and other factors. If we do so, we reserve the right to charge a reasonable fee in appropriate circumstances and as permitted by applicable law. We make no guarantee as to the complete deletion of any such Content and copies thereof. In any case, a back-up or residual copy of such Content may remain on our servers after the Content appears to have been removed from our Website, and we retain all rights granted in this paragraph to all such remaining copies.

Your Warranties Regarding Your Content

By posting your Content via our Website, you represent and warrant that (i) you own all right, title and interest in your Content, or otherwise have the right to grant the license set forth in preceding paragraph, and (ii) the posting of your Content on or through our Website does not violate the privacy rights, publicity rights, copyrights, trademarks, patents, trade secrets, contract rights, confidentiality, or any other rights of any third party.

Ownership of our Website and Content

As between you and us, we own and reserve all rights, title and interests in our Website, including all of the software and code that comprise and operate our Website, and all of the Content of our Website except your Content. Our Website and the Content we and others provide may be protected under trademark, service mark, trade dress, copyright, patent, trade secret and other intellectual property laws.

We hereby grant you a limited, revocable, non-sublicensable license to download and print copies of any portion of the Content of our Website to which you have properly gained access, but only for your own personal, non-commercial, non-competitive and non-derogatory use (unless you posted the Content), and only if you do not remove, modify or obscure any copyright, trademark, or other proprietary notices from such Content (unless you posted the Content). The foregoing license is subject to these Terms of Use and does not include the right to use any data mining, robots or similar data gathering or extraction methods. This license is revocable at any time without notice and with or without cause.

You may not and you may not permit others to copy, distribute, perform or display publicly, prepare derivative works based on, broadcast, exploit or use any part of the Content on our Website (except your Content) except as expressly provided in these Terms of Use without our prior written permission. Any use of our Website, including the Content of our Website (except your Content), other than as specifically authorised in these Terms of Use is strictly prohibited and will terminate the license granted herein. Such unauthorised use may also violate applicable laws including copyright and trademark laws and applicable communications, regulations and statutes.

Nothing in these Terms of Use shall be construed as transferring any right, title or interest in our Website to you or anyone else, except the limited license to use our Website on the terms expressly set forth herein.

Copyright

The entire Content of each Website is a collective work under Australian and international copyright laws and treaties. Cochlear Foundation either owns or is licensed to reproduce the copyright in the selection, coordination, arrangement and enhancement of the Content of our Website.

You may not, except with our prior written permission (or in accordance with relevant copyright law):

- use any photograph or other Content on our Website (other than your Content);
- imitate our website design, logos, taglines, packaging or trade dress; or

- use our logos, company name, in marketing, promotional or advertising materials in a manner that suggests that Cochlear Foundation endorses or sponsors your goods or services.

Where your use of our Content is authorised, you must provide proper attribution and must not remove, alter or obscure any copyright or other proprietary rights notices associated with such Content.

If you have reason to believe any part of the Content of our Website infringes the copyrights of others, or that any link on our Website links to infringing materials, please notify our Copyright Agent immediately using the contact information provided below. It is our policy to investigate any allegations of copyright infringement brought to our attention. We will promptly remove any notified Content that we deem infringing following such investigations. In addition, we reserve the right in our sole discretion to suspend and/or terminate access to our Website by any user who is alleged to have posted infringing materials or a link to infringing materials on our Website and to remove or disable the allegedly infringing Content or link. Where reasonably possible without risking legal liability for the Cochlear Foundation, we will notify you in advance of the suspension or termination.

Notice of Claim of Copyright Infringement. If you are the copyright owner (or are authorised to act on behalf of the copyright owner), please notify our Copyright Agent immediately if you believe that (a) any Content displayed on our Website infringes your copyright or (b) any link posted on our Website links to materials that infringe your copyright. As soon as we receive your notice of claimed infringement, in the form described below, we will, if we believe the complaint to be substantiated, promptly remove or disable access to the materials that are claimed to be infringing (or the subject of infringing activity). Your notice must be in writing and must include the following:

- the signature of the relevant owner or person authorised to act on behalf of the owner of the copyright work;
- identification of the copyrighted work you believe has been infringed (or if you believe multiple copyrighted works have been infringed, a representative list);
- identification of the material you believe is infringing or the subject of infringing activity, together with enough information to permit us to locate the material on our Website;
- enough information to permit us to contact you, such as, your name, address, telephone number and, if available, e-mail address;
- a statement that you have a good faith belief that the allegedly infringing use of the material was not authorised by the owner of the exclusive right that is allegedly infringed (the "copyright owner"), an agent for the copyright owner, or by law;
- a statement that all of the information you have provided is accurate; and
- a statement, made under penalty of perjury, that you are the copyright owner or are authorised to act on behalf of the copyright owner.

Your notice must be signed (physically or electronically) and must be addressed as follows:

Copyright Agent
Cochlear Foundation Limited
1 University Avenue,
Macquarie University,
NSW 2109 Australia

E-mail: contact@cochlearfoundation.org

Attribution of Trademarks

All trademarks on our Website are the property of their respective owners.

Cochlear and the elliptical logo are registered or unregistered trademarks of Cochlear Limited and are used under license.

You may not use any of trademarks displayed on our Website except with the prior express written permission of the relevant trademark owner.

Non-Commercial Use

Our Website may not be used in connection with any commercial purposes, except as specifically approved in writing by us. Unauthorised framing of or linking to our Website is prohibited.

Commercial advertisements, affiliate links, and other forms of solicitation may be removed from our Website without notice and may result in termination of access privileges.

Links to Third-Party Websites

Our Website may contain links to other websites owned by third parties (such as, advertisers, affiliate partners, strategic partners, or others). We are not responsible for and have no control over the products or offerings of, any of these businesses or individuals, or the accuracy of the content of their websites. To the extent permitted by law, we do not assume any responsibility or liability for the actions, product, and content of any such websites. Before you use any third party website, you should review the applicable terms of use and policies for such websites. The inclusion of a link in our Website does not imply our endorsement of such third party website. If you decide to access any such linked websites, you do so at your own risk.

International Use

You agree to comply with all applicable laws regarding your use of our Website.

User Disputes

You are solely responsible for your interactions with other members of our Website. Cochlear Foundation reserves the right, but has no obligation, to monitor disputes between you and other members of our Website. You indemnify and hold harmless Cochlear Foundation and its officers, directors, employees, agents, licensors and service providers from any claim of damages arising out of any dispute between you and another User.

Disclaimer of Warranties

If you reside in Australia, the European Economic Area, the United Kingdom, Switzerland, New Zealand or any other applicable jurisdictions with mandatory consumer protection laws, we acknowledge that there are certain guarantees, warranties, terms and conditions imposed by the law relating to the supply of goods and services which the law expressly provides may not be excluded, restricted or modified or may only be limited to a certain extent ("Statutory Obligations"). Nothing in the Terms excludes, restricts or modifies the Statutory Obligations, otherwise than as permitted by law.

Subject to the Statutory Obligations:

Your use of our Website (including all of the Content), and any reliance you have on any opinion, advice, statement, memorandum, or information made available through our Website, including from any third party unaffiliated with us, is at your sole risk and you will be solely responsible for any harm that may result. Our Website, and all of the Content made available through our Website are provided on as "as is" and "as available" basis, without representations or warranties of any kind. To the fullest extent permitted by law, Cochlear Foundation, and its respective officers, directors, employees, agents, licensors and service providers (collectively, "Cochlear Foundation Parties"), expressly disclaims all representations and warranties of any kind whatsoever, whether express or implied, with respect to our Website or your use of our Website, including all representations and warranties of title and non-infringement. Without limiting the generality of the foregoing, Cochlear Foundation does not represent or warrant that (a) our Website will meet your requirements or expectations; (b) your use of our Website will be timely, secure, uninterrupted or error-free, or that defects will be corrected; (c) the content or any advice, opinion, statement or other information displayed or distributed through our Website is accurate, complete, current or reliable, or virus-free; (d) your Content, communications, personalised settings or other data will not be deleted, lost, misdelivered, or corrupted.

Some jurisdictions do not allow the limitation of certain warranties or liabilities, so some of these disclaimers may not apply to you.

Limitation of Liability

Subject to the Statutory Obligations, and to the extent permitted by law, you agree that:

To the extent permitted by law, Cochlear Foundation Parties (as previously defined) will not have any liability to you or to any third party for any losses or damages (whether direct, indirect, general, special, consequential, incidental, exemplary or otherwise, including, without limitation, loss of data, income, goodwill or profits) arising out of or in connection with any claim, whether the claim is based on contract, tort (including negligence), strict liability or any other legal theory, related to the use of or inability to use our Website (including our Content) . We are not responsible or liable in any manner for any content posted by or conduct of any third-party users of our Website. This is a comprehensive limitation of liability that applies even if any of the Cochlear Foundation Parties have been advised of or should have known of the possibility of such damages, and without regard to the effectiveness of other remedies. If any part of this limitation of liability is found to be invalid or unenforceable for any reason, then our aggregate liability (and any other person or entity whose liability would otherwise have been limited) for liabilities that would otherwise have been limited shall not exceed two hundred and fifty dollars US dollars (US\$250.00).

Some jurisdictions do not allow the exclusion or liability for certain types of damages, so some of these disclaimers may not apply to you. This limitation of liability does not limit or restrict our liability for fraud or fraudulent misrepresentation, gross negligence, death or personal injury to the extent caused by our negligence, or for any other liability that cannot by law be excluded.

Indemnity

You agree to indemnify and hold harmless Cochlear Foundation Parties (as previously defined) from any and all third-party claims, liability, damages, losses, costs and expenses (including reasonable attorneys' fees and costs) arising from your wilful or negligent breach of these Terms of Use. We will notify you promptly of any such claim, liability, loss, cost or expense.

The indemnities given under these Terms of Use will survive the termination of your use of our Website and any other "click-through" or "Online" agreement.

Modification and Discontinuation

We reserve the right to discontinue or modify our Website at any time without prior notice.

Interpretation

As used in these Terms of Use, the term "including" means "including, but not limited to."

Waiver

Our failure at any time to require performance of any provision of these Terms of Use or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by any of us of any breach of any provision of these Terms of Use or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under these Terms of Use.

Severability

If any provision of these Terms of Use is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Terms of Use shall remain in full force and effect.

Dispute Resolution

In the event that a conflict between you and Cochlear Foundation should arise out of or in connection with this Website or these Terms of Use, you agree to negotiate in good faith and undertake reasonable efforts, in cooperation with Cochlear Foundation, to achieve the most beneficial outcome for both parties.

As an alternative to resolution of disputes through the courts, consumers who reside in the European Union may refer his/her complaint to the European Online Dispute Resolution Platform (European ODR Platform). Consumers may obtain further information by visiting the EU's Online Dispute Resolution site at <https://ec.europa.eu/consumers/odr>. However, Cochlear Foundation does not participate in the aforementioned dispute resolution mechanism or any other alternative.

Governing Law, Jurisdiction and Venue

If you access the Website from:

- North America, these Terms of Use are governed by the laws of the State of Colorado, USA;
- Latin America, these Terms of Use are governed by the laws of the Republic of Panama;
- Europe, the Middle East or Africa, these Terms of Use are governed by the laws of England; or
- Asia, Australia or elsewhere in the South Pacific, these Terms of Use are governed by the laws of the State of New South Wales, Australia,

except where you are required by applicable law or regulation to enter into contracts governed by the laws of a specific country, in which case these Terms are governed by the laws of that specific country, in each case without regard to its conflicts of law provisions.

You agree to submit to the non-exclusive jurisdiction of the courts and courts of appeal from them in the jurisdiction of the governing law applicable to you above and you agree that you will not object to the exercise of such jurisdiction by those courts on any basis.

Notwithstanding the above, if you are a consumer, your ability to enforce the Statutory Obligations (if any) applicable at your place of residence remain unaffected by the foregoing choice of law and venue.

Entire Agreement

These Terms of Use as supplemented or amended by any applicable Privacy Notices or "click-through agreement," contain the entire understanding and agreement between you and us with respect to our Website and supersede all previous communications, negotiations and agreements, whether oral, written, or electronic between you and us with respect thereto.

Limitations on Actions

Subject to the Statutory Obligations, any claim or cause of action you may have against us arising out of or related to use of our Website must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Questions About These Terms of Use

If you have any questions regarding these Terms of Use, please contact us by email at contact@cochlearfoundation.org.