

NuraNow AGREEMENT

Last Updated: 5th March, 2019

This Agreement (the “*Agreement*”) is an agreement between Nura Operations Pty Ltd, an Australian corporation (“*Nura*,” “*we*” or “*us*”) and you (“*Customer*” or “*you*”), dated as of the date you indicate acceptance (“*Effective Date*”). This Agreement includes, and incorporates by this reference, the [Nura Terms of Use Policy](#), Sections 6 (Shipping and Handling) and 8 (Errors) from the [Nura Terms of Sale](#), any ordering document between Nura and Customer referencing this Agreement (“*Order*”) and all amendments and addenda to this Agreement. Nura and Customer are sometimes referred to collectively as the “*Parties*” and individually as a “*Party*.”

PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS IMPORTANT TERMS THAT AFFECT YOUR USE OF THE NURANOW PROGRAM (defined below) AND INCLUDES A MANDATORY ARBITRATION PROVISION AND CLASS ACTION WAIVER IN SECTION 17 OF THE [NURA TERMS OF USE POLICY](#). By indicating acceptance of this Agreement and executing an Order, via click through or other electronic means offered by Nura, or otherwise using or accessing the NuraNow Program, you agree to be bound by the terms and conditions of this Agreement and all terms incorporated by reference.

Nura reserves the right to change any of the terms and conditions contained in this Agreement, any Policies, the Site or the NuraNow Service, at any time and in its sole discretion. If Nura makes any changes, it will use reasonable efforts to notify Customer that this Agreement or the Policies have changed. Customer’s continued use of the NuraNow Service will confirm Customer’s acceptance of such changes. Nura encourages Customer to frequently review this Agreement and any other applicable policies and guidelines to ensure Customer understands the terms and conditions that apply to Customer’s use of the NuraNow Program. If Customer does not agree to the amended terms, policies or guidelines, Customer must stop using the NuraNow Program. Nura and Customer agree as follows:

Section 1. Definitions

Words used in this Agreement with their initial letters capitalized will have the meanings specified in **Appendix 1**.

Section 2. Customer’s Rights in the NuraNow Program. Nura’s offering includes use of the Nura Licensed Hardware, which Nura customizes to Customer’s hearing by collecting hearing measurements and other Customer Data through the Nura App to personalize Customer’s listening experience (the “*NuraNow Program*”).

2.1 Rights to Use the Nura Licensed Hardware. During the Term, Nura hereby grants to Customer:

- (a) a revocable, personal, non-commercial license to use the Nura Licensed Hardware, as specified in the Order; and
- (b) a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use and access the NuraNow Program.

Provided Customer’s NuraNow Subscription is active and in good standing, Customer will be eligible to (i) receive a new Nura Licensed Hardware every twenty-four (24) months; and (ii) retain a revocable, personal, non-commercial license to use the old Nura Licensed Hardware (“*Decommissioned Hardware*”). Customer shall not remove, alter or destroy in any way any Nura Licensed Hardware and Decommissioned Hardware, or any label or Nura Mark on the unit. Customer will keep the Nura Licensed Hardware and Decommissioned Hardware in good repair, appearance and condition, subject to normal wear and tear.

2.2 Restrictions; Limitations. Customer may not use the NuraNow Program in any manner or for any purpose other than as expressly permitted by this Agreement. Without limitation of the foregoing, the rights granted under this Section 2 do not include or authorize: (a) modifying, disassembling, decompiling, reverse engineering or otherwise making any derivative use of the Nura Licensed Hardware, Nura App or any Accessories or using or accessing the NuraNow Program to build a competitive product or service; (b) using any data mining, robots or similar data gathering or extraction methods except as provided by the NuraNow Program or Accessories; (c) performing or disclosing any benchmarking or performance testing of the NuraNow Program; (d) selling, licensing, renting, leasing, assigning,

distributing, displaying, hosting, disclosing, outsourcing or otherwise commercially exploiting the NuraNow Program except as authorized in this Agreement; or (e) using the NuraNow Program other than for its intended use. During and after the Term, Customer will not assert, nor authorize, assist or encourage any third party to assert, against any of the Nura Parties, any patent infringement or other intellectual property infringement claim regarding the Nura Licensed Hardware, Nura App or any Accessory that Customer or any Household User has used. The rights granted under this Section 2 are conditioned on Customer's continued compliance with this Agreement (including, without limitation, Household Users' compliance with this Agreement), and will immediately and automatically terminate if Customer does not comply with any material term or condition of this Agreement.

2.3 Lost, Damaged or Stolen Nura Licensed Hardware. Customer will notify Nura without undue delay in the event that the Nura Licensed Hardware is lost or stolen. Nura will remotely deactivate such lost or stolen Nura Licensed Hardware rendering the device useless. If at any point Customer recovers such lost or stolen Nura Licensed Hardware after receiving a replacement from Nura, Customer will notify Nura in writing (via email) and Nura will determine whether Customer should return or dispose of the recovered unit. In the event of accidental damage, loss or theft of the Nura Licensed Hardware, Customer is entitled to one (1) repair or replacement every twenty-four (24) months that Customer's NuraNow Subscription is active and in good standing, with a new or refurbished unit or parts, of the Nura Licensed Hardware ("**Accidental Loss Claim**"). Under any Accidental Loss Claim, whether the Nura Licensed hardware is repaired, replaced with new or refurbished parts is in the sole discretion of Nura. For any additional accidentality damaged, lost or stolen Nura Licensed Hardware, Customer will have the option to repair or replace such Nura Licensed Hardware at a fifty (50) percent discount off the listed retail price. Customer authorizes Nura to charge Customer's payment method provided under Section 4 for any such repair or replacement costs.

2.4 Changes to NuraNow Program. Nura may change the NuraNow Program from time to time, including changing or removing features or functionality from the Nura App or Nura Licensed Hardware. Nura will notify Customer of any discontinuation of the NuraNow Program.

2.5 Suspension of NuraNow Program. Nura may, in its sole discretion, immediately temporarily suspend access to or use of the NuraNow Program by Customer or any Household User if Customer or any Household User violates a material restriction or obligation of Customer or Household Users in this Agreement (including any Policies), or if in Nura's reasonable judgment, the NuraNow Program or any component thereof is about to suffer a significant threat to security or functionality. Nura will provide advance notice to Customer of any such suspension in Nura's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Nura will use reasonable efforts to re-establish the affected NuraNow Program promptly after Nura determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured. Nura may terminate access to the NuraNow Program if any of the foregoing causes of suspension are not cured within thirty (30) days after Nura's initial notice thereof. Any suspension or termination by Nura under this Section 2.5 will not excuse Customer from its obligation to make payment(s) under this Agreement. If any Household User breaches any term or condition of the Policies, then, in addition to any other remedies available to Nura, Nura will have the right, in its sole discretion, to immediately suspend access to the NuraNow Program by the Household User who failed to comply with the terms and conditions of the Policies. Any suspension under this Section shall remain in effect until the applicable breach, if curable, is cured.

Section 3. Eligibility; Registration; Support; Data Practices; Nura Responsibilities

3.1 Eligibility. Customer and any Household Users must be at least 18 years old (or the age of both legal majority and the age at which the Customer and Household User can consent to collection of Customer Data where you reside) to purchase a NuraNow Subscription (defined below) to the NuraNow Program. Customer represents and warrants that it and all Household Users are not: (a) a resident of any country subject to a United States embargo or other similar United States export restrictions, including Iran, Cuba, North Korea, the Region of Crimea, Sudan or Syria; (b) on the United States Treasury Department's list of Specifically Designated Nationals; (c) on the United States Department of Commerce's Denied Persons List or Entity List; or (d) on any other United States export control list.

3.2 Registration. In order to access and use the NuraNow Program, Customer and each Household User will need to register for an Account on the Nura App and accept this Agreement. Customer will ensure that Customer and each Household User that registers for an Account: (a) provide accurate, truthful, current and complete information when creating an Account; (b) maintain and promptly update all Account information; (c) maintain the security of the Account by not sharing its password with others and restricting access to the Account and their mobile device; (d) promptly notify Nura if Customer or a Household User discovers or otherwise suspects any security breaches related to such user's

Account; and (e) take responsibility for all activities that occur under such user's Account and accept all risks of unauthorized access. Nura may prohibit a Household User's access to and use of NuraNow Program at any time for any reason, including upon request from Customer. If a Household User's right to access and use the NuraNow Program is terminated, the terms set forth in Section 5.4 will continue to apply to the terminated Household User.

3.3 Violations. Customer is responsible for any access or use of the NuraNow Program under each Household User's Account, including by any third parties that use any Household User's Account. The acts or omissions of any Household User or third party under a Household User's Account are considered the Household User's acts or omissions, as applicable.

3.4 Support. During the Term, Nura will provide online support to Customer and Household Users relating to the use and operation of the NuraNow Program between the hours of 9am to 5pm Australian Eastern Standard Time, Monday through Sunday via the online [Contact Form](#), the live chat service, email or postal mail.

3.5 Data Privacy and Security

(a) For information about Nura's data privacy and security practices, please see our [Privacy Policy](#).

(b) Customer is solely responsible for the content of any data or materials that Customer or Household Users use, process, submit, provide to, or make available through the NuraNow Program, including, without limitation, Customer Data. Customer has provided legally required notice of its use of the NuraNow Program and Accessories to all relevant data subjects including, but not limited to, all Household Users, and obtained consent for Customer to transfer personal information and other Customer Data to Nura for processing in the United States and Australia.

(c) Customer represents and warrants to Nura that: (i) Customer has all rights in the Customer Data necessary to grant the rights contemplated by this Agreement; and (ii) none of the Customer Data or use of the NuraNow Program or any Accessories by Customer or any Household Users will violate the Policies or applicable law.

3.6 Nura Responsibilities.

Nura is responsible for the performance of its employees and contractors and their compliance with Nura's obligations under this Agreement. Nura may use non-employee contractors or agents for the purpose of providing the NuraNow Program hereunder.

Section 4. Payments and Taxes

4.1 NuraNow Subscriptions. Nura offers different subscription plans for access and use of the NuraNow Program (each, a "*NuraNow Subscription*") on a monthly or other periodic basis, all as specified on [the Nura website](#)

4.2 Continuous Subscriptions. WHEN CUSTOMER REGISTERS FOR A NURANOW SUBSCRIPTION, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT (A) NURA (OR OUR THIRD PARTY PAYMENT PROCESSOR) IS AUTHORIZED TO CHARGE CUSTOMER AT THE BEGINNING OF EVERY MONTH OR OTHER PERIODIC BASIS (AS SELECTED BY CUSTOMER VIA THE NURANOW PROGRAM ORDER) FOR CUSTOMER'S NURANOW SUBSCRIPTION (IN ADDITION TO ANY APPLICABLE TAXES AND OTHER CHARGES) FOR AS LONG AS CUSTOMER'S NURANOW SUBSCRIPTION CONTINUES, AND (B) CUSTOMER'S NURANOW SUBSCRIPTION IS CONTINUOUS UNTIL CUSTOMER CANCELS IT OR NURA SUSPENDS OR STOPS PROVIDING ACCESS TO THE NURANOW PROGRAM IN ACCORDANCE WITH THIS AGREEMENT.

4.3 Cancellation Policy. CUSTOMER MAY CANCEL ITS NURANOW SUBSCRIPTION AT ANY TIME BY LOGGING INTO CUSTOMER'S ACCOUNT ON THE NURANOW PROGRAM AND FOLLOWING THE INSTRUCTIONS TO CANCEL. CUSTOMER WILL BE RESPONSIBLE FOR ALL CHARGES (INCLUDING ANY APPLICABLE TAXES AND OTHER CHARGES) INCURRED WITH RESPECT TO FEES PROCESSED PRIOR TO THE CANCELLATION OF CUSTOMER'S NURANOW SUBSCRIPTION. WITHOUT LIMITING THE FOREGOING, EXCEPT AS OTHERWISE SET FORTH IN SECTION 5.4, WITH RESPECT TO CUSTOMER'S TERMINATION FOR NURA'S MATERIAL BREACH OF THIS AGREEMENT, CUSTOMER WILL NOT RECEIVE A REFUND FOR ANY PARTIAL MONTH. For instructions on where and how to return the Nura Licensed Hardware after cancellation, please contact us via nuranow@nuraphone.com

4.4 Free or Promotional Trials. From time to time, to the extent legally permitted, Nura may offer free or reduced rate promotional trials of certain NuraNow Subscriptions for specified periods of time without payment or for a reduced promotional price. If Nura offers Customer a free or promotional trial, the specific terms of the free or promotional trial will be provided in the marketing materials describing the particular trial, during the online registration process when the code for the trial is entered on Nuranow.com or other Nura operated websites.

ONCE THE FREE OR PROMOTIONAL TRIAL ENDS, CUSTOMER AUTHORIZES NURA (OR OUR THIRD PARTY PAYMENT PROCESSOR) TO BEGIN CHARGING CUSTOMER'S DESIGNATED PAYMENT METHOD ON A RECURRING BASIS FOR CUSTOMER'S NURANOW SUBSCRIPTION (PLUS ANY APPLICABLE TAXES AND OTHER CHARGES) FOR AS LONG AS THE NURANOW SUBSCRIPTION CONTINUES, UNLESS CUSTOMER CANCELS THE NURANOW SUBSCRIPTION PRIOR TO THE END OF THE FREE OR PROMOTIONAL TRIAL OR OTHERWISE CANCELS THE NURANOW SUBSCRIPTION IN ACCORDANCE WITH THIS SECTION 4. INSTRUCTIONS FOR CANCELING CUSTOMER'S NURANOW SUBSCRIPTION ARE DESCRIBED IN SECTIONS 4.1, 4.2 AND 4.3 ABOVE.

4.5 Payment and Billing Information. By providing a payment method that Nura accepts, Customer represents and warrants that Customer is authorized to use the designated payment method and that Customer permits Nura (or our third party payment processor) to charge Customer's payment method for the total amount of Customer's NuraNow Subscription or other purchase (including any applicable taxes and other charges). If the payment method cannot be verified, is invalid or is otherwise not acceptable, Customer's Order or NuraNow Subscription may be suspended or cancelled. Customer must resolve any problem Nura encounters in order to proceed with Customer's Order. In the event Customer wants to change or update payment information associated with Customer's account, Customer can do so by logging into the NuraNow Program and editing the payment information. Customer acknowledges that the amount billed may vary due to promotional offers, changes to your NuraNow Subscription or changes in applicable taxes or other charges, and Customer authorizes Nura (or our third party payment processor) to charge Customer's payment method for the corresponding amount.

4.6 Pricing and Availability. All Orders must be accepted by Nura. Your Order is only accepted when you are sent confirmation of shipping information with a tracking number. All prices are shown in USD, AUD, EUR, GBP, or another local currency, as applicable, and applicable taxes and other charges, if any, are additional. Nura reserves the right to adjust prices as Nura may determine in its sole discretion, at any time and without notice; provided, however, that if Nura changes the amounts or other charges associated with your NuraNow Subscription, Nura will use reasonable efforts to provide advance notice of such changes in accordance with this Section 4. Nura will not, however, be required to notify Customer of changes in any applicable taxes. The NuraNow Program, Accessories and NuraNow Subscriptions are subject to availability, and we reserve the right to impose quantity limits on any Order, to reject all or part of an Order, or to discontinue offering certain Accessories or NuraNow Subscriptions without prior notice, even if Customer has already placed an Order.

4.7 Taxes. Customer is responsible for any sales, duty or other governmental taxes or fees due with respect to Customer's purchase of a NuraNow Subscription or other Accessories. Nura will collect applicable sales tax if it determines that Nura has a duty to collect sales tax. Nura will present any taxes that it is required to collect at checkout, but note that actual taxes charged may be adjusted from the amount shown at checkout. Several factors may cause this, such as variances between processor programs and changes in tax rates.

4.8 Risk of Loss. Risk of loss to any Nura Licensed Hardware, Decommissioned Hardware and Accessories will pass to Customer when Nura places such Nura Licensed Hardware, Decommissioned Hardware and Accessories in the possession of the carrier for shipment. Risk of loss will remain with Customer until or unless Nura receives such Nura Licensed Hardware, Decommissioned Hardware or Accessories on the basis of cancellation or repairs.

Section 5. Term and Termination

5.1 Term. The term of this Agreement will commence on the Effective Date and will continue for the period set forth in the Order describing the NuraNow Subscription period or otherwise agreed upon by the Parties unless and until terminated pursuant to Section 2.4, 5.2, or 5.3 of this Agreement (the "**Initial Term**"). After the expiration of the Initial Term, the Agreement will automatically renew for ongoing one-month periods (collectively with the Initial Term, the "**Term**").

5.2 Termination for Convenience. Customer may terminate the Term for convenience at any time prior to the next NuraNow Subscription billing cycle by emailing nuranow@nuraphone.com clearly indicating Customer's wish to cancel the NuraNow Subscription. In the event Customer terminates under this Section 5.2, Customer must return all Nura Licensed Hardware and Decommissioned Hardware received during the Term no later than thirty (30) days from the date of Customer's cancellation notice. Customer is entitled to keep any Accessories associated with the terminated NuraNow Subscription as described in the applicable Order. Nura reserves the right to continue charging Customer the NuraNow Subscription fee if Customer does not return all Nura Licensed Hardware and Decommissioned Hardware within the thirty (30) day period after Customer's notice of termination

5.3 Termination for Material Breach. If either Party commits a material breach of or default under this Agreement, then the other Party may give notice that the breach or default has occurred (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Agreement that are in breach or default, and the action required to cure the breach or default) and that the Term will terminate pursuant to this Section 5.3 if the breach or default is not cured within thirty (30) days after receipt of notice (or such later date as may be specified in such notice). If the specified breach or default is not cured within thirty (30) days after receipt of such notice (or such later date as may be specified in such notice), then the Term will terminate.

5.4 Effect of Termination. In the event of any termination of the Term:

(a) all of Customer's and each Household User's rights under this Agreement will immediately terminate, the license granted to Customer in this Agreement will terminate and Customer and all Household Users will immediately cease any access or use of the NuraNow Program;

(b) Customer must return all Nura Licensed Hardware and Decommissioned Hardware received during the Term no later than thirty (30) days from the date of termination notice. Unless otherwise specified in the Order, Customer is responsible for all return shipping fees and any damage beyond reasonable wear and tear to the returned Nura Licensed Hardware and Decommissioned Hardware. Customer authorizes Nura to charge Customer's payment method for repair or replacement costs associated with damage beyond reasonable wear and tear;

(c) If Customer terminates the Term for convenience under Section 5.2, then Customer will be responsible for that month's NuraNow Subscription fees; if Nura terminates the Term for material breach by Customer under Section 5.3, then Customer will remain responsible for the remaining balance of the NuraNow Subscription fees in Customer's Order and Customer must pay within thirty (30) days all such amounts, as well as all sums remaining unpaid under the Agreement plus related taxes and expenses;

(d) Nura will have no obligation to maintain any Customer Data or to forward any Customer Data to Customer or any third party; and

(e) Sections 1, 2.2, 3.3, 4, 5.4, 6, 7, 8.3, 9, and 10 of this Agreement, together with any other provisions that by their nature are intended to survive, will continue to apply in accordance with their terms.

If Customer terminates the Term for material breach by Nura under Section 5.3, then Nura shall refund to Customer within thirty (30) days of termination any unused pre-paid fees on a pro rata basis for the remaining Term following the month in which the termination is effective.

Section 6. Indemnification

6.1 General. Customer will defend, indemnify, and hold harmless the Nura Parties from and against all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party or Household User claim concerning: (a) Customer's or Household Users' Unauthorized Use of the NuraNow Program including, without limitation, any use of any Accessories and the NuraNow Program other than as permitted under this Agreement or in a manner that is illegal, tortious, or violates the rights of another; (b) any Customer Data or other data or content related to Customer, Household Users or other users which Customer provides, uploads, or inputs into the NuraNow Program; or (c) your breach of this Agreement or the rights of a third party. If Nura is obligated to respond to a third party subpoena or other compulsory legal order or process related to the topics described above, Customer will also reimburse Nura for reasonable attorneys' fees, as well as the time and materials spent by Nura's

employees and contractors responding to the third party subpoena or other compulsory legal order or process at Nura's then-current hourly rates.

6.2 Process. Nura will promptly notify Customer of any claim subject to Section 6.1 of this Agreement, but Nura's failure to promptly notify Customer will only affect Customer's obligations under Section 6.1 of this Agreement to the extent that such failure prejudices Customer's ability to defend the claim. Customer may: (i) use counsel of its own choosing (subject to Nura's written consent) to defend against any claim; and (ii) settle the claim as Customer deems appropriate, provided that Customer obtain Nura's prior written consent before entering into any settlement. Nura may also assume control of the defense and settlement of the claim at any time.

Section 7. Proprietary Rights

7.1 The NuraNow Program. As between Nura and Customer, Nura owns all right, title, and interest in and to the NuraNow Program, including the Nura Licensed Hardware. Except as otherwise specified in Sections 2.1, 5.2 and 7.5 of this Agreement, Customer does not obtain any rights under this Agreement from Nura to the Nura Licensed Hardware, including any related Intellectual Property Rights. Upon receipt of Customer's complete payment, all right, title and interest in any Accessories purchased by Customer shall pass to Customer.

7.2 Feedback. Customer and Household Users may voluntarily provide Nura with Feedback. Customer will not, and will ensure Household Users do not, provide any such Feedback to any third party without Nura's prior written consent in each instance. Any Feedback that Customer or Household Users provide to Nura may or may not be treated confidentially by Nura and will become the sole property of Nura. Nura will own, and Customer and Household Users hereby assign, all exclusive rights, including, without limitation, all intellectual property rights, in and to Feedback and Nura will be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

7.3 Trademarks. As between Nura and Customer, Nura owns all right, title and interest in and to the Nura Marks and any goodwill arising out of the use of the Nura Marks will remain with and belong to Nura and its licensors. The Nura Marks may not be copied, imitated or used without the prior written consent of Nura or the applicable trademark holder.

7.4 Additional Protection of Proprietary Rights. Customer will not infringe or violate, and will take appropriate steps and precautions for the protection of, the NuraNow Program or any Accessories and related Intellectual Property Rights referred to in Section 7.1. Customer will immediately notify Nura of any Unauthorized Use that comes to Customer's attention. In the event of any Unauthorized Use relating to the activities of Customer, Household Users or any other user, Customer will take all steps reasonably necessary to terminate such Unauthorized Use. Customer will immediately notify Nura of any legal proceeding initiated by Customer in connection with any such Unauthorized Use. Nura may, at its option and expense, assume control of such proceeding. If Nura assumes such control, Nura will have exclusive control over the prosecution and settlement of the proceeding, and Customer will provide such assistance related to such proceeding as Nura may reasonably request. Customer will assist Nura in enforcing any settlement or order made in connection with such proceeding.

Section 8. Limited Warranties and Remedies

8.1 Warranty. Nura warrants that the Nura Licensed Hardware will be free from defects in materials and workmanship, under normal use in accordance with the applicable Documentation during the Term of your NuraNow Subscription. In the event Customer is eligible for a new Nura Licensed Hardware as described in Section 2.1, any warranties provided under this Agreement will transfer from the Decommissioned Hardware to the new Nura Licensed Hardware. Any license to continue to use any Decommissioned Hardware will be provided "as is" without warranties of any kind (express or implied). To be eligible for warranty service, you must contact the Nura customer service team and have requested a Return Merchandise Authorization (RMA) under warranty.

8.2 Remedy. Subject to this Section 8.2, Nura will use commercially reasonable efforts to correct any manufacturing or workmanship nonconformance of the Nura Licensed Hardware, which may include repair or replacement at Nura's sole discretion, with new or refurbished hardware or parts. Unless otherwise stated in the Order, Customer will be responsible for all shipping charges to and from Nura for any warranty claims made during the NuraNow Subscription. For the avoidance of doubt, the warranties and remedies listed under this Section 8 do not apply to Decommissioned Hardware.

THE REMEDIES DESCRIBED IN THIS SECTION 8 SHALL BE NURA'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THE FOREGOING WARRANTY.

8.3 DISCLAIMER. EXCEPT FOR THE NURA LICENSED HARDWARE WARRANTY EXPRESSLY SET FORTH HEREIN AND SUBJECT TO ANY LEGAL RIGHTS YOU MAY HAVE UNDER ANY LAW THAT APPLIES TO YOU WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT (“**YOUR CONSUMER RIGHTS**”), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SITE, THE NURANOW PROGRAM AND ALL ACCESSORIES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND CUSTOMER HEREBY WAIVES, RELEASES, AND DISCLAIMS, ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE NURANOW PROGRAM, SITE OR ANY ACCESSORIES, INCLUDING ANY WARRANTY THAT THE NURANOW PROGRAM, SITE OR ANY ACCESSORIES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS OR DATA WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, NURA AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

NOTHING IN THIS AGREEMENT LIMITS, EXCLUDES, RESTRICTS, MODIFIES OR PURPORTS TO LIMIT, EXCLUDE, RESTRICT OR MODIFY YOUR CONSUMER RIGHTS. IF ANY PART OF THIS AGREEMENT CONTRADICTS YOUR CONSUMER RIGHTS OR ANY OTHER APPLICABLE LAW, THEN YOUR CONSUMER RIGHTS OR OTHER APPLICABLE LAW WILL PREVAIL OVER THAT PART. IF YOU SUFFER ANY LOSS IN CONNECTION WITH THE NURANOW PROGRAM, SITE OR ACCESSORIES, YOU MUST TAKE ALL REASONABLE STEPS TO MINIMISE YOUR LOSS, INCLUDING NOTIFYING US WITHOUT DELAY IF THERE ARE STEPS WE CAN TAKE TO HELP MINIMISE YOUR LOSS.

Section 9. Limitations of Liability

9.1 Force Majeure. Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (except with respect to monetary obligations) as a result of any cause or condition beyond such Party's reasonable control (including, without limitation, any act or failure to act by the other Party). This paragraph will not apply to any payment obligation of either Party.

9.2 Limitation of Liability. **IN NO EVENT SHALL ANY OF THE NURA PARTIES BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE NURANOW PROGRAM, ANY ACCESSORIES OR THE SITE, INCLUDING THE INFORMATION, CONTENT AND MATERIALS CONTAINED THEREIN. IN NO EVENT WILL THE AGGREGATE LIABILITY OF ANY OF THE NURA PARTIES, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE GREATER OF (1) THE COMPENSATION PAID BY CUSTOMER, IF ANY, TO NURA FOR SUCH NURANOW PROGRAM FOR THE 12 MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO LIABILITY OR (2) \$100.**

THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT LIMIT OR EXCLUDE LIABILITY FOR THE GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT OF THE OTHER NURA PARTIES OR FOR ANY OTHER MATTERS IN WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE RELATIONSHIP BETWEEN NURA AND YOU.

Section 10. Miscellaneous

10.1 Reference Program. If Customer or a Household User volunteers any quotes or statements about Customer's experience with the NuraNow Program, Nura may, at its option, use such quotes and statements in connection with its sales and marketing activities.

10.2 No Third Party Beneficiaries. This Agreement does not create any third party beneficiary rights in any individual or entity that is not a Party to this Agreement.

10.3 Assignment. Customer may not assign this Agreement or any right, interest or benefit under this Agreement without prior written consent of Nura. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by any permitted assignee.

10.4 Nonwaiver. The failure of either Party to insist upon or enforce performance by the other Party of any provision of this Agreement, or to exercise any right or remedy under this Agreement or otherwise by law, will not be construed as a waiver or relinquishment of such Party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather the provision, right or remedy will be and remain in full force and effect.

10.5 Dispute Resolution Procedures.

The Parties hereby incorporate by reference into this Agreement the "Dispute Resolution; Binding Arbitration" provision listed in Section 16 of the Terms of Sale. **Please read the Section 17 of the [Terms of Use Policy](#) carefully because it requires you to arbitrate certain disputes and claims with Nura and limits the manner in which you can seek relief from us.**

You and Nura agree that any dispute arising out of or related to this Agreement or the NuraNow Program is personal to you and Nura and that any dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding as provided in the [Terms of Use Policy](#).

10.6 Severability. If any provision of this Agreement is deemed unlawful, void or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.

10.7 Applicable Law.

(a) U.S. Customers. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, without reference to its choice of law principles to the contrary. The 1980 UN Convention on Contracts for the International Sale of Goods or its successor will not apply to this Agreement. Subject to Section 10.5, Customer hereby consents to the jurisdiction and venue of the state and federal courts located in Alameda County, California with respect to any claim arising under or by reason of this Agreement.

(b) Non U.S. Customers. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of Victoria, Australia, without regard to conflict of laws provisions. To the extent that you reside in a country that will not apply the laws of Victoria, Australia, then your country's laws will apply to such disputes related to the NuraNow Program or this Agreement. Any Dispute (as defined in the Terms of Sale) between the Parties that is not subject to arbitration will be resolved exclusively in the courts located in Victoria, Australia.

10.9 Entire Agreement. This Agreement, together with any agreement, Order, policy or guideline referenced in this Agreement, constitutes the complete and exclusive statement of all mutual understandings between the Parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.

Appendix 1

Definitions

“**Account**” means a single user electronic account permitting Customer or Household Users to access and use the NuraNow Program.

“**Customer Data**” means any information about Customer collected through use of NuraNow Program and Site as described in the Privacy Policy.

“**Documentation**” means the online documentation relating to the NuraNow Program or any Accessories furnished or made available by Nura to Customer.

“**Feedback**” means information and feedback (including, without limitation, questions, comments, suggestions, or the like) regarding the performance, features, functionality and overall Customer experience using the NuraNow Program or any Accessories.

“**Intellectual Property Rights**” means any patent, copyright, trademark, service mark, trade name, trade secret, know-how, moral right or other intellectual property right under the laws of any jurisdiction, whether registered, unregistered, statutory, common law or otherwise (including any rights to sue, recover damages or obtain relief for any past infringement, and any rights under any application, assignment, license, legal opinion or search).

“**Nura App**” means the mobile application used in connection with the NuraNow Program, licensed under the [Nura Terms of Use Policy](#).

“**Nura Marks**” means any trademarks, service marks, service or trade names, logos, and other designations of Nura and its affiliates.

“**Nura Parties**” means Nura and its affiliates, independent contractors and service providers, and each of their respective members, directors, officers, employees and agents.

“**Party**” means Nura or Customer.

“**Accessories**” means any cords, ear buds or others accessories used in connection with Nura Licensed Hardware made available by Nura through the NuraNow Program or Site.

“**Policies**” means Nura’s Privacy Policy, all restrictions described on the Site related to the NuraNow Program, and any other policies and procedures related to Customer’s and Household Users’ access and use of the NuraNow Program.

“**Privacy Policy**” means the privacy policy currently referenced at <https://help.nuraphone.com/hc/en-us/articles/115002243574-nura-privacy-policy>, as it may be updated by Nura from time to time.

“**Site**” means www.nuraphone.com, and any successor or related website designated by Nura.

“**Unauthorized Use**” means any use, reproduction, modification, distribution, disposition, possession, examination, inspection, viewing, disclosure or other activity involving the NuraNow Program, Site, Accessories, or Documentation of Nura that is not expressly authorized under the Agreement or otherwise in writing by Nura.
