

Equipment and Software License Agreement

THIS EQUIPMENT AND SOFTWARE LICENSE AGREEMENT ("Agreement") is entered into as of the "Effective Date" between COCHLEAR AMERICAS, a Delaware corporation, with offices at 13059 E. Peakview Ave., Centennial, CO 80111 ("Cochlear"), and the audiology clinic or center, hospital, school, or university identified below ("Licensee").

ENTER NAME OF LICENSEE HERE: _____

Contact Information

Individual's Name: _____

Address: _____

Title: _____ E-Mail: _____

Phone: _____ Fax: _____

Licensee operates an implantable hearing device support program or provides audiological training that supports patients with cochlear implants, and/or auditory brainstem implants, and/or osseointegrated hearing devices including those manufactured and/or distributed by Cochlear ("Cochlear Products"). Solely in connection with Licensee's use for programming, customizing, testing, and/or audiological training on Cochlear Products associated with (a) Licensee's purchase of Cochlear Products and Licensee's implantable hearing device support program, and/or (b) Licensee's audiological educational programs ("Authorized Uses"), Cochlear is willing to loan to the Licensee the Equipment defined in the Terms and Conditions below. For each request accepted by Cochlear for Equipment, an invoice shall be provided to the Licensee which will list all items sent to the Licensee with that order (or returned by the Licensee and received by Cochlear, as applicable) and identifying the location to which the Equipment was shipped (each an "Order").

In consideration of the foregoing and the following terms and conditions of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties by their authorized representatives have entered into this Agreement effective, when signed by both parties, as of the last date below ("Effective Date").

Cochlear Americas:

Signed: _____

Print Name: _____

Title: _____

Date: _____

Licensee:

Signed: _____

Print Name: _____

Title: _____

Date: _____

www.cochlear.com

Cochlear Americas
13059 East Peakview Ave.
Centennial, CO 80111 USA

Tel: 1 303 790 9010
Fax: 1 303 792 9025
Toll Free: 1 800 523 5798

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Hear now. And always



TERMS AND CONDITIONS EQUIPMENT AND SOFTWARE LICENSE AGREEMENT

1. Defined Terms.

- (a) "Equipment" means the laptop computer and any associated equipment and hardware provided to Licensee by Cochlear hereunder, and/or the HiPro box for Baha programming, and the Software installed or embedded in the Equipment.
- (b) "Software" means all software installed or embedded on the Equipment, including, without limitation, all updates, upgrades, bug fixes and modifications which Cochlear may provide under this Agreement, as to proprietary software, or which any third party makes commercially available as to that third party's software.

2. License and Use of Equipment and Software

(a) Equipment and Software. Cochlear grants to Licensee a limited, revocable, non-transferable, non-exclusive license (without the right to sublicense) to use the Equipment listed in an Order, solely (i) for internal use by employees and agents of Licensee as set forth herein, (ii) for the Authorized Uses, defined on page 1, and (iii) at or from the location for Licensee set forth above, or at other Licensee locations. Additionally, Cochlear hereby grants to Licensee a limited, revocable, non-transferable, non-exclusive sublicense to use the Software, which may not be copied by Licensee, or used on any other laptop owned or used by Licensee. (Licensee may be provided Cochlear software via disk or other means which is subject to the software license terms of that software and not subject to the limitations on the embedded / installed Software referenced in this Agreement.) Licensee shall return all Equipment and the associated Software, licensed and/or loaned under this Agreement to Cochlear upon termination of this Agreement, or termination of the use of the Equipment.

(b) Loss or Damage. Licensee shall promptly notify Cochlear in writing of any loss, theft, or damage of any type to Equipment. Cochlear may charge and Licensee shall pay for replacement costs for any loss or theft of Equipment, and for any damage to Equipment determined by Cochlear not to be the result of normal wear and tear. Damage assessment will be performed by Cochlear. Licensee assumes all risk of loss and damages to the Equipment while under Licensee's control (ordinary wear and tear excepted).

(c) Limitations on Use. Except for other software provided by Cochlear, no other software may be loaded onto Equipment by Licensee. Cochlear reserves the right to refuse to provide additional Equipment, in whole or in part, should Cochlear reasonably believe that Licensee is misusing the Equipment, abusing the rights to receive the Equipment, or is requesting excessive quantities of the Equipment, based upon Licensee's business needs. Licensee is not authorized to sell, lease, sub-lease or otherwise request any form of consideration or payment in exchange for the provision of the use of the Equipment. Cochlear's provision to Licensee of Equipment hereunder does not constitute a sale or lease to Licensee. Title to the Equipment is and shall remain the exclusively in Cochlear's name.

3. TERM AND TERMINATION. Unless earlier terminated as set forth herein, this Agreement commences on the Effective Date and continues until terminated as set forth herein. This Agreement may be terminated (a) by a party if the other party materially breaches any provision of this Agreement and does not cure such breach (provided that such breach is capable of cure) within ten days after being provided with written notice thereof; (b) immediately upon notice from Cochlear if Licensee, in any manner, breaches Sections 2 or 9; or (c) ten days after a party provides the other party with written notice of termination without cause. Immediately upon the termination of this Agreement for any reason, (i) Licensee's rights granted herein will immediately cease to exist; (ii) Licensee shall immediately cease all use of the Equipment and Software; and (iii) Licensee shall return all Equipment to Cochlear and grant Cochlear access to Licensee's premises to secure the return of the Equipment, if needed. Any amounts owed to Cochlear under this Agreement prior to its termination or expiration shall become due and payable immediately upon such termination or expiration.

4. Maintenance. Cochlear may, but is not required to, as to the Equipment, (a) provide maintenance and support services; (b) replace damaged items, or (c) authorize Licensee to allow a third party to provide needed maintenance and support services.

5. Taxes. Licensee is responsible for payment of any taxes or regulatory fees that may be imposed by the transactions contemplated by this Agreement (other than taxes based on Cochlear's income) and any penalties or charges that accrue with respect to the non-payment of any such amounts.

6. Disclaimer of Warranties. THE EQUIPMENT IS PROVIDED TO LICENSEE "AS IS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES IN ACCEPTING THE TERMS OF THIS AGREEMENT.

7. NO LIABILITY. As to the Equipment, Cochlear has no liability under this Agreement for any claim related to (a) use not in strict accordance with this Agreement; (b) use in combination with equipment or software not supplied by Cochlear; or (c) modification by any person other than Cochlear or its authorized agents.

8. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, (1) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY EVEN IF COCHLEAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (2) NEITHER PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND/OR THE EQUIPMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL EXCEED U.S.\$5,000 DURING ANY ROLLING 12-MONTHS. The restriction in this paragraph shall not apply to the extent prohibited by or in conflict with applicable law.

9. CONFIDENTIALITY. The parties shall comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any applicable state laws regarding privacy of patient information, and all implementing regulations, as applicable to the relationship between the parties.

10. GENERAL PROVISIONS.

(a) Audits and Inspections. Cochlear shall have the right, upon reasonable prior written notice to Licensee, to review Licensee's relevant records, inspect Licensee's facilities and inspect Equipment solely to ensure compliance with this Agreement.

(b) Insurance. Licensee shall be responsible for insuring the Equipment. Cochlear has no responsibility to insure the Equipment.

(d) Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile, or certified or registered mail, (postage prepaid) to the other party at the address for each party set forth herein, and will be effective upon receipt, or upon rejection of delivery. Either party may change its address by giving notice of the new address to the other party, which shall be effective five business days after mailing.

(e) Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado (excluding any applicable choice of law rules).

(g) Miscellaneous. Each party shall comply with all applicable laws concerning its obligations herein. Licensee shall not export Equipment, directly or indirectly, in violation of any applicable law. Licensee may not assign or transfer its rights or obligations (in whole or in part) under this Agreement to any third party without Cochlear's prior written consent, and any such attempted assignment or transfer in violation of the foregoing will be void. If any provision of this Agreement is held by a court to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions of this Agreement will continue in full force and effect. The respective rights and obligations of Licensee and Cochlear, which by their nature would continue, shall survive the termination or expiration of this Agreement. This Agreement and all Orders issued under this Agreement identifying any additional Equipment to be provided to Licensee constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements or communication, whether written or oral. This Agreement shall supersede the terms and provisions of any Licensee-issued purchase orders or other ordering document submitted to Cochlear by Licensee. All copies of this Agreement signed by both parties shall be deemed originals.