

NANOSONICS CANADA 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 Canada, 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 will be appended to, and 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 Province of Ontario. All sales by 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. The Parties have required that these Terms and all documents relating thereto be drawn-up in English. *Les parties ont demandé que ces Termes ainsi que tous les documents qui s'y rattachent soient rédigés en anglais.*
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 are in Canadian dollars and 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 Canadian 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, confidential, 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: (a) **Personal Information** has the meaning set out in the applicable Privacy Legislation; and (b) **Privacy Legislation** means the Australian Privacy Act 1988 (Cth) 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 in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, 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 Courts of the Province of Ontario 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, provincial 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 Health Canada or other federal or provincial regulatory bodies. 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 Health Canada 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. Customer must not resell the products or any parts thereof. 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 provincial health care program (including, without limitation, Medicare), 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. **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, 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

19. **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.
20. **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.
21. **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:
- 21.1. **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. 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 21.3 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.
 - 21.2. **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 21.1 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.
 - 21.3. **Nanosonics' Limited Warranty for Capital Equipment:** For the purposes of this clause 21.3, "**Capital Equipment**" means the trophon2 device 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. **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:
- 22.1. **Definitions**
Unless the context otherwise requires:
 - 22.1.1. **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.
 - 22.1.2. **Services** means the services to be provided by Nanosonics under the Service Program as set out in the quote.
 - 22.1.3. **Service Program Term** means the term of the Service Program commencing on the Commencement Date and expiring after the period specified in the quote.
 - 22.2. **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.
 - 22.3. **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.
 - 22.4. **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.
 - 22.5. **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.
 - 22.6. **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.
 - 22.7. **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/repaired 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.

- 22.8. Spare parts availability: Services provided by Nanosonics on trophon devices are subject to the commercially reasonable availability of spare parts.
- 22.9. Service warranty: All parts and labor provided as part of the Services have a 6-month warranty.
- 22.10. 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.
- 22.11. 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.
- 22.12. 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.
- 22.13. Privacy: To the extent Personal Information 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.
- 22.14. 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 and hereby represents that any individuals involved in the conception or creation of such intellectual property have waived any moral rights therein.
- 22.15. 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.
- 22.16. 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 22.16 can only be used for the purchase of a new Service Program. Subject to this clause, all fees otherwise paid are non-refundable.

23. **AuditPro System Terms:** All capitalized terms used throughout these AuditPro System Terms are as defined in the Terms unless otherwise stated. The following additional terms apply to the purchase of AuditPro Systems from Nanosonics:

- 23.1. **Definitions:** Unless the context otherwise requires:

- 23.1.1. AuditPro 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 AuditPro System and have accepted and agreed to the AuditPro User Access Terms and Conditions, as amended from time to time.
- 23.1.2. AuditPro Contract Start Date means thirty (30) days from the date the AuditPro System is shipped to Customer or the date Customer installs the AuditPro System, whichever is the earlier.
- 23.1.3. AuditPro Services means Nanosonics will provide access to its cloud-based application, mobile application, dashboards, data management and analytics services to Customer via its use of the AuditPro System and Devices (if applicable), which function in accordance with the Documentation, to allow Customer to link reprocessing events of medical devices to usage of these medical devices to patient procedures in clinical settings. Nanosonics will also provide training and support for the use of the AuditPro System as part of the AuditPro Services.
- 23.1.4. AuditPro Software means the machine-readable version of the computer programs available through authorized access to cloud services and installed on the Devices.
- 23.1.5. AuditPro System means the Devices, the AuditPro Software and the AuditPro Services accessible through Customer's use of them.
- 23.1.6. AuditPro Term is the number of years from the AuditPro Contract Start Date as specified in the quote.
- 23.1.7. AuditPro User Access Terms and Conditions means the terms of access to be agreed to by any Authorized User prior to use of the AuditPro System.
- 23.1.8. 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 Indiana, where Nanosonics is located in North America.
- 23.1.9. Data means all data, works and materials uploaded via or stored through the AuditPro Software by Customer or collected by Customer for uploading via or storage through the AuditPro Software.
- 23.1.10. Device means a mobile scanning device and any accessories (including any docking station) if and where provided by Nanosonics for use as part of the AuditPro System.
- 23.1.11. Documentation means any published specifications, and instructions for use, of the AuditPro Services contained in the user manuals and sales materials made available by Nanosonics to Customer upon purchase of the AuditPro System, as updated or amended by Nanosonics from time to time to contemplate any necessary updates and enhancements.
- 23.1.12. Intellectual Property Rights means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, moral right, plant breeder's rights, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other intellectual property rights whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any such rights.
- 23.1.13. System Availability means the ability of Customer to access the AuditPro 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 AuditPro 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.

- 23.2. **Shipment and Delivery of Device:** This clause applies where Devices are provided with the AuditPro System:

- 23.2.1. Upon Nanosonics' provision of its written order acknowledgment to Customer, Nanosonics will supply the Devices to Customer in accordance with the order. The Customer will be charged the freight charges in addition to the price and such freight charges will correspond to the reasonable costs incurred by Nanosonics in respect of handling and standard freight for orders shipped in Customer's location. Shipment dates are estimated and

- Nanosonics will not be liable for late shipments. Nanosonics will use its reasonable commercial efforts to deliver the Devices to Customer.
- 23.2.2. Nanosonics will bear the risk of loss during shipment of the Devices to Customer which will pass to Customer upon Customer's receipt of such Devices subject to the provisions of this clause 23.2.
- 23.2.3. Customer will promptly inspect the Devices delivered to it by Nanosonics and notify Nanosonics of any shortages or damages to or defects in the delivered Devices that are observable in a reasonable visual inspection within thirty (30) days after delivery.
- 23.2.4. Title to the Devices will pass from Nanosonics to Customer upon full payment of the price of the Device.

23.3. Grant of Rights.

- 23.3.1. From the AuditPro Contract State Date and for the AuditPro Term, Nanosonics grants to Customer a royalty free, non-sublicensable, non-transferrable and non-exclusive right to: (a) use the AuditPro Software; (b) access and use the AuditPro Services, including the Data; and (c) to otherwise use the Intellectual Property Rights in the AuditPro System; to the extent necessary to allow Customer and its employees, agents and contractors (including AuditPro Authorized Users) the full use and enjoyment of the AuditPro System for Customer's internal business purposes in accordance with these AuditPro System Terms.
- 23.3.2. Nanosonics will issue each AuditPro Authorized User with login access, which must not be shared or used by more than one AuditPro Authorized User. Customer will be responsible for managing access and usage of the AuditPro System by its AuditPro Authorized Users, including cancellation of any access rights of AuditPro Authorized Users to the AuditPro System where appropriate.
- 23.3.3. Customer must: (a) access and use the AuditPro Software and AuditPro Services in strict accordance with these AuditPro System Terms and any directions issued by Nanosonics and any applicable laws; (b) permit only its AuditPro Authorized Users to access and use the AuditPro Services and not resell, lease, reproduce, distribute, disclose or allow use of any of the AuditPro Services in any format, throughout any timeshare service, network or by any other means, to any third party who is not an AuditPro Authorized User; (c) refrain from using the AuditPro 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; (d) not and must not permit any third party to, modify, copy or create derivative works based upon the AuditPro Software or AuditPro Services, or decompile, disassemble or otherwise reverse engineer the AuditPro Software or AuditPro Services; and (e) not interfere with or disrupt the AuditPro Services or attempt to gain unauthorized access to the AuditPro Services or their related systems and/or data.
- 23.3.4. Customer acknowledges that usage of the AuditPro Services may be monitored, recorded and audited and that usage of the AuditPro Services indicates consent to such monitoring and recording. If Customer fails to comply with this clause 23.3, Nanosonics will inform Customer of such failure in writing and reserves the right to suspend or terminate the AuditPro Services. If Customer's failure is not remedied within thirty (30) days, any resulting suspension may continue until such failure is remedied.
- 23.3.5. Unauthorized use of the AuditPro System is prohibited and may be subject to criminal and civil penalties.

23.4. Installation.

- 23.4.1. Customer must install, network and set-up the AuditPro System strictly as directed by Nanosonics upon purchase and as advised to it from time to time.
- 23.4.2. Customer will ensure that the AuditPro System remains up to date at all times, including ensuring that the time settings used on any Devices remain accurate and in synchronization with all other devices at all times.
- 23.4.3. Customer will provide secure internet connection and any other software and hardware necessary for the AuditPro System and ensure ongoing connection to the Customer's network at all times. Nanosonics is not responsible for any connectivity failings caused by a fault or failure of the internet or any public telecommunications network or 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 AuditPro System or time setting errors. Customer acknowledges that it must ensure the connectivity component of each Device is connected to a WiFi connection at least once every 24 hours.

23.5. AuditPro Services and AuditPro Support.

- 23.5.1. Nanosonics will make the AuditPro Services available to Customer and its AuditPro Authorized Users in accordance with these AuditPro System Terms.
- 23.5.2. Nanosonics will provide reasonable customer support for the AuditPro System to Customer during the AuditPro 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 AuditPro 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.
- 23.5.3. Nanosonics will not be responsible to provide support, updates, repairs or any other maintenance and support to the extent that issues arise because Customer: (a) misuses, improperly uses, mis-configures, alters, or damages the AuditPro System; (b) uses the AuditPro System with any hardware or software not recommended by Nanosonics; (c) uses the AuditPro System at any unauthorized location; (d) fails to install an update to the AuditPro System if such update would have resolved the issue; (e) experiences loss or partial loss of connectivity due to outages or other issues with Customer's or third-party connections or utilities; or (f) otherwise uses the AuditPro System in a manner not in accordance with these AuditPro System Terms or Nanosonics' instructions.

23.6. AuditPro Training.

- 23.6.1. Customer is solely responsible for ensuring that all AuditPro Authorized Users receive initial and regular ongoing training that has been certified by Nanosonics in relation to the proper and authorized use of the AuditPro System, as notified by Nanosonics to Customer upon purchase of the AuditPro 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 AuditPro Authorized User or any other user of the AuditPro System.

23.7. Acceptance of AuditPro User Access Terms and Conditions.

- 23.7.1. Customer accepts and agrees to the AuditPro User Access Terms and Conditions, as amended from time to time, and acknowledges that its AuditPro Authorized Users must accept and agree to the AuditPro User Access Terms and Conditions as a condition of using the AuditPro System. Customer hereby authorizes its personnel to agree and accept the AuditPro User Access Terms and Conditions prior to using the AuditPro System.

23.8. Data.

- 23.8.1. Customer acknowledges that all Data input into the AuditPro System pursuant to these AuditPro System Terms, whether by Customer, or its AuditPro Authorized Users, is and will continue to be the property of Customer. The Customer hereby grants Nanosonics a worldwide, perpetual, irrevocable, non-cancellable, non-exclusive, sublicensable, royalty-free, unlimited license to access and use the Data for its own internal business purposes.
- 23.8.2. Customer is responsible for ensuring, or causing its AuditPro Authorized Users to ensure, that all Data input into the AuditPro System is correct, accurate, complete, and consistent with training and product support materials at all times and in no circumstances comprises Personal Information. Nanosonics is not responsible for any inaccurate, incomplete or incorrect Data uploaded by Customer or its AuditPro Authorized Users into the AuditPro System.
- 23.8.3. Customer accepts and acknowledges that procedure data not able to be synced to the AuditPro System will be temporarily stored on the Device, where a Device is used as part of the AuditPro System. Any Data stored on the Device is stored solely at Customer's risk. Customer acknowledges that if the Device is lost, damaged or broken before the Data is uploaded to the AuditPro cloud application, the Data may be lost permanently, and Nanosonics is not responsible for retrieving any Data. Customer acknowledges that once the Data has been delivered to the AuditPro dashboard application, the Data will be permanently deleted from the Device and Customer will no longer be able to retrieve the Data from the Device. Customer is responsible for maintaining a separate data tracking system in the event of any lost, stolen or damaged Data.
- 23.8.4. Nanosonics accepts no responsibility or liability for any loss of Data or disruption of access to the AuditPro System under any circumstances.
- 23.8.5. If at any time Customer suspects or has reason to believe that the Data or AuditPro Software has or may have become corrupt, compromised, lost or sufficiently degraded in any way for any reason, Customer must immediately inform Nanosonics.

23.9. Privacy.

- 23.9.1. Customer acknowledges that it is solely responsible for ensuring it has all necessary rights to collect the Data in connection with the AuditPro System, including any Personal Information, and must ensure that it and its employees, agents and contractors (including any AuditPro Authorized Users) at all times comply with their obligations with respect to that Data including in accordance with Privacy Legislation.
- 23.9.2. 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 from AuditPro Authorized Users in order for Nanosonics and Customer to input, store and manage that Personal Information using the AuditPro System as contemplated by these AuditPro System Terms.
- 23.9.3. Customer must ensure that it and its AuditPro Authorized Users do not input or store Personal Information or any other information capable of identifying an individual (e.g. a patient) in the AuditPro Software, or Personal Information relating to an AuditPro Authorized User.
- 23.9.4. 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 AuditPro System against misuse or loss and unauthorized access, copying, modification and disclosure.

23.10. Confidential Information.

- 23.10.1. 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 AuditPro System except: (a) for the purpose of and to the extent required to provide or receive the AuditPro Services as the case may be or (b) when required to do so by law or any regulating authority.
- 23.10.2. 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 the 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 or devices.

23.11. End of Life.

- 23.11.1. At the end of the AuditPro Term, or earlier termination of these AuditPro System Terms, unless otherwise agreed, Nanosonics will disable Customer's access to the AuditPro Software and customer support center and cease to provide the AuditPro Services and associated customer support to Customer. For the avoidance of doubt, no repair services or spare parts for any Device(s) will be provided by Nanosonics after the expiry of the AuditPro Term, or termination of these AuditPro System Terms, unless otherwise agreed by the Parties.
- 23.11.2. Customer is encouraged to return the Device(s), at Nanosonics' cost, to Nanosonics at the end of the AuditPro Term, or upon termination of these AuditPro System Terms, where the Device(s) will be recycled in Nanosonics' recycling program.

23.12. AuditPro Term and Termination.

- 23.12.1. These AuditPro System Terms commence on the AuditPro Contract Start Date and continue for the AuditPro Term unless terminated earlier pursuant to these AuditPro System Terms.
- 23.12.2. A Party may terminate these AuditPro System Terms for cause: (a) upon thirty (30) days' written notice to the other Party of a material breach of these AuditPro System Terms if such breach remains uncured at the expiration of such period; or (b) 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 AuditPro System Terms, Nanosonics will refund Customer pro-rata for any AuditPro Services Customer has paid for in advance within thirty (30) days of the effective date of termination.
- 23.12.3. Where Customer has paid upfront for the AuditPro System, Customer may terminate these AuditPro System Terms without cause upon at least 60 days' prior written notice, however the price paid is not refundable.
- 23.12.4. Where Customer has selected an annual billing frequency, Customer may only terminate these AuditPro System Terms: (a) on the first anniversary of the AuditPro Contract Start Date by providing 60 days' prior written notice to Nanosonics of its intention to do so; or (b) after the first anniversary of the AuditPro 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 23.12.4, Customer agrees to pay an early termination charge amounting to fifty percent (50%) of the price that may be attributed to the AuditPro Services that would have otherwise been paid to Nanosonics by the Customer for the period commencing from the date of termination of these AuditPro System Terms by Customer until the end of the AuditPro Term. All discounts applied to the price in Customer's original quotation, if any, will be removed from the price for the purpose of calculating the early termination charge. Customer acknowledges and agrees that the early termination charge is calculated based on Nanosonics' genuine pre-estimate of the loss it may suffer as a result of the early termination. The early termination charges are payable to Nanosonics within 30 days of the termination date.
- 23.12.5. Consequences of termination or expiry. Upon termination or expiry of these AuditPro System Terms, Customer and its AuditPro Authorized Users must immediately cease using the AuditPro Services. Nanosonics will revoke Customer's access to the AuditPro Services and the customer support center and disable all AuditPro Authorized User logins. 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.
- 23.12.6. Within 12 months after termination or expiry of these AuditPro System Terms, Customer may by written request to Nanosonics, obtain: (a) a one-off record of the Data collected in the AuditPro System in a form specified by Nanosonics from time to time at no additional charge; or (b) the right to purchase an annual "View Only" subscription to access the Data on an ongoing basis on applicable terms offered by Nanosonics and for a period to be agreed by the Parties (for so long as the Nanosonics' AuditPro System offering has not reached product end of life). Nanosonics is not responsible for retaining the Data and may permanently delete the Data if Customer does not purchase the Data, or the right to access the Data within the required time. The price payable by Customer for the provision of Data described in this clause 23.12.4 will be determined by Nanosonics acting reasonably, taking into account Nanosonics' cost of providing Customer with access to the Data.

23.13. AuditPro Warranty. EXCEPT AS EXPRESSLY PROVIDED BY THESE TERMS OR THE AUDITPRO SYSTEM 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 AUDITPRO SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM SECURITY VULNERABILITIES, OR THAT THE AUDITPRO SERVICES WILL BE SUITABLE FOR ANY PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT THE NATURE OF COMPUTER SOFTWARE AND TECHNOLOGY IS SUCH THAT THE OPERATION OF THE AUDITPRO SERVICES WILL NOT BE UNINTERRUPTED, ERROR FREE OR FREE FROM SECURITY VULNERABILITIES AND CUSTOMER HAS RELIED ON ITS OWN JUDGEMENT IN DETERMINING WHETHER THE AUDITPRO SERVICES ARE SUITABLE FOR THE PURPOSES FOR WHICH IT INTENDS TO USE THE AUDITPRO SERVICES.

- 23.13.1. Nanosonics undertakes: (a) that it will provide the AuditPro Services in a professional and workmanlike manner consistent with good industry standards and practices and in compliance with all applicable laws; (b) that the AuditPro System will perform in all material respects in accordance with the Documentation; and (c) subject to clauses 23.13.2 and 23.13.5, at least 99.0% AuditPro System Availability during each thirty (30) day period.
- 23.13.2. Customer acknowledges that the AuditPro Services are hosted on existing infrastructure supplied to Nanosonics by third party suppliers and that the reliability of the AuditPro Services and the scheduled downtime for carrying out routine maintenance may be affected by the availability of services from such third party suppliers.
- 23.13.3. As Customer's sole and exclusive remedy and Nanosonics' entire liability for any breach of the warranties given under clauses 23.13.1(a) and 23.13.1(b), Nanosonics will re-perform the AuditPro Services to comply with the warranty.
- 23.13.4. Warranty against defects for Devices. Where applicable, Nanosonics warrants to Customer that the Devices supplied by Nanosonics to Customer will be free from material defects in workmanship and materials under normal use for a period of one (1) year, after the date the applicable invoice for the corresponding AuditPro System was issued. If Customer believes that there is any defect in the Device(s) which has caused a breach of the foregoing

("Warranty Defect"), Customer may give notice to Nanosonics of the Warranty Defect and must promptly provide Nanosonics with all information relating to that Warranty Defect as Nanosonics may reasonably request. If Customer gives notice and returns the Device, at their cost, due to a defect within the warranty period, Nanosonics will inspect the returned Device(s) and, if the fault is a Warranty Defect, Nanosonics will issue a replacement (or part thereof) in accordance with the results of its inspection at no cost to Customer, or provide a credit for the cost of the replacement Device(s) (if a replacement has already been provided) and reimburse the cost of returning the defective Device(s) to Nanosonics. Any defective Device(s) that is replaced is warranted only for the balance of the initial warranty period. If Customer gives notice to Nanosonics of what Customer believes to be a Warranty Defect, returns the Device, at its cost, and, on subsequent investigation, it is established that it was not a Warranty Defect, Customer will be responsible for Nanosonics' reasonable costs incurred in investigating the alleged Warranty Defect, in addition to the cost incurred by Nanosonics to return the Device(s) to Customer. Notwithstanding this clause 23.13.4, Nanosonics does not warrant, and such limited warranty will be null and void, if the Device(s) fails to perform or is defective because of: accident, casualty, misuse (including use of the AuditPro System with any hardware or software not recommended by Nanosonics, use of the AuditPro System in an unauthorized location, or use of the AuditPro System in a manner not in accordance with Nanosonics' instructions), 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 clause 23.13.4 and any other limitations and exclusions of liability or warranties contained in the Terms and these AuditPro System Terms apply only to the maximum extent permitted by law. Nothing in these Terms and these AuditPro System Terms excludes, restricts or modifies any condition, warranty, right, obligation or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified. These terms must be read and construed subject to any such statutory provisions.

- 23.13.5. Warranty Limitations. Downtime caused directly or indirectly by any of the following will not be considered a breach by Nanosonics of these AuditPro System Terms: (a) a force majeure event; (b) a fault or failure of Customer's computer systems, networks or utilities; (c) a modification of the AuditPro Software by anyone other than Nanosonics or its contractors; (d) any breach by Customer of these AuditPro System Terms; (e) any breach by an AuditPro Authorized User of the AuditPro User Access Terms and Conditions; or (f) scheduled maintenance.

23.14. Intellectual Property.

- 23.14.1. Customer acknowledges that Nanosonics owns and retains all Intellectual Property Rights in and to the AuditPro System and any improvements developed by Nanosonics, Customer or any of Customer's employees, agents or contractors (including AuditPro Authorized Users) in the course of developing, manufacturing, supplying, marketing or using the AuditPro System. Customer hereby assigns to Nanosonics all rights, title and interest in and to the improvements on creation, including any Intellectual Property Rights 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 AuditPro System or any Nanosonics Intellectual Property Rights, nor create derivative works from them.
- 23.14.2. If any third party makes a Claim that the AuditPro Software or AuditPro Services, or Customer's use of the AuditPro Software or AuditPro Services (in accordance with these AuditPro System Terms), infringes any Intellectual Property Rights of any person, Nanosonics will indemnify and hold harmless Customer against any loss, damages or costs 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 23.14.2, subject to the following conditions:
- 23.14.2.1. Customer must promptly notify Nanosonics in writing of any such Claim of which Customer has notice;
- 23.14.2.2. Customer must not make any admissions in relation to the Claim without Nanosonics' prior written consent;
- 23.14.2.3. Customer, at Nanosonics' request and expense, must allow Nanosonics to conduct and settle (or control the conduct and settlement of) all negotiations and litigation resulting from any such Claim; and
- 23.14.2.4. 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.
- 23.14.3. In the event of a Claim, Nanosonics will, at its sole option and expense:
- 23.14.3.1. procure for Customer the right to continue using the AuditPro Software or AuditPro Service under these AuditPro System Terms;
- 23.14.3.2. replace or modify the AuditPro Software or AuditPro Service to be non-infringing without material decrease in functionality; or
- 23.14.3.3. if the above options are not reasonably practicable, terminate the grant of right for the infringing AuditPro Software or AuditPro Service (subject to providing as much notice as is reasonably practicable) and refund Customer all prepaid fees for the remainder of the AuditPro Term after the date of termination.
- 23.14.4. Nanosonics will have no liability for any Claim to the extent the Claim is based upon:
- 23.14.4.1. the use of the AuditPro Software or AuditPro Service in combination with any other product, service or device not furnished, recommended or approved by Nanosonics, if such Claim would have been avoided by the use of the AuditPro Software or AuditPro Service, without such product, service or device;
- 23.14.4.2. Customer's use of the AuditPro Software or AuditPro Service other than in accordance with these AuditPro System Terms.
- 23.14.5. This clause 23.14 sets out Nanosonics' sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement of third party Intellectual Property Rights of any kind.
- 23.14.6. Clause 6 (Limitation of Liability) shall not apply to Nanosonics' indemnification obligations under clause 23.14.2.

23.15. Indemnity

- 23.15.1. 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:
- 23.15.1.1. any Claim or allegation by a third party in connection with the use of the Device, AuditPro Software and AuditPro Services by Customer or its Authorized Users other than in accordance with these AuditPro System Terms;
- 23.15.1.2. breach of clause 23.14 (Intellectual Property);
- 23.15.1.3. any injury to or death of any person caused by an act or omission of Customer or its Authorized Users; or
- 23.15.1.4. any damage to real, personal or tangible property caused by any act or omission of Customer or its Authorized Users.
- 23.15.2. 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.

23.16. Compliance with laws and regulations

- 23.16.1. Customer will comply with all relevant import and export laws affecting the Device and/or the AuditPro Software or any portion of it including, without limitation, those applied by Australia and Canada.