

# TELESENSI HOSTED SERVICE END USER LICENSE AGREEMENT

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## TERMS AND CONDITIONS

**CAUTION:** PLEASE READ THIS SOFTWARE SERVICE LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE SERVICE. BY INSTALLING OR USING THE SOFTWARE SERVICE, YOU INDICATE YOUR COMPLETE AND UNCONDITIONAL UNDERSTANDING AND ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY REMOVE THE SOFTWARE SERVICE FROM YOUR COMPUTER AND DESTROY THE ASSOCIATED DOCUMENTATION. IF THE SOFTWARE SERVICE WAS ACCESSED ELECTRONICALLY, CLICK "DISAGREE/DECLINE" NOW.

This is a legal Agreement entered into between Diacoustic Medical Devices (Pty) Ltd (Company Registration Number 2007/034050/07), with its principal place of business at Octo Place A3, Electron Street, Stellenbosch, South Africa ("Diacoustic") and you ("You or the User"), the user of the TeleSensi Software (collectively, the Hosted Service).

**IMPORTANT NOTICE:** INSTALLING THE LATEST VERSION OF THE SOFTWARE SERVICES WILL DELETE PRIOR VERSIONS OF THE SOFTWARE INSTALLED ON YOUR COMPUTER.

**IMPORTANT NOTICE:** THE SOFTWARE SERVICE IS USED TO TRANSMIT PERSONAL, CLINICAL AND MEDICAL INFORMATION. THE USE, STORAGE AND DISCLOSURE OF INFORMATION SUBMITTED, CREATED, STORED OR TRANSMITTED FOR THE APPLICATION OF THIS SOFTWARE SERVICE, EITHER ELECTRONICALLY OR OTHERWISE, IS SUBJECT TO ALL INTERNATIONAL, NATIONAL, STATE/PROVINCIAL AND LOCAL LAWS, PRACTICES AND REGULATIONS THAT ARE APPLICABLE TO YOU, IN PARTICULAR LAWS, PRACTICES AND REGULATIONS RELATING TO PRIVACY, AND DATA, INCLUDING THE USE, STORAGE, DISCLOSURE AND TRANSMISSION OF INDIVIDUALLY IDENTIFIABLE INFORMATION.

YOU ARE RESPONSIBLE FOR FAMILIARIZING YOURSELF WITH ANY SUCH LAWS, PRACTICES AND REGULATIONS AND FOR MAKING THE NECESSARY ARRANGEMENTS TO IMPLEMENT APPROPRIATE SECURITY MEASURES TO CONTROL ACCESS TO PATIENT DATA SUBMITTED, CREATED AND STORED IN RELATION TO THE SOFTWARE.

IN VIEW OF THE ABOVE, THE SOFTWARE PERMITS THE DISCLOSURE OR SHARING OF AUSCULTATION SOUND RECORDINGS WITHOUT DISCLOSING THE PATIENT'S IDENTITY AND NO PERSONAL INFORMATION IS EMBEDDED WITHIN THE HEART SOUND FILES.

THE SOFTWARE SERVICE IS A MEDICAL DATA SYSTEM (MDDS) INTENDED TO BE USED FOR THE TRANSFER OF PHYSIOLOGICAL SOUNDS CAPTURED WITH AN FDA-CLEARED ELECTRONIC STETHOSCOPE. THE SOFTWARE SERVICE DOES NOT TRANSFORM OR AGGREGATE ANY OF THE PHYSIOLOGICAL SOUNDS CAPTURED AND SHARED.

THE SOFTWARE SERVICE IS NOT INTENDED FOR USE AS PART OF URGENT OR MISSION CRITICAL CLINICAL CARE, OR THE LONG TERM MONITORING OF A PATIENT.

ACCORDINGLY, YOU HEREBY ASSUME ALL RISKS, RESPONSIBILITIES AND LIABILITIES ASSOCIATED WITH THE USE, STORAGE, DISCLOSURE AND/OR TRANSMISSION OF INFORMATION IN RELATION TO THE SOFTWARE AND DIACOUSTIC IS HEREBY INDEMNIFIED FROM ANY CLAIMS, LOSSES OR DAMAGES RESULTING FROM YOUR ACTIONS OR NEGLIGENCE IN THIS REGARD.

PLEASE CONSULT YOUR INSTITUTION'S INFORMATION TECHNOLOGY DEPARTMENT OR COMPUTER TECHNICIAN TO IMPLEMENT APPROPRIATE SECURITY MEASURES TO PROTECT ACCESS PATIENT DATA CREATED AND STORED USING THIS SOFTWARE SERVICE.

IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT USE OR ACCESS THE SOFTWARE SERVICES OR, WHEN APPLICABLE, CLICK THE "CANCEL" BUTTON AND DO NOT PURCHASE THE SERVICES.

ANY SOFTWARE ASSOCIATED WITH THE SERVICES AND WEBSITE IS PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES.

1. **SERVICES:** Diacoustic will provide the Hosted Services in accordance with this agreement. Additional terms and conditions may apply and will be stated on an order form or a separate Service Level Agreement (SLA). Diacoustic may at its sole discretion discontinue or modify the features of the Software Service from time to time without prior notification. Use of the Services requires one or more compatible devices, Internet access (fees may apply), and certain software (fees may apply), and may require obtaining updates or upgrades from time to time. Because use of the Services involves hardware, software, and Internet access, Your ability to use such Services may be affected by the performance of these factors. High speed Internet access is recommended. You acknowledge and agree that such system requirements, which may be changed from time to time, are Your responsibility. The following defined terms may appear in Your Order Form:
  - a. **"Agreement"** means the provisions of this agreement;
  - b. **"Host"** means an individual who can schedule and start a Session. Every Session will have a host;
  - c. **"Hosted Services"** means the tele-auscultation service as provided by TeleSensi.
  - d. **"Initial Subscription Term"** means the initial subscription term for a Software Service as specified in an Order Form or SLA;
  - e. **"Intellectual Property Rights"** means patents, trademarks, design rights, engineering rights, trade secrets, database rights, moral rights and copyright, whether registered or not, and anything related thereto or similar from time to time; information relating to Diacoustic's business and method of operation; and any information provided to you through use of the Software Service or pursuant to its operation;
  - f. **"Order Start Date"** means the date an Initial Subscription Term begins as specified in an Order Form;
  - g. **"Participant"** means an individual, other than the Host, who participates in a Session.
  - h. **"Service Provider"** or **"Diacoustic"** or **"we/us"** means Diacoustic Medical Devices (Pty) Ltd. The company that provides the Service;
  - i. **"Session"** means a TeleSensi consultation session between a Host and Participant;
  - j. **"Renewal Term"** means the renewal subscription term for a service commencing after the Initial Subscription Term or another Renewal Term as specified in an Order Form or SLA;
  - k. **"USER"** means a Host or a Participant registered with a valid account to use the Software Service;
2. **OWNERSHIP:** The Software Service, documentation and any other works accompanying this Agreement are owned by Diacoustic and are protected by international copyright laws and other treaty provisions. All rights in the Software Service including license keys, licensing rights, and all intellectual property rights belong to Diacoustic. These rights are not transferred as part of this agreement. Specifically, and without limiting the generality of the foregoing, you acknowledge that no rights are granted to you other than specifically provided for in this Agreement. Diacoustic and/or Diacoustic's licensor(s) retain full ownership of the Software and the media on which the Software is distributed. The rights granted under the terms of this Agreement shall also apply to any software upgrades that replace and/or supplement the original Software, unless such upgrade contains a separate license.
3. **BASIS OF USE:** Upon acceptance of these terms and conditions and in consideration thereof you will be granted a non-exclusive, non-transferable, non-sublicensable, personal license to use the Software Service, in the case of a private individual, for your own personal or business use or, in the case of a legal entity, for Internal Business Use only. Your use of the Software Service may also be restricted by specific terms contained in any accompanying addenda to this Agreement, Diacoustic invoice or accompanying documentation; specific to the Software Service edition You subscribe to.

In the case of subscribing for an unlimited Software Service, the Software Service will be limited to Users that are members or employees of the main account holder. User privileges may not be provided outside the scope of an unlimited Software Service's agreement. Misuse of the Software Service will result in a written warning. If you neglect to respond and rectify the misuse within five (5) working days the Software Service agreement will be terminated without any compensation.

4. **PRODUCT PLANS AND CHARGES:** You agree that Diacoustic may charge your credit card or other payment mechanism selected by You and approved by Diacoustic ("Your Account") all amounts due and owing for the Software Service, including on-boarding fees or any other fee or charge associated with Your Account.

The categories and prices of the currently applicable Hosted Services are described and quote in a separate document.

Diacoustic may choose to temporarily change fees for promotional or new services, and such changes are immediately effective when Diacoustic announces the temporary promotional event or new service.

Any changes to fees for the Hosted Services that are not temporary or promotional will be effective thirty (30) days after we provide you with notice by posting such changes on the Diacoustic website or via personal email.

You are responsible for paying all fees and applicable taxes associated with the Hosted Services in a timely manner with a valid payment method. You authorize Diacoustic or its third party payment providers to charge your credit card, charge card, debit card, PayPal, or financial institution account (herein "Payment Method") for all charges, including possible on-boarding charges, to your accounts with Diacoustic.

Unless otherwise stated, all fees are quoted in U.S. Dollars.

5. **PERMITTED LICENSE USE, COPIES AND RESTRICTIONS:** Unless otherwise established, the Services are accessible only to trained physicians or persons working under the supervision of a trained physician. To be able to utilize the Software Service, the User must have a computer connected to the Internet.

To access the service, the User must have a valid account protected by a password. Only one user per account is allowed. The User undertakes to provide true, accurate and complete information and to update it regularly.

The Service Provider reserves the right, entirely at its discretion, to temporarily and indefinitely suspend or refuse access to the Software Service by the User if the latter does not comply with these Terms of Use, or for any other reason. In the case of suspension of the Service, even temporary, these Terms of Use remain applicable.

All computers on which the Software has been installed and which are used within the sphere of a patient must be fit for medical use. This implies that the computer must be isolated from the mains power and comply to the IEC 60601-1 standard. Only devices approved by Diacoustic are allowed to be used with the Software Service.

Except as and only to the extent expressly permitted in this Agreement or by applicable law, you may not copy, disassemble, decompile, reverse engineer, disassemble, amend, modify, incorporate, create derivative works of or otherwise change the Software Service or any part thereof, except as expressly permitted by Diacoustic in writing. Any interoperability information, which you reasonably require, may be obtained from Diacoustic on payment of a reasonable fee covering Diacoustic's costs in doing so.

No part of the Software Service including this Agreement may be reproduced, published, transmitted electronically, mechanically or otherwise, transcribed, stored in a retrieval system or translated into any language in any form, by any means, for any purpose other than the User's personal use, without the express written permission of Diacoustic.

The Software Service or the use of the Software Service may be subject to legal or regulatory provisions related to products used in the Health Care Industry in your country of residence. Prior to using the Software, it is your responsibility to ensure that the use of the Software will not violate any legal or regulatory provisions and Diacoustic accepts no responsibility for any failure to do so.

You shall not remove any product identification, legal, copyright, trademark or other proprietary rights notices contained in the Software.

You shall not use the Software for any fraudulent, unlawful or illegal activities.

You will during the continuance of this Agreement:

- a. effect and maintain adequate security measures to safeguard the Software Service from access, use or copying by any unauthorized person,
- b. retain the Software Service and all copies thereof under your effective control at all times;

6. **TERMINATION:** If you have subscribed for a specific term to use the Software Service, the service will terminate on the last day of the then-current term. You may have selected for automatic renewal at the end of the term, in this case payment will be scheduled within the last week of your term unless either party provides notice of termination at least thirty (30) days prior to the commencement of the Renewal Term. If You fail to comply with any provision of this Agreement, Diacoustic may terminate this agreement immediately and retain any fees previously paid by You. Upon any termination of this Agreement, You must cease any further use of the Services and destroy any copies of associated software within Your possession and control. You will not destroy or attempt to harm any Services or associated software on Diacoustic's servers or Diacoustic's network.

7. **DISCLAIMER OF WARRANTIES:** This Software Service is provided "AS IS", without any warranty of any kind.

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SOFTWARE IS AT YOUR OWN SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

The entire and exclusive liability and remedy for breach of this limited warranty shall be limited to replacement of defective media or documentation and shall not include or extend to any claim for or right to recover any other damages, including but not limited to, loss of profit, data, or use of the Software SERVICE or special, incidental or consequential damages, or other similar claims, even if Diacoustic has been specifically advised of the possibility of such damages. In no event will Diacoustic's liability for any damages to you or any other person ever exceed the lower of the list price or the actual price paid for the Software, regardless of the form of the claim.

DIACOUSTIC SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER IMPLIED TERMS ARE EXCLUDED.

Specifically, Diacoustic makes no representation or warranty that the Software Service or any documentation associated with it are "error-free", or meet any of your particular standards, requirements, or needs. The Software Service is not intended to replace the skill and judgment of a qualified medical practitioner and should only be used by people that have been appropriately trained in the Software Service's functions, capabilities and limitations. You agree to hold harmless, indemnify and defend, at your own cost, Diacoustic from and against any losses, damages, fines and expenses (including attorneys' fees and costs) arising out of or relating to your use of the Software.

THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SOFTWARE AND DOCUMENTATION REMAINS WITH YOU.

Risk associated with the use of correct medical certified equipment, including the computer on which the Software is installed, remains with you.

SOME JURISDICTIONS MAY NOT ALLOW SOME OF THE ABOVE DISCLAIMERS OF WARRANTIES AND MAY NOT APPLY TO YOU.

8. **LIMITATION OF LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DIACOUSTIC OR ITS AFFILIATES, SUPPLIERS OR RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS OR DAMAGE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF DIACOUSTIC, ITS AFFILIATES, SUPPLIERS OR RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, DIACOUSTIC'S, ITS AFFILIATES', SUPPLIERS' AND RESELLERS' MAXIMUM CUMULATIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SERVICES (IF ANY) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to You.

#### 9. MISCELLANEOUS

- a. **GOVERNING LAW:** The laws of the High Court of the Western Cape, South Africa, shall govern this agreement.
- b. **WAIVER:** A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.
- c. **SEVERABILITY:** If any of the provisions or part of a provision of this Agreement is judged to be illegal or unenforceable, the remainder will continue in full force and effect unless the substantive purpose of this Agreement would be frustrated by this, in which case either party may terminate this Agreement forthwith on giving written notice to the other. Where any provision of this Agreement is deemed unenforceable under any applicable local laws, then the offending part shall be deemed excised from this Agreement and replaced by equivalent provisions with the same effect to the fullest extent possible and permitted by such local laws.
- d. **NOTICES:** Any notice required to be given under this Agreement by either party must be in writing and in the English language, and may be delivered either personally or by recorded delivery post to the address specified above in South Africa and in the case of the latter will be deemed to have been received 3 working days after the date of posting. Notices will be delivered to the principal place of business of either party or to any other address notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement. In any event notice shall have been deemed to be given after actual receipt of the same by the Company Secretary of either party (or equivalent thereof).