

## **Terms and Conditions of Use – Cochlear Link**

### **WELCOME!**

Welcome to Cochlear Link, a data processing, transmission and storage service that enables the remote storage and sharing of implant customer data within and between authorised clinics for treatment purposes. The term Cochlear Link includes the Software (as defined in clause 15.7) ("Cochlear Link"). This service is owned and operated by Cochlear Limited and its affiliates listed in clause 13 ("us", "we", or "our").

Below we set out the terms and conditions of your use of and access to Cochlear Link, including the Software. Please read these terms and conditions carefully before using or otherwise accessing Cochlear Link or installing or using the Software. If you do not agree to these terms and conditions do not install the Software or use or access Cochlear Link.

### **ACKNOWLEDGEMENTS**

By installing, using or otherwise accessing ("Using", "Use" or "Uses") Cochlear Link, you agree to be bound by these terms and conditions, which includes any accompanying schedules that may be applicable to you ("Terms"). 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. 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.

You agree that we provide Use of Cochlear Link to you subject to the Terms. We reserve the right to change any of the Terms at any time by notifying you of the changes, or by presenting the updated Terms to you on installation of any updates to the Software ("Modifications"). Your Use of Cochlear Link after we make any Modifications available in this manner constitutes your acceptance of those Modifications. Once a Modification is accepted in this manner, that Modification will form part of the Terms. You acknowledge and agree that the Software automatically communicates with Cochlear servers to check for and receive updates to the Software in accordance with clause 5.1 below.

If you access Cochlear Link from Europe, the Middle East or Africa, any Personal Information we collect will be handed in accordance with Addendum 1 to the Terms (the "Data Processing Addendum"). If you access Cochlear Link from any other region, any Personal Information we collect from you will be handled in accordance with our Privacy Policy, which is available at <http://www.cochlear.com>.

#### **1. GRANT OF LICENCE TO THE SOFTWARE**

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 royalty-free, non-exclusive, non-transferable, non-assignable, non-sublicensable personal license to use the Software solely for the purpose of Using Cochlear Link in accordance with the Terms.

#### **2. DISCLAIMER & COCHLEAR'S RESPONSIBILITIES**

2.1 If you reside in Australia, the European Economic Area, Switzerland, New Zealand or any other applicable jurisdictions with mandatory consumer guarantees, 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.

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 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;
  - 2.2.3 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;
  - 2.2.4 we do not guarantee, represent or warrant that Cochlear Link is virus, worm, defect or Trojan horse free; and
  - 2.2.5 it is your responsibility to secure your own systems and your access to Cochlear Link.
- 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 Unless expressly provided by us, should 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.
- 2.6 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 act in violation of the Terms or any applicable laws;
  - 3.1.2 violate the rights of any person (including us), including trade secrets, privacy rights, confidentiality, Intellectual Property Rights (as defined in clause 15.7) and other rights;
  - 3.1.3 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;
  - 3.1.4 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;

- 3.1.5 use any device, software, process or means to access, retrieve, scrape or index any content on or from Cochlear Link and/or to interfere, or attempt to interfere, with the proper working of Cochlear Link;
  - 3.1.6 pose as any person or attempt to solicit money, passwords or Personal Information (as defined in clause 15.7) 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;
  - 3.1.7 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;
  - 3.1.8 remove, alter, cover or obfuscate any copyright, trade mark or other propriety rights notices on or embedded in the Software, including on or in any machine readable or printed portion of the Software displays, packaging and labelling;
  - 3.1.9 reverse engineer, decompile, disassemble all or any portion of the Software or otherwise attempt to gain access to the human-readable computer programming language (ie source code) version of the Software; and/or
  - 3.1.10 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 We may exercise whatever means we deem necessary to prevent unauthorised Use of Cochlear Link, including instituting technological barriers or reporting your conduct to any person or governmental agency.

#### **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 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 provided by you to Cochlear through your Use of Cochlear Link ("Data").
- 4.3 You grant to us a limited license to use and disclose the Data to the extent necessary to provide the Cochlear Link service in compliance with the Terms and applicable law.

#### **5. AUTOMATIC SOFTWARE UPDATES**

- 5.1 The Software, once installed, regularly communicates with our servers to determine whether there are any patches, bug fixes, updates, upgrades or other modifications to improve the Software. You agree that the Software may automatically install any such improvements to the Software without providing any further notice. This feature may not be disabled. If you do not want to receive automatic updates, you must uninstall the Software.

## **6. DATA**

- 6.1 If you provide Data or other information to us or into Cochlear Link which contains Personal Information then, without limiting any of your obligations to us, you warrant that:
- 6.1.1 the Personal Information has been collected in accordance with Privacy Law (as defined in clause 15.7); and
  - 6.1.2 we are authorised (either by consent of the individual or otherwise by Privacy Law) to collect the Personal Information from you and use the Personal Information in accordance with the Terms.
- 6.2 We do not guarantee any back-up or other storage of any Data and, other than as required by Privacy Law, we are not required to make any Data available to you. You are responsible for retaining copies of all Data.

## **7. SECURITY OF COCHLEAR LINK**

- 7.1 Use of Cochlear Link is password protected. You must memorise your password and store your password in a safe and secure place. You agree that you will not disclose your password or allow your password to be used by any person who is not authorised pursuant to the Terms to access or use your password and you are responsible and liable to us for any Use of Cochlear Link by anyone using your password. Subject to the Statutory Obligations and other applicable law, we accept no responsibility for breaches of security or unauthorised access to Cochlear Link.
- 7.2 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. LIMITATION OF LIABILITY & INDEMNITY**

- 8.1 To the maximum extent permitted by law but subject to the Statutory Obligations and excluding any indemnification obligations, neither party nor any of its officers, employees, principals or contractors shall have any liability to the other party in contract, tort, statute or in any other way (whether arising from negligence or otherwise) for any indirect, special, incidental, or consequential damage or loss of any kind, including loss of profits, loss of revenue or business opportunities, business interruption, costs, charges or expenses, or for any damage for personal injury or loss of Data, even if the other party has been advised of the possibility of such damages.
- 8.2 To the maximum extent permitted by law and subject to the Statutory Obligations, in no event shall our total liability to you for all direct damages (other than as may be required by applicable law) exceed the amount of two hundred and fifty dollars (US\$250.00).
- 8.3 You will at all times indemnify and will continue to indemnify, hold harmless and defend us and our 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, willful misconduct, and/or breach of clause 3.1 or any express warranty set out in the Terms. To the extent that the indemnity in this clause refers to persons other than us, we hold this indemnity on trust for those other persons. If we request you to do so, at your own expense, you will defend any action brought against our Indemnified in respect of the indemnity given in clause 8.3. If we request you to defend any such action, you must do so in accordance with any reasonable conditions imposed, and directions given, by us.

- 8.4 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.
- 8.5 In defense 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 shall arise for such claims where they arise as a result of: (i) your use of the Cochlear Link in violation of the Terms; and/or (ii) your failure to use updated or modified Software provided by Cochlear to avoid an infringement claim or failure to install upgrades in a timely manner.
- 8.6 If any third party makes a claim, or notifies an intention to make a claim, relevant to clauses 8.3 or 8.4 of the Terms, the party against which the claim is made (the Indemnified Party) shall:
- 8.6.1 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;
  - 8.6.2 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);
  - 8.6.3 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
  - 8.6.4 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.

## **9. RESTRICTION ON DISTRIBUTION**

The Software may be subject to export restrictions imposed by the United States as well as your country of residence. 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 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 the laws of the United States or your country of residence.

## **10. STOPPING YOUR USE OF COCHLEAR LINK**

- 10.1 You may terminate your Use of Cochlear Link at any time by uninstalling the Software and notifying us of your termination. We reserve the right to terminate, temporarily block, suspend or otherwise deny your Use of Cochlear Link at any time and for any reason 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.

- 10.2 We may change, remove or discontinue Cochlear Link or any features or functionality of Cochlear Link from time to time. We will notify you in advance of any material change to or discontinuation of Cochlear Link.

## **11. EFFECT OF TERMINATION**

- 11.1 Upon termination of the Terms;

11.1.1 all your rights under the Terms immediately terminate;

11.1.2 you will immediately return or, if instructed by us, destroy all Software in your possession; and

11.1.3 any post-termination assistance from us is subject to mutual agreement.

## **12. NOTICES**

Any notices or communications to Cochlear under or relating to this Agreement must be provided in writing in the English language and shall be addressed to: Cochlear Ltd, 1 University Avenue, Macquarie University, NSW 2109 Australia, ATTN: Group General Counsel.

## **13. GOVERNING LAW AND CONTRACTING ENTITY**

- 13.1 If you access Cochlear Link from:

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

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

13.1.3 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

13.1.4 Asia, Australia or elsewhere in the South Pacific, the Terms are governed by the laws of the State of New South Wales, Australia, and Cochlear Link is provided by Cochlear Limited.

- 13.2 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 in accordance with clause 13.1 and you agree that you will not object to the exercise of such jurisdiction by those courts on any basis.

## **14. SURVIVAL**

Clauses 2.1-2.2, 2.4-2.6, 8, and 11-15 of the Terms survive the termination (for any reason) or expiry of the Terms.

## **15. MISCELLANEOUS PROVISIONS & TERMINOLOGY**

- 15.1 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. If we provide a translation of the English language version of the Terms, the English language version of the Terms will prevail to the extent of any conflict or inconsistency.

- 15.2 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.
- 15.3 In the interpretation of the Terms, the following applies unless the context otherwise requires:
- 15.3.1 headings are inserted for convenience only and do not affect the interpretation of the Terms;
- 15.3.2 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;
- 15.3.3 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency; and
- 15.3.4 a reference to the word "include" or "including" is to be interpreted without limitation.
- 15.4 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 15.7).
- 15.5 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.
- 15.6 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.
- 15.7 In the Terms, the following definitions apply:
- "**Additional Software**" has the meaning given to that term in clause 15.2.
- "**Additional Software Terms**" has the meaning given to that term in clause 15.2.
- "**Cochlear Link**" has the meaning given to that term in the Welcome section at the beginning of the Terms.
- "**Data**" has the meaning given to that term in clause 4.2.
- "**Force Majeure Event**" means any event or other occurrence which is beyond our reasonable control.

**"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 but not including Moral 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 the Acknowledgments section at the beginning of the Terms.

**"Moral Rights"** has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes to exist anywhere in the world.

**"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 your 'sensitive information' (as that term is defined in the Privacy Law).

**"Privacy Law"** means any applicable legislation, statutory instruments and any other enforceable codes, or guidelines regulating the collection, processing, use and/or disclosure of Personal Information that applies to either of the parties or to the Cochlear Link.

**"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 2.2.2.

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

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



## **Addendum 1 to Terms and Conditions of Use – Cochlear Link**

**IMPORTANT: THIS ADDENDUM AND THE ACCOMPANYING ANNEX IS ONLY APPLICABLE TO  
USERS IN EUROPE, MIDDLE EAST AND AFRICA**

### **DATA PROCESSING ADDENDUM**

**between You**

- acting as and hereinafter referred to as “**DATA CONTROLLER**” –

and

**Cochlear Europe Ltd**

- acting as and hereinafter referred to as “**DATA PROCESSOR**” OR “**COCHLEAR**” –

together hereinafter referred to as the “**Parties**”

#### **Preamble**

This Addendum sets out the privacy and data protection obligations of the Parties which arise from any data processing conducted in the course of Use of Cochlear Link by the party acting in a role of a Data Processor on behalf of the party acting in a role as a Data Controller, as stipulated in the Terms and Conditions of Use – Cochlear Link (the “**Terms**”). The Parties acknowledge, however, that in relation to personal data of individuals to which Cochlear has a direct commercial relationship and/or where Cochlear determines the purposes on which such personal data are collected, processed or used, Cochlear will be responsible in accordance with the applicable data protection laws and act as a (joint) data controller and clauses 2 and 3.5 of this Addendum will not apply.

#### **1. Scope of Services**

1.1 The scope of the services is reflected in the Terms, in particular the data processing is conducted for the following purposes:

- Providing Cochlear Link as a service for collection, storage and transfer of patient’s personal information between the Data Controller and Data Processor;
- Updating a patient’s personal information; and
- At the request of the Data Controller or patient, making patient’s personal information available to another entity via Cochlear Link.

1.2 Due to the nature of services provided, it may be required that Data Processor collects, processes and/or uses personal data of Data Controller, i.e. data of Data Controller’s customers, employees or suppliers (hereinafter referred to as “**Data Controller Data**”):

- Contact information such as name, address and other contact details;
- Implant and sound processor information such as the type and age of the hearing implant and/or sound processor as well as technical details and files required for the operation of each;

- Hearing information such as the type of hearing loss and information on a patient's hearing treatment;
- Free text fields - Comments about a patient's status added in free field forms by you; and
- Any other information provided by the Data Controller to the Data Processor from time to time.

## **2. Commissioned Data Processing**

- 2.1 The Data Processor shall collect process and/or use the Data Controller Data only on behalf of the Data Controller. The Data Controller shall at all times be the owner of the Data Controller Data and shall be solely responsible for compliance of its instructions with applicable data protection laws, unless personal data belongs to individuals to which Cochlear has a direct commercial relationship and/or where it determines the purposes on which such personal data are collected, processed or used, where Cochlear acts as a (joint) data controller. In the latter case, Cochlear acts as both Data Processor and Data Controller, in which case the responsibilities are defined in clause 2.2.
- 2.2 The Parties agree that there may be circumstances in which Cochlear and Data Controller act both as joint controllers. For which data this is relevant derives from the relationship between each Party and each individual patient, and these relationships may change over time. The Parties agree, that in case of joint controllership the data subject can contact both Parties concerning his/her data subjects rights. As between the Parties internally it is agreed that the Party receiving the request takes the lead in handling the request. It is the common goal of both Parties that such requests are handled smoothly and adequately. To this end, both Parties provide each other with required information and support. And, if it makes more sense that the other Party handles the request direct, the Parties will agree accordingly. In general, internally each Party is responsible for its own proceedings.
- 2.3 Within its responsibility as a controller, the Data Controller shall be entitled to demanding the rectification, deletion, blocking and making available of Data Controller Data any time during and after the term of the Terms. For avoidance of doubt, this clause will not apply if the Data Processor is entitled to retain the data due to the existence of a direct commercial relationship with the individual, or if the Data Processor is required to retain the Data Controller Data due to a regulatory requirement.

## **3. Instructions – Obligations of the Data Processor**

- 3.1 The Data Processor shall collect, process and/or use Data Controller Data only within the scope of the Data Controller's instructions as provided for in the Terms and, as the case may be, with later instructions issued by the Data Controller orally or in writing. If and to the extent patients request Cochlear to make their personal data within the Data Controller Data available to patient, Cochlear or a third party, Cochlear shall comply with this request and the party with which the personal data is shared shall become a joint controller over said personal data.
- 3.2 The Data Processor shall take the appropriate technical and organizational measures to adequately protect the Data Controller's Data against misuse and loss, as set out in detail in **Annex 1** to this Addendum.

- 3.3 The Data Processor shall ensure that any personnel entrusted with processing Data Controller Data is subject to secrecy obligations that ensure that the person will only collect, process or use personal data as is required for performance of the task he/she is authorized to perform.
- 3.4 The Data Processor shall promptly notify the Data Controller in case of serious interruption of operations, data leaks, data theft or other incidents involving the unintended disclosure of Data Controller Data. Data Processor shall, without any undue delay, take any measure necessary for excluding or minimizing any potential risk with regard to the integrity and confidentiality of Data Controller Data; and/or to rectify an incident. The Data Processor shall provide to Data Controller upon request all information necessary for a breach notification as may be required by applicable laws.
- 3.5 The Data Controller shall retain title to all data but also to any carrier media provided to the Data Processor as well as any copies or reproductions of data, except for personal data pertaining to an individual that has a direct commercial relationship with Cochlear where Cochlear acts as a (joint) data controller.
- 3.6 The Data Processor shall be obliged to audit and verify the fulfillment of the above-entitled obligations and shall maintain an adequate documentation of such verification.
- 3.7 If the Data Controller is located in the European Union (EU) or European Economic Area (EEA), it hereby authorizes the processing and/or use of Data Controller Data in countries outside the EU or EEA if the following conditions are met:
- (a) the data transfer is permissible in accordance with applicable law, currently in case the data recipient is located in a country outside the EU/EEA for which an adequacy decision in the sense of Article 25.3 of the EU Directive 1995/46/EC exists; or an exemption in accordance with Art. 25.1 applies; or the Parties provide for sufficient guarantees in the sense of Article 26.2 EU Directive 1995/46/EC, for example because the data recipient is subject to relevant EC Model Clauses provided for by the European Commission (e.g. EU Commission Decision 2010/87/EU dated February 5, 2010); and
  - (b) upon request the Data Processor shall inform the Data Controller on relevant countries and/or data recipients and/or provide it with documentation on compliance with EU requirements on data transfers to countries outside the EU/EEA.

It is the goal of both Parties to adequately safeguard data transfers outside the EU/EEA. Therefore, both Parties will work amicably to adapt documentation for such transfers in accordance with the then current regulatory landscape. Also, whilst Data Controller may oppose the data transfer to specific recipients and/or countries, it is the common understanding of both Parties that the services require data transfers outside the EU/EEA. Should the Parties not be able to amicably agree on a solution, either Party can terminate the agreement without penalty.

- 3.8 Data Processor reasonably supports Data Controller in being able to demonstrate compliance with applicable data protection laws. Data Processor shall inform Data Controller of any legal requirements that may prohibit it from complying with Data Controller's instructions unless that law prohibits such information on important grounds of public interest. Data Processor shall immediately inform Data Controller if in its opinion an instruction infringes applicable data protection laws.

#### **4. Subcontracting to Third Parties**

- 4.1 The Data Processor shall be entitled to subcontract the Data Processor's obligations to third parties in as far as these third parties will be subject to obligation on data protection which are at least equivalent to those contained in this Addendum.
- 4.2 In as far as the sub-processor is located in a country outside the EU/EEA, clause 3.7 above applies.

#### **5. Information of Third Persons**

If and to the extent the Data Processor is obliged to provide information concerning Data Controller Data to a third party due to a mandatory statutory provision, the Data Processor shall inform the Data Controller about the identity of the third party, legal basis for such request and requested information prior to the provision of such information, in as far as possible (otherwise without undue delay).

#### **6. Audit Right**

Upon receiving a written request from the Data Controller, Data Processor will at the Data Processor's election either:

- 6.1 conduct an audit of the security of the systems used to provide the Services. Such audits may be performed by third parties at Data Processor's discretion and expense with the purposes of providing an audit report. The audit report will address the status of technical and organizational measures implemented by Data Processor as per clause 3.3 and whether these are suitably designed to provide a reasonable level of security for the Data Controller Data. Upon Data Controller's reasonable notice and written request, Data Processor will provide to Data Controller solely, on a confidential basis a redacted version of this audit report so that Data Controller can reasonably verify Data Processor's compliance with its security obligations under this Addendum. Data Processor may remove any information from this audit report that Data Processor, in its sole discretion, reasonably deems that it may compromise the security of Data Processor's Services, except for any redaction that may prevent Data Processor from assessing or understanding the substance of the audit report or Data Processor's compliance with its security obligations under this Addendum; or
- 6.2 provide a copy of an audit report no more than 12 months old from a third party addressing the status of technical and organizational measures implemented by Data Processor as per clause 3.3 and whether these are suitably designed to provide a reasonable level of security for the Data Controller Data. Upon Data Controller's reasonable notice and written request, Data Processor will provide to Data Controller solely, on a confidential basis a redacted version of this audit report so that Data Controller can reasonably verify Data Processor's compliance with its security obligations under this Addendum. Data Processor may remove any information from this audit report that Data Processor, in its sole discretion, reasonably deems that it may compromise the security of Data Processor's Services, except for any redaction that may prevent Data Processor from assessing or understanding the substance of the audit report or Data Processor's compliance with its security obligations under this Addendum.

## **7. Termination**

- 7.1 Unless the parties have expressly agreed otherwise, the duration of these data processing conditions are co-terminus with the Terms and Conditions of Use of Cochlear Link. The termination of the Terms of Use and Conditions Cochlear Link automatically lead to the termination and these data processing conditions.
- 7.2 Regardless of other provisions of the Terms, Data Controller shall be entitled to cancel this Addendum at any time without observing of a notification period, if Data Processor severely violates a provision of this Addendum, does not execute an instruction pursuant to section 3 of this Addendum, or refuses controls of Data Controller pursuant to section 7 of this Addendum. Termination of this Addendum shall automatically terminate the Terms and Your rights to use of Cochlear Link.

## **8. Final provisions**

- 8.1 This Addendum terminates and supersedes all previous agreements between or among the Parties in relation to its subject matter. In case of any conflicts between the provisions of this Addendum and the Terms, or any other terms and conditions or agreements agreed by the Parties, the provisions of this this Addendum shall always prevail.

## **Annex to Addendum 1 to Terms and Conditions of Use – Cochlear Link**

### **Technical and organizational measures**

#### **Access Control in a Physical Sense**

Data Processor shall take reasonable measures to prevent unauthorized persons from gaining access to data processing systems for processing and/or using Data Controller by implementing physical controls including:

- an access control system (ID reader, magnetic card, chip card);
- keys;
- door locking (electric door openers etc.);
- security staff, janitors; and
- surveillance facilities (alarm system, Closed Circuit Television (CCTV) monitor)

#### **Access Control to the IT System**

Data Processor shall take reasonable measures to prevent data processing systems from being used without authorization by implementing:

- password procedures (incl. special characters, minimum length, frequent change of passwords);
- automatic blocking (e.g. password or timeout); and
- creation of one master password per user.

#### **Access control to Data Controller Data**

Data Processor shall ensure that persons authorized to use the data processing system have only access to the data, which they are authorized to access, and that Data Controller Data cannot be read, copied, altered and/or removed without authorization during processing, use and after recording by implementing:

- differentiated access rights (profiles, roles, transactions and objects);
- reports on access used;
- access levels and access controls;

- change control procedures; and
- audit trails.

### **Transmission Control**

Data Processor shall ensure that Data Controller Data cannot be read, copied, altered or removed without authorization during electronic transfer or transport. To this end Data Processor shall implement:

- encryption/tunneling (VPN = Virtual Private Network);
- login/password access control;
- logging; and
- transport security.

### **Input control**

Data Processor shall ensure that it is possible after the fact to check and ascertain whether Data Controller Data has been entered into, altered or removed from data processing systems and if so, by whom by implementing:

- logging and reporting systems; and
- role aligned access and entitlements.

### **Job control**

Data Processor shall ensure that Data Controller Data processed on behalf of the Data Controller is processed strictly in compliance with the Data Controller's instructions requiring its employees to obey the instructions of Data Controller and to process Data Controller Data exclusively in compliance with Data Controller's instructions.

### **Availability control**

Data Processor shall ensure that Data Controller Data is reasonably protected against accidental destruction or loss by implementing:

- backup procedures;

- mirroring of hard disks, e.g. RAID technology;
- uninterruptible power supply (UPS);
- remote storage;
- anti-virus and firewall systems; and
- disaster recovery plan.

### **Separation Control**

Data Processor shall ensure that Data Controller Data collected for different purposes can be processed separately by implementing:

- segregation of functions (production/testing);
- record of customer consent and scope of consent for any data provided directly to the Data Processor.