

Terms and Conditions of Use – Cochlear Link

WELCOME!

What's new

We've updated the Cochlear Link Terms of Use and the key changes are outlined below.

- We have updated the description of the Cochlear Link service.
- In clause
 - 4.5 and 5.2, we have made updates to include rights of users in the European Union under the European Data Act.
 - 5.3, we have updated your obligations under European Data Protection Law regarding data collection and sharing.
 - 6, we have made updates about software performance analytics.
 - 8.1, we have updated your obligations to ensure Cochlear Link is online to ensure updates can be made.
 - 15.1.4, we have updated your obligations regarding instructions for stored data in the event of termination.
 - 19.7, we have updated definitions.
- We have added clauses 9 (Payments and charges for use of the services) and 20 (Optional Services)

These Terms and Conditions govern the use of Cochlear Link, a service for clinics using Custom Sound Pro fitting software. Cochlear Link enables the synchronisation and remote storage of recipients' Cochlear Data Exchange files (CDX files) comprising Recipient's Personal Information in the Cochlear Cloud. This facilitates sharing of Recipients' Personal Information within the clinic and/or between authorised hearing care partners, and Cochlear, for treatment and support purposes. Upon synchronisation, Cochlear Link may digitally register recipients' devices with Cochlear and activate the device warranty, if the device has not previously been registered. The term Cochlear Link includes the Software (as defined in clause 19.7) and the Cochlear services listed at clause 20 of these Terms (the "**Services**") (together, "**Cochlear Link**"). Not all Services are available in all countries.

Cochlear Link is owned and operated by Cochlear Limited and its affiliates listed in clause 17 ("**us**", "**we**", or "**our**").

Below are the terms and conditions for your use of and access to Cochlear Link. Please read these terms and conditions carefully before using or otherwise accessing Cochlear Link. If you or the entity you represent ("**you**", "**your**" or "**Customer**") do not agree to these terms and conditions, do not install, use or access Cochlear Link.

By installing, using or otherwise accessing ("**Using**", "**Use**" or "**Uses**") Cochlear Link, you and any entities you represent agree to be bound by these terms and conditions including any Service-Specific Terms (together, "**Terms**"). The Terms supersede and replace all prior agreements, oral or written, between you and us regarding Cochlear Link. If you are Using Cochlear Link on behalf of an entity, you warrant that you are properly authorised

to bind that entity to the Terms and you agree to be bound by these Terms on behalf of yourself and on behalf of the entity. In the event and to the extent of an inconsistency between the terms in the body of these Terms and any Service Specific Terms, the Service Specific Terms will prevail in respect of the Service to which those Service Specific Terms relate.

If you or an entity you represent does not wish to be bound by the Terms neither you nor the entity you represent may Use Cochlear Link. You agree to ensure that any person who Uses Cochlear Link at your direction or on your behalf complies with the Terms.

1. GRANT OF LICENCE

Subject at all times to your compliance with the Terms, we grant to you until expiry or termination of the Terms for any reason a non-exclusive, non-transferable, non-assignable, non-sublicensable personal licence to use the Software solely with Cochlear Link to facilitate your provision of healthcare services to Recipients or potential Recipients of our products or services. Any such software is licensed and not sold.

2. DISCLAIMER & COCHLEAR'S RESPONSIBILITIES

- 2.1 If you reside in Australia, the European Economic Area, United Kingdom, Switzerland, New Zealand or any other applicable jurisdictions with mandatory guarantees or legal requirements for the supply of goods and services, we acknowledge that there are certain guarantees, warranties, terms and conditions (including in respect of refunds and returns) 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.

For consumers living in Australia: Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

If you reside in New Zealand and are acquiring the Services for a business purpose: You accept that the Consumer Guarantees Act 1993 will not apply to the Services

- 2.2 Subject to the Statutory Obligations and other applicable law:
- 2.2.1 except as otherwise provided herein, Cochlear Link is provided 'as is' and without any guarantee, warranty or condition, either express or implied, including without limitation, warranties of merchantability, title, non-infringement, fitness for a particular purpose or that Cochlear Link will be secure, uninterrupted or error free. Except as otherwise provided herein, you expressly agree that your Use of, or ability to Use Cochlear Link is at your own risk;
 - 2.2.2 unless expressly provided by us, if you rely on any materials, data or other information provided or otherwise made available in or through Cochlear Link for any reason you do so at your own risk.
 - 2.2.3 You acknowledge that (i) given the nature of telecommunications systems (including our reliance on systems and services that we do not own or control), we do not promise that Cochlear Link will be continuous or fault free, and (ii) we have no control over, and have no duty to take any action, regarding, any facts, faults or omissions

of any third party telecommunications systems, networks or operators (including, without limitation, suspension or termination of our service providers' connections, or faults in or failures of their apparatus or network), in the jurisdictions in which they operate;

2.2.4 unless otherwise stated in any Service-Specific Terms, Cochlear Link is provided without any obligation to provide support, upgrades, maintenance, bug patches or fixes ("**Support Services**"). If we elect to provide Support Services to you, such Support Services will be provided 'as is' and without any guarantee, warranty or condition, either express or implied;

2.2.5 we do not guarantee, represent or warrant that the information, or any advice, opinion, statement or representation contained in or accessible through Cochlear Link is accurate, suitable for your purposes or without errors or omissions;

2.2.6 although all reasonable care has been taken in the development of Cochlear Link to guard against defects or vulnerabilities (including regular security tests and code reviews on software and hardware), we cannot guarantee, represent or warrant that Cochlear Link is virus, worm, defect or Trojan horse free, and therefore it is your responsibility to secure your own systems and method of accessing Cochlear Link.

2.2.7 You agree that all portions of Cochlear Link are our proprietary and confidential information and will be treated by you as confidential. Unless we agree otherwise in writing, you may not disclose information obtained from Cochlear Link to any third party other than to facilitate your provision of healthcare services to Recipients or potential Recipients of our products or services. These obligations of confidentiality do not apply to any information which is already in the public domain, other than through a breach by you of these obligations, or which is required to be disclosed by law or a regulatory body.

2.3 Cochlear represents and warrants that:

2.3.1 it owns or licenses all Intellectual Property Rights in Cochlear Link and has the authority to grant the rights subject to the Terms; and

2.3.2 Cochlear Link does not and will not infringe the Intellectual Property Rights of any third parties.

2.4 You acknowledge that your Use of Cochlear Link may be interfered with by numerous factors outside of our control.

2.5 Subject to the Statutory Obligations and other applicable law, we make no guarantees, representations or warranties on behalf of, and accept no responsibility for services made available in or through Cochlear Link by people other than us.

3. RULES FOR USING COCHLEAR LINK

3.1 You agree that each time you Use Cochlear Link you will not:

3.1.1 provide in-person or telehealth services to a Recipient unless you are licensed to provide such services pursuant to applicable laws and regulations;

- 3.1.2 use Cochlear Link with devices or systems other than Cochlear’s systems or devices in accordance with their instructions for use;
 - 3.1.3 act in violation of the Terms or any applicable laws, including the Privacy Law;
 - 3.1.4 use Cochlear Link in any manner which may expose us or our service providers to civil or criminal liability or regulatory enforcement;
 - 3.1.5 violate the rights of any person (including us), including trade secrets, privacy rights, confidentiality rights, Intellectual Property Rights (as defined in clause 19.7);
 - 3.1.6 use Cochlear Link in any manner which is not reasonable and/or not in accordance with the purposes for which it is made available to you, such as off-label use, or to build a similar or competitive product;
 - 3.1.7 use Cochlear Link (directly or indirectly) for any activity which is obscene, indecent or offensive and/or which defames, abuses, harasses, stalks, threatens, menaces or offends any person;
 - 3.1.8 use any device, software, process or means to access, retrieve, scrape, index, or train, validate, or otherwise develop machine-learning models based on any content on or from Cochlear Link and/or to interfere, or attempt to interfere, with the proper working of Cochlear Link;
 - 3.1.9 provide false identity information to gain access to or use Cochlear Link, pose as any person or attempt to solicit money, passwords or Personal Information from any person and/or gain access, or attempt to gain access, to any secured portion of Cochlear Link to which you do not possess express access rights;
 - 3.1.10 reproduce, republish, retransmit, modify, adapt, distribute or redistribute, translate, create derivative works or adaptations of, publicly display, sell, trade, or in any way exploit Cochlear Link or any content on Cochlear Link, except as expressly authorised by us;
 - 3.1.11 remove, alter, cover or obfuscate any copyright, trade mark or other propriety rights notices on or embedded in Cochlear Link;
 - 3.1.12 reverse engineer, decompile, disassemble all or any portion of Cochlear Link or otherwise attempt to gain access to the human-readable computer programming language (i.e. source code) version of Cochlear Link; and/or
 - 3.1.13 intentionally transmit, or attempt to transmit, any computer viruses, worms, defects, Trojan horses or other items of a destructive nature that do, or are designed to, interrupt, destroy, change or limit the functionality of Cochlear Link or any other computer software, hardware or other electronic equipment or information which in any way impinges on another user's use or enjoyment of Cochlear Link, or otherwise breaches, or encourages other users to breach, the Terms.
- 3.2 In Using Cochlear Link, you acknowledge that certain minimum system requirements apply. Such minimum system requirements may change over time and will be supplied to you upon request. You are responsible for the proper configuration, maintenance, backup and security of any computing and/or networking equipment to enable your connection to and Use of Cochlear Link.

- 3.3 You must not attempt to circumvent or break any security mechanism of Cochlear Link or Use Cochlear Link in a manner that poses a security or other risk to us, our service providers, or any third party. You must notify us immediately (and in any event, within 24 hours) of any unauthorised use of any username or password or any other known or suspected breach of security and use reasonable efforts to stop any unauthorised use of Cochlear Link that is known or suspected by you. We may exercise whatever means we deem necessary to prevent unauthorised Use of Cochlear Link, including instituting technological barriers or reporting the conduct to any person or governmental agency.
- 3.4 We reserve the right to take any steps we believe are necessary to (i) satisfy any applicable law, regulation, legal process or governmental agency request; (ii) enforce these Terms, including investigation of potential violations of these Terms; (iii) detect, prevent, or otherwise address fraud, security or technical issues; (iv) respond to your support requests; or (v) protect our rights, property or safety or those of our customers, end user, and/or public. You agree to provide us with any information we reasonably request to investigate and resolve problems relating to your Use of Cochlear Link.

4. INTELLECTUAL PROPERTY

- 4.1 All Intellectual Property Rights in Cochlear Link are owned by or licensed to us, unless otherwise expressly notified by us.
- 4.2 Any feedback you provide to us about Cochlear Link, whether through Cochlear Link, email, verbal communications or feedback forums will be and remain our exclusive property, and we may use such feedback in any manner we deem appropriate without providing notice or compensation to you, and without seeking your permission. By providing feedback, you hereby assign and agree to assign to us 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 Cochlear Link, or to make changes to our products or services, 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.
- 4.3 You represent and warrant that you do now, or will prior to your Use of Cochlear Link, own or have a licence to all Intellectual Property Rights in all data including any Personal Information provided by you to Cochlear through your Use of Cochlear Link (“Data”).
- 4.4 You grant to us a limited licence to use and disclose the Data (i) to the extent necessary to provide the Cochlear Link service in compliance with the Terms and applicable law and (ii) as otherwise set out in these Terms.
- 4.5 We do not guarantee any back-up or other storage of any Data and we are not required to make any Data available to you, other than as required by Privacy Law and the European Data Act.

5. PERSONAL INFORMATION

- 5.1 Collection of Personal Information
- 5.1.1 By Using Cochlear Link, you will provide Personal Information and other information to us through the synchronisation and storage process.
- 5.1.2 The Personal Information we collect from you will be handled in accordance with this clause 5 and [Cochlear’s Global Privacy Notice](#).

- 5.2 If you access Cochlear Link from the European Union, you agree that personal and non-personal data generated by the product and related services and governed by the European Data Act is subject to the terms available [here](#).
- 5.3 Responsibilities under European Data Protection Law: Where European Data Protection Law applies to the processing of Personal Information we collect from you in connection with Cochlear Link, the terms of the [Connected Care Data Processing Agreement](#) (“DPA”) will govern such processing. Without limiting any of your obligations set out in the DPA, you warrant that the Personal Information provided to us has been obtained in accordance with the European Data Protection Law, and that we are authorised (either by consent of the individual or otherwise) to receive the Personal Information from you, and to use, share and otherwise process the Personal Information in accordance with the DPA and Cochlear’s Global Privacy Notice.
- 5.4 Responsibilities under Non-European Data Protection Law: If Non-European Data Protection Law applies to the processing of Personal Information we collect from you in connection with Cochlear Link:
- 5.4.1 without limiting any of your obligations to us, you warrant that the Personal Information has been obtained in accordance with Privacy Law (as defined in clause 19.7), and we are allowed (either by consent of the individual or otherwise by Privacy Law) to receive the Personal Information from you, and to use, share and otherwise process the Personal Information in accordance with the Terms, applicable Privacy Law and [Cochlear’s Global Privacy Notice](#);
- 5.4.2 each party will comply with any obligations applicable to it under Privacy Law with respect to the processing of Personal Information, and, in particular, will (and ensure its employees and contractors will): (i) keep Personal Information confidential and disclose it only on a need- to-know basis in accordance with the Terms; (ii) adequately protect against unauthorised or unlawful access to or processing of Personal Information and against accidental loss or destruction or disclosure of, or damage to, Personal Information; and (iii) ensure it has a response plan in place to handle any actual or suspected data breach affecting Personal Information.
- 5.5 If you access Cochlear Link from the United States, you acknowledge that a Business Associate Agreement is not required under HIPAA, as further [described by the U.S. Department of Health and Human Services](#),¹ and that any sharing of Personal Information, including Protected Health Information, falls within HIPAA’s treatment, payment, and operations exception.
- 5.6 We may use or otherwise process De-identified Personal Information processed in connection with Cochlear Link in accordance with applicable laws for (i) evaluating, improving and/or developing our products and services; (ii) developing new products and services; and (iii) scientific research.

6. SOFTWARE INFORMATION

- 6.1 Cochlear Link may automatically generate and send analytics to Cochlear about the software performance. Cochlear will use this information to support the on-going maintenance and development of Cochlear’s products and services.

¹ <https://www.hhs.gov/hipaa/for-professionals/faq/490/when-may-a-covered-health-care-provider-disclose-protected-health-information-without-authorization/index.html>

7. SECURITY OF COCHLEAR LINK

- 7.1 Cochlear will implement and maintain appropriate administrative, organizational (physical) and technical safeguards to help protect the Data against unauthorised access, destruction, modification and disclosure.

8. UPDATES AND CHANGES TO SERVICES

- 8.1 Cochlear Link regularly communicates with our servers to determine whether there are any patches, bug fixes, updates, upgrades or other modifications (“**Updates**”) to improve Cochlear Link. You agree to ensure the application remains online to receive such Updates and that we may automatically implement such Updates without providing any further notice to you.
- 8.2 We reserve the right to change or discontinue the Services, in particular to extend, limit or discontinue these, while taking reasonable account of your interests. Insofar as it is reasonable and necessary, taking into consideration your interests, we will provide you with reasonable notice of any material change or the discontinuation of any Services.

9. PAYMENTS AND CHARGES FOR USE OF THE SERVICES

- 9.1 In certain jurisdictions, it may be agreed that fees will be charged for your Use of certain Services (“**Cochlear Fees**”). In such cases, you agree to pay the Cochlear Fees in accordance with these Terms and as set forth in any applicable additional agreements until you notify us of termination as set out in clause 14.
- 9.2 You may charge Recipients in connection with your provision of healthcare services facilitated by your Use of the Services (“**Recipient Charges**”). If you decide to do so, you:
- 9.2.1 are solely responsible for the processing and administration of payments in connection with Recipient Charges in compliance with all applicable laws (including communication of information about transactions, refunds, adjustments, and the handling of disputes);
 - 9.2.2 represent and warrant that you will not unlawfully file any claims for reimbursement from any third-party insurer, including any federal or state-funded program, in connection with Recipient Charges; and
 - 9.2.3 acknowledge that we are not responsible for or liable to you in connection with payments for Recipient Charges made by a Recipient which are later disputed or the subject of a refund request by the Recipient, which are made in error, or which violate any applicable laws.

10. LIMITATION OF LIABILITY

- 10.1 To the maximum extent permitted by law but subject to the Statutory Obligations and excluding any indemnification obligations, neither party nor any of its directors, officers, employees, principals or contractors will have any liability to the other party in contract, tort, statute or in any other way (whether arising from negligence or otherwise): (i) for any indirect, special, incidental, or consequential damage or loss of any kind; (ii) for loss of profits or goodwill, loss of revenue or business opportunities, business interruption, costs, charges or expenses of procurement of substitute goods or technology, or for any damage for personal injury or loss of Data; and (iii) arising from interferences, interruptions, computer viruses, breakdowns or disconnection that may prevent

access, navigation and/or use of Cochlear Link, even if the other party has been advised of the possibility of such damages.

- 10.2 Without prejudice to clause 10.1, to the maximum extent permitted by law but subject to the Statutory Obligations and excluding any indemnification obligations, in no event will either party's total liability in respect of a Service exceed the greater of: (a) the amount of Cochlear Fees paid by you for that Service in the 12-month period preceding the first claim; or (b) five hundred US dollars (US\$500.00).
- 10.3 Clauses 10.1 and 10.2 do not apply to the extent applicable local laws do not allow us to limit or exclude our liability for damages caused by an injury to life, body or health or for damages caused by our wilful misconduct or negligence. However, we will not be liable for any damage to the extent caused by a third party or by your wilful misconduct or negligence and/or your breach of any provision or express warranty set out in these Terms.

11. INDEMNITY

- 11.1 You will at all times indemnify and will continue to indemnify, hold harmless and defend us and our directors, officers, employees, principals and contractors ("**Our Indemnified**") against all losses, whether direct or indirect, including all liabilities, damages, costs and expenses (including all legal costs determined on a full indemnity basis), suffered or incurred by any of Our Indemnified arising out of or in connection with any claims brought by third parties arising from your negligence, wilful misconduct, and/or breach of clause 3 or any express warranty set out in the Terms by you or by any person using your login information. To the extent that the indemnity in this clause 11 refers to persons other than us, we hold this indemnity on trust for those other persons.
- 11.2 Cochlear will at all times indemnify and will continue to indemnify, hold harmless and defend you and your officers, employees, principals and contractors ("**Your Indemnified**") against all losses, whether direct or indirect, including all liabilities, damages, costs and expenses (including all legal costs determined on a full indemnity basis), suffered or incurred by any of Your Indemnified arising out of or in connection with any claims brought by third parties arising from our breach of any express warranty set out in the Terms.
- 11.3 In defence or settlement of a claim relating to any actual or alleged infringement or violation of Intellectual Property Rights by Cochlear, we may, at our election, obtain for you the right to continue using Cochlear Link, replace or modify Cochlear Link to ensure its non-infringement, or terminate the Terms upon written notice to you. Further, no indemnity obligations will arise for such claims where they arise as a result of your Use of the Cochlear Link in violation of the Terms.
- 11.4 If any third party makes a claim, or notifies an intention to make a claim, relevant to clauses 11.1 or 11.2 of the Terms, the party against which the claim is made (the "**Indemnified Party**") will:
- 11.4.1 as soon as reasonably practicable, give written notice of the claim to the other party (the "**Indemnifying Party**"), specifying the nature of the claim in reasonable detail;
 - 11.4.2 not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed);
 - 11.4.3 give the Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party, so as to enable the

Indemnifying Party and its professional advisers to examine them and to make copies (at the Indemnifying Party's expense) for the purpose of assessing the claim; and

- 11.4.4 subject to the Indemnifying Party providing security to the Indemnified Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Indemnifying Party may reasonably request to avoid, dispute compromise or defend the claim.

12. RESTRICTION ON DISTRIBUTION

The Software may be subject to export laws and regulations. We do not authorise you to ship or export the Software or any portion thereof to any country or jurisdiction other than the country or jurisdiction in which you acquired it. Without limiting the foregoing, you agree that you will comply with all such export laws and regulations and will not ship or export the Software or any portion thereof to any country or jurisdiction to which such shipment or export would be prohibited under any laws.

13. MODIFICATIONS TO THESE TERMS

- 13.1 We reserve the right to change any part of these Terms at any time ("**Modifications**"). We will provide you with notice of any Modifications. Your Use of Cochlear Link after we provide such notice and make any Modifications to the Terms available constitutes your acceptance of the relevant Modifications. If you do not agree to the Modifications, you must stop Using Cochlear Link.

14. STOPPING YOUR USE OF COCHLEAR LINK

- 14.1 You may terminate these Terms in respect of one or more of the Services by giving us 30 days' notice by contacting our [Customer Service](#) team for your country or region. We reserve the right to terminate, temporarily block, suspend or otherwise deny your Use of Cochlear Link or one or more of the Services for breach (including for non-payment of Cochlear Fees) or when continuing to provide Cochlear Link or the Services to you would expose us or our service providers to civil or criminal liability or regulatory enforcement and, subject to the Statutory Obligations and other applicable law, at no cost or liability to you. We will notify you prior to, or as soon as reasonably practicable after, any suspension, termination or other blockage of your Use of Cochlear Link or any Services. Any unpaid Cochlear Fees will be immediately due and payable upon termination of your Use of the relevant Services.
- 14.2 We may change, remove or discontinue Cochlear Link or any features or functionality of Cochlear Link from time to time. We will you notify you in advance of any material change to or discontinuation of Cochlear Link.

15. EFFECT OF TERMINATION

- 15.1 Upon termination of the Terms in whole, or in part in respect of a Service ("**Terminated Service**");
- 15.1.1 all your rights under the Terms (or in respect of the Terminated Service, as applicable) immediately terminate;
- 15.1.2 you will immediately cease Use of Cochlear Link (or the Terminated Service, as applicable);
- 15.1.3 any post-termination assistance from us is subject to mutual agreement;

15.1.4 you must provide written instructions to the Cochlear [Customer Service](#) team for your country or region within 180 days from the date of termination to either delete or return the recipients' Cochlear Data Exchange files (CDX files) stored in the Cochlear Cloud through your Use of Cochlear Link (or the Terminated Service, as applicable). If you do not do so, Cochlear reserves the right to delete the CDX files in accordance with the applicable Privacy Laws or Statutory Obligations. As a result, you may no longer be able to access the Terminated Service (or any Data and Personal Information that is stored on that Service). You should have a regular backup plan; and

15.1.5 you will promptly pay any outstanding Cochlear Fees for any Terminated Service, if applicable, that you have incurred up to the date of termination.

16. NOTICES

Any notices or communications to Cochlear under or relating to these Terms must be provided in writing.

17. GOVERNING LAW AND CONTRACTING ENTITY

17.1 Without prejudice to clause 17.3, if you access Cochlear Link from:

17.1.1 North America, the Terms are governed by the laws of the State of Colorado, USA, and Cochlear Link is provided by Cochlear Americas;

17.1.2 Latin America, the Terms are governed and interpreted under the laws of the Republic of Panama and Cochlear Link is provided by Cochlear Latino América S.A.;

17.1.3 Europe, the Middle East or Africa, the Terms are governed by the laws of England and Cochlear Link is provided by Cochlear Europe Limited; or

17.1.4 Asia, Australia or elsewhere not covered by this clause 17, the Terms are governed by the laws of the State of New South Wales, Australia, and Cochlear Link is provided by Cochlear Limited.

17.2 Subject to clause 17.3, You agree to submit to the exclusive jurisdiction of the courts and courts of appeal from them in the jurisdiction of the governing law applicable to you in accordance with clause 17.1 and you agree that you will not object to the exercise of such jurisdiction by those courts on any basis.

17.3 Your local laws may require it to govern or may give you the right to resolve disputes in another forum or jurisdiction, in which case clauses 17.1 and 17.2 apply only to the extent that such local laws allow.

18. SURVIVAL

Clauses 2.1-2.2, 2.4-2.5, 4, 5.6, 9.2, 10, 11 and 15-19 of the Terms survive the termination (for any reason) or expiry of the Terms.

19. MISCELLANEOUS PROVISIONS & TERMINOLOGY

19.1 These Terms which, for the avoidance of doubt, include Modifications accepted pursuant to the Terms contain everything that we and you have agreed in relation to the subject matter dealt with by the

Terms. You cannot rely on an earlier written document or anything said or done by or on behalf of us that are not contained in the Terms. We will not be bound by any term, condition or other provision which is different from or in addition to the provisions contained in the Terms (whether or not it would materially alter the Terms) and which is submitted by you in any confirmation, correspondence or any other document

- 19.2 Any of our software (other than the Software) to be acquired by/licensed to you ("**Additional Software**") will be done so on separate stand-alone terms and conditions ("**Additional Software Terms**"). In the event and to the extent of an inconsistency between the Terms and any Additional Software Terms the Terms will prevail in respect of Cochlear Link or any part of it and the Additional Software Terms will prevail in respect of the Additional Software or any part of it.
- 19.3 In the interpretation of the Terms, the following applies unless the context otherwise requires:
- 19.3.1 headings are inserted for convenience only and do not affect the interpretation of the Terms;
 - 19.3.2 a reference in the Terms to any law, legislation, legislative provision, statute, regulation or code includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, and any re-statement of a code;
 - 19.3.3 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency; and
 - 19.3.4 a reference to the word "include" or "including" is to be interpreted without limitation.
- 19.4 Subject to the Statutory Obligations and other applicable law, we are not liable to you for any delay in performing, or failure to perform, any of our obligations if such delay or failure is due to a Force Majeure Event (as defined in clause 19.7).
- 19.5 Each provision of the Terms is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from the Terms in the relevant jurisdiction, but the rest of the Terms will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.
- 19.6 A waiver of any right, power or remedy under the Terms by either party must be in writing signed by both parties. A waiver by either party only affects the particular obligation or breach for which it is given, and it is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion. The fact that either party fails to do, or delay in doing, something that it is entitled to do under the Terms does not amount to a waiver by the party.
- 19.7 In the Terms, the following definitions apply:
- "**Additional Software**" has the meaning given to that term in clause 19.2.
- "**Additional Software Terms**" has the meaning given to that term in clause 19.2.
- "**Cochlear Data Exchange File (CDX File)**" means the structured file containing the clinical state of a recipient's device fitting from Custom Sound Pro fitting software.
- "**Cochlear Fees**" has the meaning given to that term in clause 9.1.

"**Cochlear Link**" has the meaning given to that term in the section at the beginning of the Terms.

"**Data**" has the meaning given to that term in clause 4.3.

"**DPA**" has the meaning given to that term in clause 5.3.

"**De-identified Data**" means Personal Information where identifying information has been transformed or removed such that it is not reasonably likely that an individual can be identified from such data.

"**EU GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

"**European Data Protection Law**" means as applicable EU GDPR, the Federal Data Protection Act of 19 June 1992 (Switzerland) and the UK GDPR, as amended from time to time.

"**Force Majeure Event**" means any event or other occurrence which is beyond our reasonable control.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the regulations enacted by the Department of Health and Human Services at 45 CFR Parts 142, 160-164, and requirements of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), as incorporated in the American Recovery and Reinvestment Act of 2009 and any regulations promulgated pursuant thereto, as amended from time to time.

"**Indemnified Party**" has the meaning given to that term in clause 11.4.

"**Indemnifying Party**" has the meaning given to that term in clause 11.4.1.

"**Intellectual Property Rights**" means all intellectual property rights at any time recognised by law, including:

- (a) patents, copyright (including future copyright), circuit layout rights, designs, trademarks, business names, whether registered or not, trade secrets, know-how and other intellectual property rights; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

"**Modifications**" has the meaning given to that term in clause 13.1.

"**Non-European Data Protection Law**" means data protection or privacy laws in force outside the European Economic Area, Switzerland and the UK, as amended from time to time.

"**Optional Services**" means the services set out in clause 20.

"**Personal Information**" means any information or an opinion about an identified individual, or an individual who is reasonably identifiable (including information forming part of a database), whether true or not, and whether recorded in material form or not and includes 'sensitive information' (as that term is defined in the Privacy Law).

"**Privacy Law**" means as applicable, European Data Protection Law and Non-European Data Protection Law(s).

"Protected Health Information" has the meaning given to that term under HIPAA.

"Recipient" means a user of a Cochlear™ hearing implant.

"Recipient Charges" has the meaning given to that term in clause 9.2.

"Service Specific Terms" means any terms applicable to a specific Service that are attached to these Terms.

"Software" means the computer program accompanying/to be used with Cochlear Link that is furnished (whether electronically as a download or physically on a disk or other media) to you for use (including all components of the program, such as screen displays, graphics, images, applets, and files), as well as any accompanying manuals or documentation, whether printed or in electronic form, as well as the media containing the program.

"Statutory Obligations" has the meaning given to that term in clause 2.1.

"Support Services" has the meaning given to that term in clause 2.2.4 2.2.2.

"Terms" has the meaning given to that term in the section at the beginning of the Terms.

"Terminated Service" has the meaning given to that term in clause 15.1.

"Updates" has the meaning given to that term in clause 8.1.

"Use", "Uses" and "Using" has the meaning given to those terms in the section at the beginning of the Terms.

20. OPTIONAL SERVICES

THE FOLLOWING SERVICES MAY BE OFFERED IN SOME COUNTRIES.

Replacement device service

The replacement device service enables recipients to receive a like for like replacement sound processor pre-programmed with their most recent settings if there is an issue with their existing device. To the extent authorised by and consistent with product labelling requirements, Cochlear Link allows the most recent programming settings (MAPs) to be securely accessed and used by Cochlear to pre-program the replacement device which is provided to the recipient.

Upgrade service

The upgrades service allows recipients to receive a new model of sound processor, pre-programmed with their most recent settings. To the extent authorised by and consistent with product labelling requirements, Cochlear Link allows the most recent programming settings (MAPs) to be securely accessed and used by Cochlear to pre-program the new device which is provided to the recipient.

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