

NANOSONICS INC.
GENERAL TERMS AND CONDITIONS OF SALE

1. **General:** These general terms and conditions of sale (the "**Terms**") apply to the quote and/or order to which they are attached and govern the sale of the products and services as specified in the quote or order, by Nanosonics Inc., herein referred to as "**Nanosonics**", to the party to whom Nanosonics' quotation or invoice is addressed, herein referred to as "**Customer**". Where there are product-specific or service-specific terms and conditions for the products and/or services listed in the quote, they are set out below, and where relevant, are hereby incorporated into, these Terms. The product-specific or service-specific terms shall apply solely to the products or services specified therein. If any terms set forth in the product-specific or service-specific terms conflict with the terms set forth in these Terms, then the terms set forth in the product-specific or service-specific terms shall prevail to the extent of any inconsistency. Nanosonics and Customer are sometimes collectively referred to as the "**Parties**" and each individually as a "**Party**". References to the term "**Business Day**" in these Terms (and any product-specific or service-specific terms), means a day that is not a Saturday, Sunday, a public holiday or a bank holiday in the State of Delaware. All sales of Nanosonics to Customer are subject to the Terms. In the event that any purchase order or other communication between Nanosonics and Customer contains terms and conditions in addition to or inconsistent with these Terms, those terms and conditions are hereby excluded and these Terms will apply, unless acceptance of other terms and conditions is made in writing by authorized representatives of Nanosonics and Customer.
2. **Quotations; Acceptance of Orders:** Written quotations related to the sale of products or services covered by these Terms automatically expire 30 days after the date issued unless otherwise specified in the quotation. All quotations and orders are subject to these Terms and to Nanosonics' written order acknowledgment. Orders become effective only when accepted by Nanosonics' written order acknowledgment and such orders will be subject to these Terms.
3. **Prices and Fees:** Unless otherwise agreed by the Parties, prices and fees do not include any applicable property, sales, use, privilege or export taxes, custom duties or any other tax, fee or charge of any nature whatsoever imposed by any government authority on or measured by any transaction between the Parties and such taxes are additional to the price and recoverable by Nanosonics from Customer, unless Customer provides evidence of its tax exempt status to Nanosonics prior to placing its Order.
4. **Payment:** Customer will pay Nanosonics, via check, ACH bank payment, wire transfer or credit card in United States currency the net amount of the invoice issued by Nanosonics within thirty (30) days of the date of the invoice. Credit card payments will incur an additional 3.0% processing fee based on the total of the invoice. A late payment charge of up to one and one-half percent (1.5%), or the highest rate permitted by applicable law, of the amount of the invoice may be charged for each month, or any portion thereof, that payment is not made within thirty (30) days of the date of the invoice. Payment shall be deemed to be made on the date of receipt by Nanosonics. If Customer in good faith disputes any invoiced charges, Customer may withhold the disputed amount, but only if on or before the due date for payment, the undisputed amount is paid in full and notice in writing of the dispute is given to Nanosonics, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Nanosonics will investigate all disputes. If the amount is found to be payable (in whole or in part) then Customer must pay the amount within seven (7) days of receiving notice and the basis of the decision. Invoiced charges that are not disputed in good faith within fifteen (15) days of the date of an invoice will be deemed to be correct.
5. **Force Majeure:** Nanosonics will not be liable for any delay or failure in performance of any services or any accepted order, in the delivery or shipment of any product or for any damages or losses suffered by Customer or any third party which are caused by, or in any manner arise from, directly or indirectly, any labor disturbances, embargos, riots, storms, fires, explosions, pandemics, acts of God or public enemies, inability to obtain necessary labor or raw materials, accidents or breakdown to, or mechanical failure of, machinery or equipment, delays or interruptions in transportation or any other causes beyond Nanosonics' control. In the event of such delay, any applicable shipment date(s) will be postponed to compensate for such delay. If Nanosonics' performance is rendered permanently impossible or impracticable, either Party may cancel the affected order(s) upon written notice to the other Party, and, upon such cancellation, Nanosonics will have no liability and Customer will be liable only for the pro-rated or allocated portion of such order(s) completed and services received by Customer, including without limitation all inventory and supplies not returnable for full credit or otherwise useable by Nanosonics.
6. **Limitation of Liability:** Except for and to the extent of any Nanosonics' liability directly arising out of Nanosonics' gross negligence or willful misconduct, to the fullest extent permitted by law, Nanosonics' total aggregate liability with respect to any claim, allegation, cause of, action, suit, demand, proceedings, judgment, debt, fine, penalty, damage, loss, cost (including legal costs), expense, tax or liability of any kind, whether arising under contract (including under any indemnity), negligence or any other tort, under statute or otherwise ("**Claim**") by Customer or any third party arising out of or in any way relating to any product or services sold by Nanosonics to Customer (including without limitation such product's sale, or use) will be limited solely to the purchase price of the product or service that gave rise to the claim. Nothing in these Terms excludes or limits a Party's liability to the other: (a) for fraud; (b) for death or personal injury caused by its negligence; or (c) to the extent the same may not be excluded or limited as a matter of law.
7. **Reduction of Liability:** Nanosonics' liability in respect of any claim will be reduced by the extent, if any, to which Customer contributed to the Claim or the loss or damage arising from it.
8. **Exclusion of Damages:** TO THE FULLEST EXTENT PERMITTED BY LAW, NANOSONICS WILL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, LOSS ARISING FROM INTERRUPTION TO BUSINESS, LOSS OF PROFITS OR OTHER LOSSES OF CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR IN ANY WAY RELATING TO THESE TERMS, OR THE SALE OR USE OF SUCH PRODUCT OR SERVICE SUPPLIED UNDER THESE TERMS, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT.
9. **Confidential Information:** Either Party may disclose or have access to certain technical, trade secret, proprietary or similar information that may be contained in plans, drawings, specifications, photographs, financial records, and other documents (collectively, "Confidential Information") disclosed or furnished by one party (the "Disclosing Party") to the other Party (the "Receiving Party") or its officers, directors, employees or agents (collectively, "Representatives") and such Confidential Information, and all copies thereof, including without limitation any and all materials of any kind containing or embodying any Confidential Information, are the sole and exclusive property of the Disclosing Party. Disclosure of Confidential Information by the Disclosing Party to the Receiving Party or its Representatives will not be construed as granting to the Receiving Party or its Representatives either expressly or by implication, any right, title or interest of any kind in any Confidential Information. Upon the Disclosing Party's request, the Receiving Party will promptly deliver to the Disclosing Party all of the Confidential Information in the Receiving Party's possession or control (including without limitation Confidential Information in the possession or control of any of the Receiving Party's Representatives), whether in written, electronically-readable or other form, including without limitation all copies or extracts thereof or based thereon. All Confidential Information will be kept confidential by the Receiving Party and will not be disclosed to any person or entity without the Disclosing Party's prior written consent, except that the Receiving Party may disclose the Confidential Information or portions thereof to those of its Representatives who reasonably need to know such information to give effect to these Terms; provided, however, that the Receiving Party will be responsible for any breach of this covenant by it or any of its Representatives and will indemnify and hold harmless the Disclosing Party and its officers, directors, employees and agents for any costs, expenses or losses incurred or suffered by any of them as a result of such breach. The Receiving Party (a) acknowledges that a failure to comply with this clause 9 will cause the Disclosing Party irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Disclosing Party and (b) consents to the Disclosing Party's obtaining from a court having jurisdiction, specific performance, an injunction, a restraining order or any other equitable relief in order to enforce such provision. The Disclosing Party's right to seek and obtain any such relief is in addition to, and not in lieu of, any other remedy to which it is entitled under applicable law (including without limitation monetary damages). Confidential Information shall not include such information as the Receiving Party proves: (i) was at the time of the disclosure generally available to the public other than as a result of a breach by the Receiving Party of any of its obligations under these Terms; (ii) was at the time of disclosure available to one party from a source other than the other party, provided that such source is not known by the Receiving Party after its reasonable inquiry to be bound by a confidentiality agreement with, or an obligation of secrecy to, the Disclosing Party; (iii) was independently developed by a party to these Terms without knowledge or use of Confidential Information of the other party; or (iv) was disclosed by a party to any person or entity not a party hereto without similar obligations of confidentiality. The parties further agree that Confidential Information shall not include any protected health information ("PHI") or other patient-identifiable information provided or received in connection with the provision of products or services.

10. **Privacy:** This clause applies to the extent that Nanosonics' products or services collect Personal Information from Customer or Customer's employees, agents or contractors. Customer acknowledges that it is solely responsible for ensuring that it and its employees, agents and contractors (including any users or operators of Nanosonics' products and services) comply with their obligations under the Privacy Legislation at all times. Customer warrants that it has and will comply with the Privacy Legislation and that it has obtained all consents or provided all notices necessary to enable Nanosonics to collect Personal Information from Customer's employees, agents or contractors who use or operate Nanosonics' products or services in order for Nanosonics to collect, store, use and disclose that Personal Information as contemplated by these Terms and the relevant product manuals, instructions for use and other product information. Customer must ensure that it and its employees, agents or contractors who are users or operators of Nanosonics' products or services do not input or store Personal Information, or any other information capable of identifying an individual (e.g. a patient), otherwise than in accordance with these Terms and the instructions for use of that product or service. Each Party represents and warrants that it will take reasonable steps to protect any Personal Information it collects in connection with the use of Nanosonics' products and services against misuse or loss and unauthorized access, copying, modification and disclosure. For the purposes of this clause 10: (a) **Personal Information** has the meaning set out in the applicable Privacy Legislation; and (b) **Privacy Legislation** means the Australian Privacy Act 1988 (Cth) and the California Consumer Privacy Act, in each case as amended or replaced from time to time, or such similar laws whether in Australia or in any other jurisdiction relating to the collection, handling and processing of Personal Information as may be applicable in respect of the Personal Information collected through the use of Nanosonics' products or services.
11. **Technical changes to Products:** Nanosonics shall be entitled to make changes to the design or specification of the products at any time, provided such change does not adversely affect the performance of the products.
12. **Prohibition on Resale:** Customer must not: (a) in any way alter or modify the products; (b) add or attach any unauthorized components of the products or remove any components from the products for resale, repair or repurpose; (c) resell any products (including parts of products) or services.
13. **Default:** If Customer: (a) fails to pay all or any part of any undisputed invoice when due; (b) fails to observe or perform any of its other obligations under these Terms; or (c) becomes insolvent, is adjudicated a bankrupt, voluntarily files or permits the filing of a petition in bankruptcy, makes an assignment for the benefit of creditors, seeks any similar relief under any bankruptcy laws or related statutes or a receiver is appointed for its assets, then Nanosonics may declare an event of default. After an event of default, all sums due or to become due from Customer to Nanosonics may, at Nanosonics' sole option, become immediately due and payable and concurrently, or in the alternative, Nanosonics may at its sole option terminate any existing order(s) between the Parties and exercise any other remedies available to Nanosonics under applicable law, including without limitation, repossession of Nanosonics' product(s) in accordance with the law. If Nanosonics does repossess such product(s), it is agreed that these Terms will no longer be in effect but that Customer will remain liable for any past due payments, including interest if applicable and for any loss or damage which may have occurred to the equipment while in the possession of Customer. Risk of loss is to remain with Customer until the product(s) are returned to the possession of Nanosonics.
14. **Governing Law; Language; Jurisdiction; Venue:** Nanosonics' quotation, invoice, these Terms and Nanosonics' order acknowledgment are governed by and must be construed according to the laws of the State of Delaware, without reference to the principles of conflicts of law that may require the application of the laws of another jurisdiction. Each of the Parties hereby irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the United States District Court for the applicable state court located in the State of Delaware for any action or proceeding arising out of or relating to the sale of Nanosonics' products to Customer; (b) waives any objection to the laying of venue of any such action or proceeding in such courts; and (c) waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Where applicable, the United Nations Convention on Contract for the International Sale of Goods is excluded in its entirety.
15. **Compliance with Laws and Regulations.** Each Party (the "Indemnifying Party") will comply with all federal, state and local laws, regulations and ordinances applicable to its business and activities and the Indemnifying Party will indemnify the other Party, its officers, directors, employees and agents (collectively, the "Indemnified Parties") from and against any and all claims, damages, penalties, assessments and liabilities imposed on the Indemnified Party relating to or resulting from the Indemnifying Party's failure to comply with such applicable laws, regulations and ordinances. Customer acknowledges that the products are or may be subject to the regulation of the FDA or other Federal or State Agencies. Customer shall not use or permit the products to be used in a manner that does not comply with any instructions or directions provided by Nanosonics and applicable FDA or other regulations, nor use the products for any non-medical, entertainment or amusement purposes. Customer agrees that it will not modify, adapt, alter, translate or create derivative works from any of the products or services purchased under these Terms, or derive, attempt to derive, or direct others to derive, the technical properties of any products or services purchased under these Terms by reverse engineering, disassembly, decompilation or any other means. Additionally, each party represents, warrants and agrees that such party has not been and during the term of these Terms will not be suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid), convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients, or suspended, excluded or sanctioned under any other federal program.
16. **Entire Agreement; Amendment; Severability; Waiver:** Nanosonics' quotation, invoice, these Terms and Nanosonics' order acknowledgement constitute the entire agreement between the Parties with respect to the sale of Nanosonics' products to Customer, superseding all prior representations, agreements or understandings, written or oral, between the Parties with respect to such sale. These Terms cannot be amended orally or by any course of conduct by either Party but may only be amended by a written agreement executed by the Parties. If a term or condition of these Terms, in whole or in part, is found to be unlawful, unenforceable or invalid, the validity and enforceability of the remaining terms and conditions shall remain in full force and effect. In lieu of any term or condition, or part thereof, that is unlawful, unenforceable or invalid, a term or condition reflecting the original intention of these Terms, to the extent permitted by law, shall be deemed to be a substitute for that term or condition. The failure by Nanosonics to (a) enforce any provision hereof will not be construed as a waiver of such provision or of Nanosonics' right to enforce such provision; or (b) object to provisions contained in any purchase order or other communication from Customer will not be construed as a waiver of these Terms nor an acceptance of any such Customer provisions.
17. **Successors and Assigns; Assignment:** These Terms will be binding upon the Parties and their respective successors and assigns; provided, however, that Customer shall not assign any of its rights or duties hereunder without Nanosonics' prior written consent, which consent may not be unreasonably withheld.
18. **Insurance.** Nanosonics shall procure and maintain, for the duration of these Terms, policies of insurance against claims for damage or injury that may arise from or in connection with the performance by Nanosonics, its employees, agents, representatives, or subcontractors of its obligations under these Terms. Such insurance coverage may include: (i) commercial general liability (CGL), covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate; (ii) workers' compensation as required by law; and (iii) employer's liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Insurance shall be written by insurers with a minimum A.M. Best's Insurance Guide rating of "A- VIII" or better.
19. **Notices:** Any notices required or permitted to be given under these Terms or any order shall be in writing, shall specifically refer to these Terms or order, and shall be addressed to the appropriate Party at the address specified in the order or such other address as may be specified by such Party in writing in accordance with this clause 19, and shall be deemed to have been given for all purposes (a) when received, if hand-delivered or sent by a reputable international courier service, (b) five (5) Business Days after mailing, if mailed by first class certified or registered airmail, postage prepaid, return receipt requested, or (c) one (1) Business Day after sending by email, delivery confirmed. In addition to the above, copies of all notices provided to Nanosonics must also be emailed to: contracts@nanosonics.us
20. **Dispute Resolution:** Each Party must not commence any court or arbitration proceedings relating to a dispute between the Parties arising in connection with these Terms ("Dispute") unless it has complied with the provisions of this clause, except to seek urgent interlocutory relief. A Party claiming that a Dispute has arisen must promptly notify the other Party in writing by giving details of the Dispute. The Parties must use reasonable endeavors to resolve any Dispute by escalating the Dispute to their respective managing

directors or similar persons and ensuring that its representatives use reasonable efforts to resolve the Dispute. Each Party must bear its own costs in relation to complying with this clause.

21. **No Relationship:** These Terms do not create any agency, partnership or joint venture between the parties. These Terms does not confer any benefits on any third party unless it expressly states that it does.

22. **Product Purchase Terms:**

All capitalized terms used throughout these Product Purchase Terms are as defined in the Terms unless otherwise stated. The following additional terms apply to the purchase of products from Nanosonics:

- 22.1 **Shipment, Delivery and Inspection:** Unless specified otherwise in an accepted order, Nanosonics will deliver product(s) FOB Destination to the delivery destination indicated by the Customer. The Customer shall be charged an amount to cover costs incurred by Nanosonics in respect of handling and standard freight for orders shipped within the contiguous USA. Shipment dates are estimated, and Nanosonics will not be liable for late shipments. Nanosonics shall use its reasonable commercial efforts to deliver products to Customer by the date set out in Customer's purchase order. Risk in the product(s) shall pass to the Customer in accordance with the abovementioned Incoterm. Nanosonics shall bear the risk of loss during shipment of product(s) to Customer. Risk shall pass to Customer upon Customer's receipt of such product(s) at the delivery destination indicated by the Customer under the abovementioned Incoterm. Customer will promptly inspect all products delivered to it by Nanosonics. Any claim against Nanosonics under the Warranty in clause 22.3 below or otherwise for shortages or for damages to or defects in the delivered product(s) that are observable in a reasonable visual inspection will be deemed waived unless the claim is made to Nanosonics within thirty (30) days after such delivery. Title to the product(s) shall pass from Nanosonics to Customer upon full payment of Nanosonics' invoice as set forth in clause 4 (Payment) above. A freight surcharge applies on shipments to Alaska and Hawaii.
- 22.2 **Cancellation and Return:** Any product order may be cancelled by Customer only with the prior written consent of Nanosonics and upon reimbursement to Nanosonics for all reasonable costs, expenses and losses incurred by Nanosonics as a result of such cancellation, such reimbursement amount shall be determined by Nanosonics in its sole discretion. Except for reasons as set forth in clause 22.1 above, Customer may only return an order with the prior written consent of Nanosonics. If the product(s) ordered are returned with Nanosonics' consent, Customer shall bear the risk of loss until such product(s) are returned to the possession of Nanosonics. Customer shall also be responsible for the costs of such return to Nanosonics.
- 22.3 **Nanosonics' Limited Warranty for Capital Equipment:** This clause only applies to the purchase of new and unused Capital Equipment (as defined herein) under these Terms. For the purposes of this clause 22.3, "Capital Equipment" means the trophon device and probe cabinet only and does not include any consumables, accessories, parts or any other supporting items. Unless otherwise stated, Nanosonics warrants to Customer that the Capital Equipment sold by Nanosonics to Customer will be free from defects in workmanship and materials under normal use for a period of one (1) year after the date of purchase. If the Capital Equipment is found to be defective within one (1) year after the date of purchase, upon the return of the defective Capital Equipment, by Customer to Nanosonics, Nanosonics will, at its sole option, repair or replace the defective Capital Equipment. Any defective Capital Equipment that is repaired or replaced is warranted only for the balance of the initial warranty period. Notwithstanding the foregoing, Nanosonics does not warrant, and such limited warranty will be null and void, if the product fails to perform or is defective because of accident, casualty, misuse, abuse, fire, alteration, liquid damage, lightening, Act of God or public enemy, vandalism, tampering or because of improper setup, operation, repair, maintenance, testing or unauthorized service. THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY APPLICABLE TO THE CAPITAL EQUIPMENT AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT APPLY TO ANY PRODUCT OR SERVICE SUPPLIED BY NANOSONICS THAT IS NOT CAPITAL EQUIPMENT, AS THAT TERM IS DEFINED ABOVE.
- 22.4 **Nanosonics' Limited Warranty for Pre-Owned Capital Equipment:** This clause only applies to the purchase of Pre-owned Capital Equipment (as defined herein) under these Terms. For the purposes of this clause 22.4, "Pre-owned Capital Equipment" means a trophon device that was previously owned, opened and used, and that has been refurbished by Nanosonics, and does not include any consumables, accessories, parts or any other supporting items. Unless otherwise stated, Nanosonics warrants to Customer that the Pre-owned Capital Equipment sold by Nanosonics to Customer will be free from defects in workmanship and materials under normal use for a period of ninety (90) days after the date of purchase. If the Pre-owned Capital Equipment is found to be defective within ninety (90) days after the date of purchase, upon the return of the defective Pre-owned Capital Equipment, by Customer to Nanosonics, Nanosonics will, at its sole option, repair or replace the defective Pre-owned Capital Equipment. Any defective Pre-owned Capital Equipment that is repaired or replaced is warranted only for the balance of the initial warranty period. Notwithstanding the foregoing, Nanosonics does not warrant, and such limited warranty will be null and void, if the product fails to perform or is defective because of accident, casualty, misuse, abuse, fire, alteration, liquid damage, lightening, Act of God or public enemy, vandalism, tampering or because of improper setup, operation, repair, maintenance, testing or unauthorized service. THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY APPLICABLE TO THE PRE-OWNED CAPITAL EQUIPMENT AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT APPLY TO ANY PRODUCT OR SERVICE SUPPLIED BY NANOSONICS THAT IS NOT PRE-OWNED CAPITAL EQUIPMENT, AS THAT TERM IS DEFINED ABOVE.

23. **Service Program Terms:** All capitalized terms used throughout these Service Program Terms are as defined in the Terms unless otherwise stated. The following additional terms apply to the purchase of NanoCare™ Service Programs from Nanosonics:

23.1 **Definitions**

Unless the context otherwise requires:

- 23.1.1 **Commencement Date means:** (a) if the Service Program is purchased before the warranty on the trophon device expires, the day after the warranty expires; or (b) if the Service Program is purchased after the warranty on the trophon device expires, the day the Service Program is purchased.
- 23.1.2 **Services** means the services to be provided by Nanosonics under the Service Program as set out in the quote.
- 23.1.3 **Service Program Term** means the term of the Service Program commencing on the Commencement Date and expiring after the period specified in the quote.
- 23.2 **Service Program specific to specific trophon device:** Each of the NanoCare™ Basic, "NanoCare™ Pro, NanoCare™ Select and NanoCare™ PM Service Programs applies to one specific trophon device and cannot be transferred to another trophon device. Multiple Service Programs will need to be purchased to cover multiple trophon devices.
- 23.3 **Fees:** The Customer agrees to pay the fees to Nanosonics in accordance with the payment option as specified in the quote. In the event of non-payment or late payment of the fee outlined in the quote, Nanosonics reserves the right, at its sole option, to suspend the provision of the Services and/or immediately terminate this Service Program upon thirty (30) days' written notice and all outstanding fees or invoices will become immediately due and payable.
- 23.4 **Service Locations:** Where the Services are provided in field at the Customer's site, the relevant Customer address is as indicated in the quote or as agreed between the parties. The Services will be delivered on or after the Commencement Date (as specified in the quote). If the Customer changes its registered business address, changes its business premises, or makes arrangements to move Nanosonics products to any other location, it must notify Nanosonics in writing.
- 23.5 **In field / on-site Services:** Where the Services are performed at the Customer's site or premises, the Customer shall provide Nanosonics personnel with access to the site or premises, provide Nanosonics personnel with sufficient working space and resources to perform the Services, ensure compliance at all times with all applicable laws and guidelines relating to work, health and safety requirements and shall provide a safe workplace for Nanosonics' personnel to undertake the relevant servicing or repairs or to conduct the relevant training under the applicable Service Program.
- 23.6 **Loaner Unit:** Where the Service Program purchased includes the provision of a trophon device on loan ("Loaner"), Nanosonics will provide the Loaner as soon as reasonably practicable. Nanosonics bears ground transportation costs when providing a Loaner to Customer. Customer agrees that the provision of any Loaner is subject to the following conditions: (a) the Loaner remains the property of Nanosonics at all times; (b) Nanosonics reserves the right to call for the return of the Loaner at any time as it sees fit; (c) Loaner(s) are provided to the Customer for use when the Customer's trophon device(s) are undergoing service or repairs or training, and only for the duration of such service or repairs or training; (d) the Customer must use the Loaner in accordance with its Instructions for Use ("IFU") and keep the Loaner in good working condition; (e) the Customer will be responsible for any damage to the Loaner resulting from any improper usage or improper packaging; (f) the Customer must return the Loaner to Nanosonics once their serviced/repaired trophon device is returned or once training is completed, such return will be at Nanosonics' cost; and (g) Nanosonics reserves the right to charge the Customer a fee if the Loaner is not returned to Nanosonics within 5 Business Days after the serviced/repaired trophon device

has been returned to the Customer or after training is completed. During the Service Program Term, the Customer bears all risks of loss or damage to the Loaner in its possession or control. The Customer will keep the Loaner insured against all risks of loss or damage for an amount equal to its replacement cost during the Term of the Service Program.

- 23.7 **Use of Loaners and any other Equipment:** The Customer will use Nanosonics products and any materials, including any Loaner(s) (the “**Equipment**”) provided during or in relation to the Service Program, solely for the purpose of supporting users of the Nanosonics trophon device being serviced/repared under this Service Program. The Customer agrees to use and operate the Nanosonics Equipment in a proper, careful and safe manner and in strict conformity with all of the requirements and recommendations set forth in Nanosonics’ IFU.
- 23.8 **Spare parts availability:** Services provided by Nanosonics on trophon devices are subject to the commercially reasonable availability of spare parts.
- 23.9 **Service warranty:** All parts and labor provided as part of the Services have a 6-month warranty.
- 23.10 **Out of scope servicing:** Nanosonics reserves the right to charge the Customer on a case-by-case basis for any servicing or repairs that are reasonably out of scope of the Service Program paid for. Nanosonics will provide an estimate of the time and cost for any out-of-scope servicing or repairs required and will not proceed until a Customer confirms such quote.
- 23.11 **Cancellation due to upgrade.** Where a trophon device (with serial number covered under a Service Program) is upgraded by the Customer to a new trophon device during the Service Program Term, the Service Program for the existing trophon device will be cancelled. If a Service Program is cancelled, for Service Programs where, at the time of the upgrade: (a) there is more than 12 months remaining on the Service Program Term; (b) the Customer has paid upfront for the Service Program; and (c) the annual preventative maintenance (where applicable) has not been performed for the remaining years of the Service Program Term, Nanosonics may provide the Customer with a credit for the pro-rata value of the remaining whole years of the Service Program Term. The Customer agrees that it will not be credited for the full year of a Service Program in the year where a Customer’s trophon device is upgraded part-way through a service year.
- 23.12 **Product use:** Services will be provided by Nanosonics (or its authorized partner provider) and are subject to: (a) the trophon device covered under this Service Program being used, stored, cleaned and maintained at all times in accordance with the product’s IFU; (b) being serviced only by authorized service personnel and genuine parts; (c) not being damaged due to external or environmental causes of any kind (including factors such as voltage fluctuations, excess voltage or power failure); or (d) damaged as a direct or indirect result of any malicious or negligent act or omission by any person. Should any non-compliance with the foregoing be found, Customer’s Service Program will be void.
- 23.13 **Privacy:** To the extent personal information, including a Customer’s user details that is input, stored, used or managed in the Equipment that is subject to the Service Program, Customer acknowledges that during the course of performing its obligations under this program, Nanosonics may have access to such personal information stored in the Equipment and Nanosonics shall collect, use and disclose such information strictly in accordance with its Privacy Policy and for the incidental purpose of undertaking the service or repairs under the Service Program.
- 23.14 **Intellectual Property:** Customer acknowledges that any and all intellectual property used, conceived or created in providing the Services or that would otherwise arise or come into existence under this Service Program, remains the property of Nanosonics and that Customer acquires no right, title or interest in or to such intellectual property. Customer hereby assigns all right, title, and interest in and to any and all intellectual property conceived or created in relation to the Services or that would otherwise arise or come into existence under this Service Program.
- 23.15 **Exclusions:** EXCEPT AS EXPRESSLY SET FORTH HEREIN, NANOSONICS PROVIDES THE SERVICES ON AN “AS-IS” BASIS AND, TO THE FULLEST EXTENT PERMITTED BY LAW, NANOSONICS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE PERFORMANCE OF NANOSONICS’ OBLIGATIONS UNDER THESE SERVICE PROGRAM TERMS.
- 23.16 **Termination of Service Program:** A Service Program may be terminated in respect of a specific trophon device(s), by either party by sixty (60) days’ notice in writing. For Service Programs where, at the time of the termination: (a) there is more than 12 months remaining on the Service Program Term; (b) the Customer has paid upfront for the Service Program; (c) the annual preventative maintenance (where applicable) has not been performed for the remaining years of the Service Program Term, and (d) the Customer wishes to terminate the Service Program without cause during the Service Program Term, then Nanosonics will provide a pro rata credit to the Customer for the value of any remaining whole years of the Service Program Term. The Customer acknowledges that it shall not be entitled to a pro rata credit for any part years if termination occurs part-way through a Service year. Upon termination or expiry or cancellation of a Service Program, Customer must pay all outstanding fees or invoices that remain payable. Any credit that is provided by Nanosonics under this clause 23.16 can only be used for the purchase of a new Service Program. Subject to this clause, all fees otherwise paid are non-refundable.

24. **Nanosonics Connect Service Terms (Connectivity Terms)** All capitalized terms used throughout these Connectivity Terms are as defined in the Terms unless otherwise stated. The following additional terms apply to the purchase of Nanosonics Connect services from Nanosonics:

- 24.1 **Definitions** Unless the context otherwise requires:
- 24.1.1 **Authorized User** means, in relation to Customer, its employees, agents and contractors and the personnel of any such contractors, that are authorized to use the System and have accepted and agreed to the User Access Terms and Conditions, as amended from time to time.
- 24.1.2 **Business Hours** means the hours between 9:00 am and 5:00 pm on a day that is not a Saturday, Sunday, a public holiday or a bank holiday in the state of Indiana.
- 24.1.3 **BYOD** means, “Bring Your Own Device”, which refers to a mobile electronic and/or internet enabled device that is provided by Customer to its Authorized Users where the Software is downloaded to for use as part of the System to enable traceability.
- 24.1.4 **Claim** means claim, allegation, cause of, action, suit, demand, proceedings, judgment, debt, fine, penalty, damage, loss, cost (including legal costs), expense, tax or liability of any kind, whether arising under contract (including under any indemnity), negligence or any other tort, under statute or otherwise.
- 24.1.5 **Contract Start Date** means the date of purchase of the Software.
- 24.1.6 **Data** means all data, works and materials processed, generated, uploaded via or stored through the System or part thereof by Customer or collected by Customer for uploading via or storage through the System.
- 24.1.7 **Device** means the BYOD, and/or handheld mobile electronic device supplied by Nanosonics and/or, the Products (as applicable).
- 24.1.8 **Documentation** means any published specifications, and instructions for use, of the Software contained in the user manuals and sales materials made available by Nanosonics to Customer upon purchase of the Service, as updated or amended by Nanosonics from time to time to contemplate any necessary updates and enhancements.
- 24.1.9 **Product** means the Trophon® and/or CORIS® device on which the Software is activated.
- 24.1.10 **Services** means the access that Nanosonics will provide to its cloud-based application, mobile application, dashboards, data management and analytics services to Customer via its use of the System, which function in accordance with the Documentation, to allow Customer to link reprocessing events of medical devices to usage of these medical devices to procedures in clinical settings.
- 24.1.11 **Software** means the machine-readable version of the computer programs available through authorized access to cloud services and installed on the Device(s).
- 24.1.12 **System** means the Devices, Software and Services accessible through Customer’s use of them.
- 24.1.13 **System Availability** means the ability of Customer to access the Services and to manage and record the reprocessing of medical devices in clinical settings in accordance with the Documentation, as measured against the time that the Services are available, which excludes any downtime resulting from: (a) outages of Customer’s or third party connections or utilities; (b) other reasons beyond Nanosonics’ control, including a force majeure event or downtime caused by a third party supplier; and (c) scheduled maintenance.
- 24.1.14 **Term** is the number of years that Customer has an active subscription for the Services from the Contract Start Date.
- 24.1.15 **User Access Terms and Conditions** means the terms of access to be agreed to by any Authorized User prior to use of the System.
- 24.2 **Responsibility for the BYOD.**
- 24.2.1 This clause only applies where a Customer provides its own BYOD for use with the System.
- 24.2.2 Customer acknowledges that it is responsible for providing BYODs to its Authorized Users for use with the System at its own cost and shall bear all risk of loss for the BYOD.
- 24.2.3 Customer shall be responsible for all security settings, security certificates, device management policies, and firmware maintenance on the BYODs. Under no circumstances will Nanosonics be responsible for any loss, or corruption or misuse or unauthorized use of the Data on the BYOD.

- 24.2.4 Customer agrees that it will ensure that the software on the BYODs used with the System remains current and up-to-date at all times and compatible for use with the System.
- 24.3 Grant of Rights.**
- 24.3.1 From the Contract State Date and for the Term, Nanosonics grants to Customer a royalty-free, non-sublicensable, non-transferrable and non-exclusive right to: (i) use the Software; (ii) access and use the Services, including the Data; and (iii) to otherwise use the Intellectual Property in the System; to the extent necessary to allow Customer and its employees, agents and contractors (including Authorized Users) the full use and enjoyment of the System for Customer's internal business purposes in accordance with these Terms.
- 24.3.2 Nanosonics will issue each Authorized User with login access, which must not be shared or used by more than one Authorized User.
- 24.3.3 Customer will be responsible for managing access and usage of the System by its Authorized Users, including cancellation of any access rights of Authorized Users to the System where appropriate.
- 24.3.4 Customer accepts and agrees to the User Access Terms and Conditions, as amended from time to time, and acknowledges that its Authorized Users must accept and agree to the User Access Terms and Conditions as a condition of using the System. Customer hereby authorizes its personnel to agree and accept the User Access Terms and Conditions prior to using the System.
- 24.3.5 Customer is solely responsible for ensuring that all Authorized Users receive initial and regular ongoing training that has been certified by Nanosonics in relation to the proper and authorized use of the System, as notified by Nanosonics to Customer upon purchase of the System and from time to time. Nanosonics is not responsible for any loss, harm, cost or damage caused by any act or omission of an Authorized User or any other user of the System.
- 24.3.6 Customer must: (i) access and use the Software and the Services in strict accordance with these Connectivity Terms, any directions issued by Nanosonics and any applicable laws; (ii) permit only its Authorized Users to access and use the Services and not resell, lease, reproduce, distribute, disclose or allow use of any of the Services in any format, throughout any timeshare service, network or by any other means, to any third party who is not an Authorized User; (iii) refrain from using the Services to intentionally send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) not and must not permit any third party to, modify, copy or create derivative works based upon the Services, or decompile, disassemble or otherwise reverse engineer the Services; and (v) not interfere with or disrupt the Services or attempt to gain unauthorized access to the Services or Nanosonics' related systems and/or data.
- 24.3.7 Customer acknowledges that usage of the Services may be recorded and audited and that usage of the Services indicates consent to such recording.
- 24.3.8 If Customer fails to comply with this clause 24.3, Nanosonics will inform Customer of such failure in writing and reserves the right to suspend or terminate the Services. If Customer's failure is not remedied within thirty (30) days, any resulting suspension may continue until such failure is remedied.
- 24.3.9 Unauthorized use of the System is prohibited and may be subject to criminal and civil penalties.
- 24.4 Installation.**
- 24.4.1 Customer must install, network and set-up (including configure) the System strictly as directed by Nanosonics upon purchase and as advised to it from time to time.
- 24.4.2 Customer will ensure that the System remains up to date at all times, including ensuring that the time settings used on any Products remain accurate and in synchronization with all other Products and the associated Customer internal network at all times.
- 24.4.3 Customer will provide a secure network connection, secure internet connection (if using Wi-Fi) and any other software and hardware necessary for the System and ensure ongoing connection to Customer's network at all times.
- 24.4.4 Customer acknowledges and agrees that Nanosonics is not responsible for any connectivity failings caused by a fault or failure of the internet or any public telecommunications network, a fault or failure of Customer's computer systems, servers or networks, or any other faults or failure that may arise as a result of Customer improperly installing or setting-up the System or time setting errors. If using internet connectivity, Customer acknowledges that it must ensure the connectivity component of each Product is connected to the internet at least once every 24 hours.
- 24.5 Software and Support Services.**
- 24.5.1 Nanosonics will make the Services available to Customer and its Authorized Users in accordance with these Connectivity Terms.
- 24.5.2 Nanosonics will provide reasonable customer support for the System to Customer during the Term. Customer acknowledges that support cases are tracked and managed through access to the Nanosonics customer support center. Nanosonics agrees to make the support center available to Customer and its Authorized Users via the contact details on Nanosonics' website and contactable during Business Hours, provided Customer is current in payment of any undisputed and correctly invoiced charges.
- 24.5.3 Nanosonics will not be responsible to provide support, updates, repairs or any other maintenance and support to the extent that issues arise because Customer: (i) misuses, improperly uses, mis-configures, alters, or damages the System; (ii) uses the System with any hardware or software not recommended by Nanosonics; (iii) uses the System at any unauthorized location; (iv) fails to install an update to the System if such update would have resolved the issue; (v) experiences loss or partial loss of connectivity due to outages or other issues with Customer's or third-party connections or utilities; or (vi) otherwise uses the System in a manner not in accordance with these Connectivity Terms or Nanosonics' instructions. Any service or support activities or repairs required as a result of the events in subparagraphs (i) to (vi) occurring, will be charged at Nanosonics' standard rates, applicable from time to time.
- 24.6 Data.**
- 24.6.1 Customer acknowledges that all Data input into the System pursuant to these Connectivity Terms, whether by Customer or its Authorized Users, is and will continue to be the property of Customer. Customer acknowledges and agrees that if the System is connected to the internet by Customer, its Authorized Users or a third party, the Data (including disinfection cycle data) is automatically transferred to Nanosonics and the Data may be used by Nanosonics for internal business purposes, including quality purposes, servicing of the System and analytics.
- 24.6.2 Customer acknowledges that if the Software is not appropriately configured, or connected to Customer's internal network for more than 14 days, then the Data on the Product that has not been transferred to Customer's internal network may be permanently lost. Customer acknowledges and agrees that any Data stored on the Product is stored solely at Customer's risk. Customer acknowledges that if the Product is lost, damaged, or broken before the Data is transferred to Customer's internal network, the Data may be lost permanently, and Nanosonics is not responsible for any loss of data or retrieving any Data (or any inaccurate Data input or selected by Customer or its Authorized Users). Customer is responsible for backing up all Data. Customer is also responsible for ensuring that any and all sensitive data (including without limitation, health-related Personal Information) is deleted from the Product prior to servicing by Nanosonics or an authorized third party.
- 24.6.3 Customer is responsible for ensuring, or causing its Authorized Users to ensure, that all Data input into the System is correct, accurate, complete, and consistent with training and product support materials at all times and in no circumstances comprises Personal Information.
- 24.7 Privacy.**
- 24.7.1 Customer acknowledges that it is solely responsible for ensuring it has all necessary rights to collect the Data in connection with the Software and the System, including any Personal Information, and must ensure that it and its employees, agents and contractors (including any Authorized Users) at all times comply with their obligations with respect to that Data including in accordance with Privacy Legislation.
- 24.7.2 Customer warrants that it has and will collect and use all Personal Information in accordance with the Privacy Legislation at all times and it has obtained all consents or provided all notices necessary to collect Personal Information in order for Nanosonics and Customer to input, store and manage that Personal Information using the System as contemplated by these Connectivity Terms.
- 24.7.3 To the extent that an Authorized User manually inputs data, including Personal Information, into a Product prior to a disinfection cycle, it is Customer's sole responsibility for ensuring that all data is accurate, that it has received all required permissions, consents and approvals for the use of that data, and that the Authorized User only inputs the data requested on the Product's user interface.
- 24.7.4 Customer represents and warrants that it will take all reasonable steps to protect any Personal Information it collects, maintains and handles in connection with the System against misuse or loss and unauthorized access, copying, modification and disclosure.
- 24.8 Confidential Information.**
- 24.8.1 Unless otherwise authorized in writing by the other Party, each Party must not use, disclose or copy the other Party's Confidential Information obtained through use of the Services and/or System except: (i) for the purpose of and to the extent required to provide or use the System in accordance with these Connectivity Terms as the case may be; or (ii) when required to do so by law or any regulating authority.

24.8.2 Upon the other Party's request, each Party will promptly return or destroy all of the Confidential Information of the other Party in their possession or under their control (including, without limitation in relation to Customer, Confidential Information of Nanosonics in the possession or under the control of any Authorized Users), whether in written, electronically-readable or other form, including all copies or extracts of Confidential Information, including deleting any such Confidential Information from any computer systems, files, System or Products.

24.9 Term and Termination.

24.9.1 These Connectivity Terms commence on the Contract Start Date and continue for the Term unless terminated earlier pursuant to these Connectivity Terms.

24.9.2 A Party may terminate these Connectivity Terms for cause: (i) upon thirty (30) days' written notice to the other Party of a material breach of these Connectivity Terms if such breach remains uncured at the expiration of such period; or (ii) immediately upon written notice if the other Party becomes insolvent or admits a general inability to pay its debts as they come due, is adjudicated a bankrupt, voluntarily files or permits the filing of a petition in bankruptcy, makes an assignment for the benefit of creditors, seeks any similar relief under any applicable bankruptcy laws or related statutes, or a receiver, liquidator or administrator is appointed for its assets. Upon termination for cause by Customer, in accordance with these Connectivity Terms, Nanosonics will refund, on a pro-rata basis, any fees that Customer has paid for in advance within thirty (30) days of the effective date of termination.

24.9.3 Customer will be invoiced annually in advance and, Customer may only terminate these Connectivity Terms without cause: (i) on the first anniversary of the Contract Start Date by providing 60 days' prior written notice to Nanosonics of its intention to do so; or (ii) after the first anniversary of the Contract Start Date but before the expiry of the Term, by providing at least 60 days' prior written notice to Nanosonics of its intention to do so. If Customer terminates in accordance with this clause 24.9.3, Customer agrees to forfeit any pre-paid fees, i.e. any fees that have already been paid are non-refundable.

24.10 Consequences of termination or expiry.

24.10.1 Upon termination or expiry of these Connectivity Terms, Customer and its Authorized Users must immediately cease using the Services. Nanosonics will revoke Customer's access to the Services and customer support center and disable all Authorized User logins if necessary. In addition to any other payments which Nanosonics may be entitled to receive, Nanosonics will be entitled to retain all payments, charges and other moneys paid to it prior to such termination and will be entitled to receive all payments, charges or other moneys which accrued prior to such termination.

24.10.2 Within 12 months after termination or expiry of these Connectivity Terms, Customer may by written request to Nanosonics, obtain a one-off record of the Data collected in the System in a form specified by Nanosonics from time to time at no additional charge. Nanosonics is not responsible for retaining the Data and may permanently delete the Data after 4 years after termination or expiry of these Connectivity Terms.

24.11 **Warranty.** EXCEPT AS EXPRESSLY PROVIDED BY THESE TERMS OR THE CONNECTIVITY TERMS, AND TO THE EXTENT PERMITTED BY LAW, NANOSONICS EXCLUDES ALL GUARANTEES, TERMS, WARRANTIES OR CONDITIONS (WHETHER IMPLIED BY STATUTE, GENERAL LAW, CUSTOM OR OTHERWISE) OR REPRESENTATIONS AND, IN PARTICULAR, ANY GUARANTEE, WARRANTY, TERM, CONDITION OR REPRESENTATION OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE OPERATION OF THE SYSTEM AND/OR THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM SECURITY VULNERABILITIES, OR THAT THE SYSTEM WILL BE SUITABLE FOR ANY PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT THE NATURE OF COMPUTER SOFTWARE AND TECHNOLOGY IS SUCH THAT THE OPERATION OF THE SYSTEM AND/OR SOFTWARE WILL NOT BE UNINTERRUPTED, ERROR-FREE OR FREE FROM SECURITY VULNERABILITIES AND CUSTOMER HAS RELIED ON ITS OWN JUDGEMENT IN DETERMINING WHETHER THE SYSTEM IS SUITABLE FOR THE PURPOSES FOR WHICH IT INTENDS TO USE THE SYSTEM.

24.11.1 Nanosonics warrants that: (i) it will provide the Services in a professional and workmanlike manner consistent with good industry standards and practices and in compliance with all applicable laws; (ii) the System will perform in all material respects in accordance with the Documentation; and (iii) subject to clauses 24.11.2. and 24.11.4., at least 99.0% System Availability will be maintained during each thirty (30) day period commencing from the Contract Start Date.

24.11.2 Customer acknowledges that the Services are hosted on existing infrastructure supplied to Nanosonics by third party suppliers, and that the reliability of the Services and the scheduled downtime for carrying out routine maintenance may be affected by the availability of services from such third party suppliers.

24.11.3 As Customer's sole and exclusive remedy and Nanosonics' entire liability for any breach of the warranties given under clause (a) above, Nanosonics will re-supply the Services to comply with the warranty.

24.11.4 **Warranty Limitations.** Downtime caused directly or indirectly by any of the following will not be considered a breach by Nanosonics of these Connectivity Terms: (i) a force majeure event; (ii) a fault or failure of Customer's computer systems, networks or utilities; (iii) a modification of the Services by anyone other than Nanosonics or its contractors; (iv) any breach by Customer of these Connectivity Terms; (v) any breach by an Authorized User of these Connectivity Terms; or (f) scheduled maintenance.

24.12 Intellectual Property.

24.12.1 Customer acknowledges that Nanosonics owns and retains all Intellectual Property in and to the System and any improvements developed by Nanosonics, Customer or any of Customer's employees, agents or contractors (including Authorized Users) in the course of developing, manufacturing, supplying, marketing or using the System. Customer hereby assigns to Nanosonics all rights, title and interest in and to the improvements on creation, including any Intellectual Property subsisting in those improvements. Customer undertakes that it must not, and must not permit any third party to, de-compile, disassemble or otherwise reverse engineer or modify the System or any Nanosonics Intellectual Property, nor create derivative works from them.

24.12.2 If any third party makes a Claim that the Software, or Customer's use of the Services (in accordance with these Connectivity Terms), infringes any Intellectual Property of any third party, Nanosonics will indemnify and hold harmless Customer against any loss, damages or costs finally awarded or other liability under any court order made against Customer as a result of that Claim and any liability under any settlement of any such Claim negotiated in accordance with this clause 24.12.2 is subject to the following conditions:

- i. Customer must promptly notify Nanosonics in writing of any such Claim of which Customer has notice;
- ii. Customer must not make any admissions in relation to the Claim without Nanosonics' prior written consent;
- iii. Customer, at Nanosonics' request and expense, must allow Nanosonics to have sole and exclusive control to conduct and settle (or control the conduct and settlement of) all negotiations, defense and litigation resulting from any such Claim; and
- iv. at all times in relation to the Claim, Customer must act in accordance with Nanosonics' reasonable instructions and, at Nanosonics' request, afford all reasonable assistance with all negotiations or litigation.

24.12.3 In the event of a Claim, Nanosonics will, at its sole option and expense:

- i. procure for Customer the right to continue using the System under these Connectivity Terms;
- ii. replace or modify the System to be non-infringing without material decrease in functionality; or
- iii. if the above options are not reasonably practicable, terminate the grant of right for the infringing System (subject to providing as much notice as is reasonably practicable) and provide a pro-rated refund to Customer of all prepaid fees for the remaining months of the Term after the date of termination.

24.12.4 Nanosonics will have no liability for any Claim to the extent the Claim is based upon:

- i. the use of the System in combination with any other product, service or Product not furnished, recommended or approved by Nanosonics, if such Claim would have been avoided by the use of the System, without such product, service or Product; or
- ii. Customer's use of the System other than in accordance with these Connectivity Terms.

24.12.5 This clause 24.12 sets out Nanosonics' sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement of third party Intellectual Property of any kind.

24.12.6 Clause 6 (Limitation of Liability) shall not apply to Nanosonics' indemnification obligations under clause 24.12.2.

24.13 Indemnity.

24.13.1 Customer is liable for, and indemnifies and holds harmless Nanosonics from and against, all loss or damage (including legal costs) incurred or suffered by Nanosonics, however caused, arising out of or in connection with:

- i. any Claim or allegation by a third party in connection with the use of the Product, Software and/or Services by Customer or its Authorized Users other than in accordance with these Connectivity Terms;
- ii. breach of clause 24.12 (Intellectual Property);
- iii. any willful misconduct or gross negligence of Customer or its Authorized Users;
- iv. any injury to or death of any person caused by an act or omission of Customer or its Authorized Users; or
- v. any damage to real, personal or tangible property caused by any act or omission of Customer or its Authorized Users.

- 24.13.2 If Nanosonics is made a defendant in any proceeding, action or arbitration by Customer, any person or entity deriving title from Customer or any other third party on the basis of breach of warranty, negligence, strict liability, tort or any other theory, and if no award or judgment is made or rendered against Nanosonics, Customer will indemnify and hold harmless Nanosonics and its officers, employees, agents and contractors from all costs and expenses incurred or suffered by any of them in connection with such proceeding, action or arbitration, including without limitation reasonable legal costs and disbursements.
- 24.14 **Compliance with laws and regulations.**
- 24.14.1 Customer will comply with all relevant import and export laws affecting the Software, System or any portion or component of it including, without limitation, those applied by Australia and in the United States.