

## Nox Connect Services - Terms of Use

In these Terms of Use “we,” “our,” “us” and “Nox” refer to:

- Nox Medical, LLC, a Georgia limited liability company with its principal place of business at 100 Kimball Place, Suite 100, Alpharetta, GA 30009, if your Territory is the United States; and
- Nox Medical Canada, Inc. a company registered in Ontario, Canada with its registered office at 1010 Polytek Street, Unit 13, Ottawa, Ontario, Canada, K1J9H9, if your Territory is Canada; and
- Nox Medical ehf, a company registered in Iceland, with its registered office at Katrínartún 2, 105 Reykjavik, Iceland, if your Territory is Australia, the European Economic Area, Switzerland or the United Kingdom.

These Terms are between Nox and you (“**you**” or “**Customer**”). These Terms govern your access to and use of the Nox Connect Services that you purchased through Nox (or one of its affiliates) or an authorized distributor of Nox Connect Services (an “Order”). Your access and use of the Nox Connect Services pursuant to an Order is subject to acceptance of these Terms by the entity you represent. By entering into and Order, you acknowledge and agree that: (i) you accept these Terms on behalf of the entity for which you are authorized to act and acknowledge that such entity is legally bound by these Terms; and (ii) you represent and warrant that you have the right, power and authority to act on behalf of and bind such entity.

### 1. Acceptance of the Terms

By agreeing to these Terms, you agree to be bound by and subject to:

- any existing agreement between you and Nox, which expressly supplements these Terms;
- the applicable Exhibit(s);
- these Terms;
- our privacy policy at: <https://noxmedical.com/privacy-policy/>,

(together, the “**Terms**”). To the extent there is any inconsistency between any document forming part of these terms, the document listed higher will prevail.

These Terms may be modified by the terms set out in an Exhibit, which will apply only in the Territory or for the service to which that Exhibit applies.

### 2. Definitions

“**Authorized User**” means the Customer, you and your employees and/or contractors and the employees and/or contractors of your affiliated companies (where you are a legal entity duly incorporated in accordance with the laws of the Territory).

“**Confidential Information**” means either Customer Confidential Information or Nox Confidential Information (as defined in **Section 14**), as applicable.

“**Customer Data**” means personal data relating to you or your Authorized Users entered by you or your Authorized Users into the Nox Connect Services or personal data otherwise collected by the Nox Connect Services.

“**Customer Notice Email Address**” means the email address you provide on the Order Form when placing your order. We will use this address to send you any notices or important information related to these Terms of Use. Notices sent to this address will be considered received by you.

“**Device**” means either of a Digital Device or a Physical Device, as appropriate.

“**Device Data**” means the data which is transmitted by a Device to the Nox Connect Services.

“**Digital Device(s)**” means Nox’s Noxturnal software and any other digital medical device(s) that transmit data to Nox Connect Services. For avoidance of doubt, Digital Devices are ordered and licensed separately from Nox Connect Services unless expressly identified as part of Nox Connect Services in the Documentation.

“**Documentation**” means the documentation for the Nox Connect Services found at <https://noxmedical.com/resources-nox-connect>, as revised from time to time to reflect Modifications (as defined in **Section 4** below).

“**EEA**” means the European Economic Area.

“**Effective Date**” will be the date on which you first agree to these Terms.

“**EU**” means the European Union.

“**Intellectual Property Rights**” means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered), copyrights, database rights, trade and service marks (both registered and unregistered) together with all applications for, right to the grant of and extensions of the same, and all other intellectual and industrial property, including, but not limited to, similar or analogous rights throughout the world, in each case for the full term of the relevant right. “**Nox Connect Services**” means the Services as defined and described in the Documentation.

“**Order Form**” means the form documenting your Order from Nox or Nox’s authorized distributor.

“**Patient Data**” means patient personal information, such as patient name, date of birth, social security number, and personal health data, entered by or on behalf of you or your Authorized Users into the Nox Connect Services, which corresponds to a particular Device designated by you as relating to that patient, and which enables Nox to provide the Services to you in relation to that patient and that Device.

“**Physical Device(s)**” means Nox’s A1 and T3 sleep diagnostic medical device(s), and any other physical medical device(s) that transmit data to Nox Connect Services. For the

avoidance of doubt, Physical Devices are separate from and do not form part of the Nox Connect Services.

“**Services**” means cloud-based, software-as-a-service, capabilities, features and functionality, including, but not limited to, cloud-based data hosting and interoperability with other software applications, as designated in the Order Form.

“**Territory**” means each country, respectively, that you designate on the applicable Order Form for your access to the Nox Connect Services. Where the Order Form does not designate a Territory, the Territory shall be the country of Customer’s address listed on the Order Form.

### 3. Privacy

Nox uses Customer Data in accordance with its privacy policy at: <https://noxmedical.com/privacy-policy/>.

The servers that host the Nox Connect Services are hosted on a secure data server located inside the country or geopolitical area (e.g., EEA or EU) listed in Table 1 that corresponds to your Territory. In limited circumstances, Nox technical support located outside of your Territory may access your patients’ personal data to provide you with technical support.

### 4. License to access and use Nox Connect Services

Nox grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use Nox Connect Services solely within the Territory in accordance with these Terms. The use of the Nox Connect Services and any third-party software or content (“**Third-Party Software**”) included in Nox Connect Services may be further limited or conditioned pursuant to the terms of any click-through or similar license applicable to the Nox Connect or Third-Party Software (collectively, “**Click-Through Licenses**”). In the event of a conflict between these Terms and the terms and conditions of any Click-Through Licenses, the terms and conditions of such Click-Through Licenses shall control as such terms or conditions relate to Nox Connect or any Third-Party Software, as applicable.

Nox may modify the Nox Connect Services from time to time to enhance, update or remove existing Services, and to include additional Services (each a “**Modification**,” and collectively, “**Modifications**”), provided, however, that a Modification will not materially degrade the Nox Connect Services. To receive or access a Modification may require Customer to affirmatively accept or subscribe to the Modification. Access and use of Modifications may be subject to Customer accepting amended or additional terms and conditions and agreeing to pay additional fees (individually and collectively, as appropriate, “**Additional Terms**”). Customer will be provided advance notice of any Additional Terms associated with Modifications.

5. If your Order identifies any Services as software as a medical device (each a “**Medical Device Service**”), then, in addition to these Terms, the terms set forth on **Exhibit A, Medical Device Addendum**, will apply.

## 6. Term

These Terms will commence on the Effective Date and will remain in effect until all access or use of the Nox Connect Services granted in accordance with these Terms have been terminated.

The term of your access and use of the Nox Connect Services pursuant to an Order and these Terms commences on the effective date specified in the applicable Order and continues for the subscription term specified therein.

We may stop providing access to the Nox Connect Services on written notice to you (a “**Termination Notice**”) if:

- a) We have reasonable grounds to believe that providing the Nox Connect Services would create a substantial economic or technical burden or material security risk for us, or if it is necessary for us to do so to comply with applicable law or requests of governmental entities;
- b) The use of the Nox Connect Services by you, or our provision of any of the Nox Connect Services to you, has become impractical or unfeasible for any reasonable legal, business or regulatory reason;
- c) You are in material breach or default of any obligation set out in these Terms (including, but not limited to, non-payment of any outstanding sums owed to Nox, if applicable) and you do not cure that material breach or default within 15 days following written notice from Nox; or
- d) You become subject to bankruptcy proceedings, become insolvent, or make an arrangement for the benefit of your creditors.

You may terminate your access to the Nox Connect Services on written notice to Nox if:

- e) Nox is in material breach or default of any material obligation set out in these Terms and Nox does not cure that material breach or default within 30 days following written notice from you; or
- f) Nox becomes subject to bankruptcy proceedings, becomes insolvent, or makes an arrangement for the benefit of Nox's creditors.

On any termination of these Terms:

- g) Subject to **Section 23 (Severability and Surviving Provisions)**, the parties’ rights under these Terms will terminate within fifteen 15 days from the date of the Termination Notice;
- h) You remain responsible for all fees and charges you have incurred through to the date of termination; and
- i) Where we have exercised a right to terminate under **Sections 5(a) or 5(b)**, we will refund any fees for the Nox Connect Services paid by you which are attributable to the unexpired portion of the period for which you paid those fees following termination.

## 7. Patient Information

Nox Connect Services may use algorithms and identifiers (e.g., serial numbers) to link Device Data to Patient Data. You are responsible for the accuracy and consistency of all data that you or your Authorized Users enter through the Nox Connect Services.

Through the Nox Connect Services you may access your Patient Data and corresponding Device Data associated with your account and organization. In certain circumstances, you may also be granted access to your patients' data, notices or other communications we have provided to your patients relating to other Nox services.

Nox does not, through the Nox Connect Services or its available functions, provide medical advice. Nox Connect Services are intended solely as a resource and informational tool. We are not medical professionals and we do not discuss or advise on any issues relating to medical treatment or diagnosis. Accordingly, you are responsible for all reliance and clinical decisions based on Patient Data and information reported on the Nox Connect Services.

Nox Connect Services are tools that can assist you in the provision of health services, but they are not a substitute for competent human intervention and discretionary thinking. Therefore, you agree that you will be responsible for each of the following, as applicable, when using the Nox Connect Services: (i) entering information accurately and completely; (ii) reading information displayed accurately; (iii) confirming the accuracy of life threatening information and critically important results that are accessed or stored through the Nox Connect Services in the same manner that such information and results would be confirmed or verified if it were in paper form or as would otherwise be confirmed or verified if you were using applicable standards of good medical practice; and (iv) reporting any errors or suspected errors discovered in the course of using the Nox Connect Services.

Customer Data, Patient Data and corresponding Device Data are protected by laws and regulations governing the privacy and security of personal health information. In your dealings with all personal data, you must comply with applicable laws and regulations as set out in your Territory.

By entering and accessing Patient Data and corresponding Device Data through the Nox Connect Services, you represent and warrant that you have the right and authority to do so, either by receiving a written and signed authorization from the patient or otherwise as required or permitted under applicable laws in your Territory.

**If your Territory is the United States**, you represent and warrant to Nox that you have obtained and will maintain all permissions, authorizations and appropriate consents from your patients required under: (i) the Telephone Consumer Protection Act of 1991 (“**TCPA**”) and any other Federal, State or local laws and regulations applicable to automated outbound contacts by phone, texts or email with consumers; and (ii) the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“**HITECH**”), and applicable regulations for the transmission, storage, retrieval, access, use and/or disclosure of protected health information of patients for the provision of Nox Connect Services. You will be responsible

for determining patient eligibility, coverage and replacement schedules for patient supplies. We will provide the Nox Connect Services in compliance with the HIPAA Business Associate Addendum incorporated into these Terms as **Exhibit B** (or an existing HIPAA Business Associate Agreement between you and Nox if one is in place as of the Effective Date).

**If your Territory is Canada**, you represent and warrant to Nox that you have provided all necessary notices to, and obtained and will maintain all permissions, authorizations and appropriate consents from your patients required under all applicable federal and provincial legislation and related regulations for the collection, transmission, storage, retrieval, access, use and/or disclosure of personal information and personal health information of patients for the provision of Nox Connect Services. You will be responsible for determining patients' eligibility, coverage and replacement schedules for patients supplies. We will provide Nox Connect Services in compliance with the Personal Information and Personal Health Information Addendum incorporated into these terms as **Exhibit C**.

**If your Territory is the EEA, Switzerland and the UK**, we will provide the Nox Connect Services in relation to personal data (including, but not limited to, personal health data) of your patients in compliance with the data protection laws of the EEA, Switzerland and the UK (as applicable) and the Data Processing Agreement incorporated into these Terms as **Exhibit D**. You represent and warrant that you are solely responsible for establishing, and have established, the valid legal basis under applicable data protection laws of the EEA, Switzerland or the UK (as applicable) (“**Valid Legal Basis**”) for the collection, transmission, storage, retrieval, access, use and/or disclosure of all personal data of patients which you enter into, and/or access through, the Nox Connect Services. Further, you acknowledge and agree that you are solely responsible for providing all necessary notices to, and (where necessary) for procuring the Valid Legal Basis from, patients for the collection, transmission, storage, retrieval, access, use and/or disclosure of all personal data of those patients which you enter into, and/or access through, the Nox Connect Services.

**If your Territory is in Australia**, you represent and warrant to Nox that you have provided all necessary notices to, and have obtained and will maintain all permissions, authorizations and appropriate consents from your patients as required under the *Privacy Act of 1988* and the Australian Privacy Principles, for the collection, transmission, storage, retrieval, access, use and disclosure of personal information as required for the provision of Nox Connect Services (including in respect of interstate and international transfers of personal information which may be required in the provision of the Services). We will provide Nox Connect Services in compliance with the Addendum incorporated into these terms as **Exhibit E**.

**If your Territory is anywhere else in the world**, you represent and warrant to Nox that you have provided all necessary notices to, and obtained and will maintain all permissions, authorizations and appropriate consents from your patients required under all applicable legislation and related regulations for the collection, transmission, storage, retrieval, access, use and/or disclosure of personal information and personal health information of patients for the provision of the Nox Connect Services. You will be responsible for determining patients' eligibility, coverage and replacement schedules for patients' supplies.

## 7. Equipment and Software Requirements

You will supply and maintain equipment to access Nox Connect Services. Specifically, you agree to use appropriate software per Nox's minimum system requirements to access Nox Connect Services.

## 8. Access

To access the Nox Connect Services Nox or you must create, add, edit and inactivate user accounts, passwords and access capabilities (“**Access Codes**”) in accordance with the Documentation. You are responsible for all user accounts and Access Codes created by you and/or on your behalf (including, but not limited to, the accuracy of all information provided by you or on your behalf in the creation of user accounts).

Unless otherwise agreed with Nox in writing, user accounts may only be created and maintained for your Authorized Users solely for the purposes of providing services to you or your affiliated companies. If you permit the creation of user accounts for other third parties to access and use the Nox Connect Services without our express written permission, Nox may elect to terminate your access to the Nox Connect Services (upon prior written notice), or the applicable Nox affiliate that sells to you may elect to charge you for providing access to those third parties through those third-party user accounts. You are responsible for any fees incurred by such third parties who you permit to access the Nox Connect Services through user accounts created by you or on your behalf.

Access Codes are required to access Nox Connect Services. You will keep all Access Codes created by you and/or on your behalf confidential to prevent unauthorized access and to prevent unauthorized use of Nox Connect Services.

You will protect the security of Access Codes created by you and/or on your behalf and other means of identification for access to, and use of, the Nox Connect Services, including as required by applicable laws and regulations.

Unless otherwise authorized by Nox in writing: (i) only one user account may be created per user; (ii) a user account may only be used by the individual for whom the user account is created and may not be shared with any other individual; and (iii) you will immediately disable an Authorized User's account when they no longer qualify as an Authorized User.

We reserve the right to disable your or your organization's access to the Nox Connect Services and notify you of the same, if we reasonably believe your Access Codes have, or may have been, obtained in an illegal or unauthorized manner or are being used, or may be used, by any unauthorized person(s).

You are responsible for the acts and omissions of each user of a user account created by you and/or on your behalf (including, but not limited to, compliance with these Terms) as if they were your acts or omissions.

You agree to pay the applicable agreed service fee(s) for Nox Connect pursuant to the order placed by you with Nox or its authorized distributor.

## **9. Customer Responsibility and Restrictions**

You are responsible for all of the equipment and software required to access and use Nox Connect Services. Nox reserves the right to terminate your access to the Nox Connect Services, or any portion thereof, if not accessed for six consecutive months after providing you with prior notice in advance of such termination. If we exercise this right, Nox will refund any fees paid by you which are attributable to the unexpired portion of the period for which you paid those fees following termination.

You will notify us immediately if you believe your account and/or your Access Code(s) have been accessed, taken or used without your permission, or if there is a suspected or actual violation of the security of the Nox Connect Services. In addition, you will inform us immediately in writing of the need to deactivate an Access Code or user account due to potential or actual security concerns or for any other reason.

You agree to immediately report to Nox the discovery of any type of discrepancy, anomaly or error detected in information obtained from, or delivered to, the Nox Connect Services. You will also immediately report to Nox the discovery of any virus or corruption in the Nox Connect Services or on your own equipment used to connect to or otherwise access the Nox Connect Services that potentially affect or do affect the Nox Connect Services. Any malicious attacks from a Customer site will be addressed to protect Nox systems, including blocking or terminating access or connections to stop the attack, and you agree to provide all reasonable assistance and cooperation to Nox in relation to any such attacks, as soon as requested by Nox.

You must notify us within 48 hours if you suspect a data breach has occurred in respect of the Nox Connect Services.

As a condition to the use of, and access to, the Nox Connect Services, you agree that you will not, and will not permit any Authorized User or other third party to: (i) access or attempt to access the Nox Connect Services except as expressly provided in these Terms; (ii) use the Nox Connect Services in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Nox Connect Services; (iii) use automated scripts to collect information from or otherwise interact with the Nox Connect Services; (iv) alter, modify, reproduce, or create derivative works of the Nox Connect Services; (v) distribute, sell, resell, lend, loan, lease, license, sublicense or transfer any rights to access or use the Nox Connect Services or otherwise make the Nox Connect Services available to any unauthorized third party; (vi) reverse engineer, disassemble, decompile, or otherwise attempt to derive the method of operation of the Nox Connect Services; (vii) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Nox Connect Services; (viii) interfere with the operation or hosting of the Nox Connect Services; or (ix) alter, obscure, or remove any copyright, trademark, or any other notices that are provided on or in connection with the Nox Connect Services.

## **10. Prohibited Locations for Use**

You represent and warrant that you will use Nox Connect Services only in settings and locations that are approved by the applicable regulatory authority in your Territory for such use.

You will not access and/or use the Nox Connect Services for any patient whose primary residence is outside the Territory or with Devices located outside the Territory, without Nox's prior written consent (such consent not to be unreasonably withheld).

## **11. Nox Responsibility**

Nox represents and warrants that the Nox Connect Services will perform in substantial conformance with the Documentation.

Neither we, nor our agent(s) will be liable for any loss that arises, to the extent it is caused by or contributed to the following:

- If you have not properly followed the Nox Connect Services instructions on how to set up and access your account and/or retrieve and view data;
- If your internet access, equipment and/or software were not working properly and this problem was or should have been apparent to you when you attempted to access the Nox Connect Services or in the event of failure by you to comply with your obligations in **Section 8 (Access)** or **Section 9 (Customer Responsibility and Restrictions)**; or
- In circumstances more particularly described in **Section 25 (Force Majeure)** of these Terms.

## **12. Updates, Upgrades and Support**

The Nox Connect Services interoperate with certain software included on Physical Devices or with Digital Devices ("**Device Software**") and licensed to the owner/user of those Devices. The Device Software may automatically download updates and upgrades from or relating to the Nox Connect Services to the Device Software. Such downloads may be done by various means including, but not limited to, using wireless technology and/or cellular networks and combinations of various wireless technologies and services. Such updates and upgrades to the Device Software might include, without limitation, bug fixes, error corrections, security patches, and new versions and releases of the Device Software that may include changes to existing features or functions and/or the addition of new features and functions and improve access to and use of the Nox Connect Services in conjunction with the Device Software. Device Software is owned by or licensed to Nox. Neither the Device Software nor any intellectual property rights in the Device Software are sold or assigned by Nox.

We may, on a regular basis, perform maintenance, modifications, upgrades or other refinements to the Nox Connect Services. Such works may result in interrupted service or errors in the Nox Connect Services. If we anticipate an interruption to the Nox Connect Services, we will make reasonable attempts to provide prior notice of such interruptions but cannot guarantee that such notice will be provided. If we do not anticipate an interruption to the Nox Connect Services, we may not provide you prior notice.

## **13. Use and Archival of Data**

You and/or your Authorized Users will have access to any Customer Data, Patient Data and corresponding Device Data so long as these Terms remain active. Specifically, if you discontinue

purchases from Nox, breach any of your obligations to Nox, or if any of your accounts or these Terms are terminated for any reason, then, where permitted by applicable law, your access to the Nox Connect Services may be modified, suspended, reassigned, or terminated by Nox (acting reasonably).

Furthermore, you agree that Nox may enable system tracking technology, including, for example, for inventory control and/or channel verification purposes. You agree that Nox Connect Services are not intended to be a permanent medical record archive or storage system. You acknowledge and agree that it is your responsibility to download, back-up or otherwise retain any data transmitted to or entered using the Nox Connect Services and to store such data separately within your own records. In addition, you are solely responsible for archiving such data or otherwise complying with medical record policies and procedures required by applicable law. Nox does not provide any services related to archival of data.

#### **For users in the EEA, Switzerland and the UK**

To the extent necessary, you grant Nox's support services in the EEA, Switzerland and the UK the permission to access Customer Data, Patient Data and corresponding Device Data for the purposes of operating and supporting Nox Connect Services.

Furthermore, Nox will process Customer Data in accordance with the Privacy Notice, and Patient Data and Device Data in accordance with the Data Processing Agreement incorporated into these Terms in **Exhibit D**.

#### **For users anywhere outside the EEA, Switzerland and the UK**

To the extent necessary, you grant Nox permission to use Customer Data, Patient Data and Device Data for the purposes of operating and supporting Nox Connect Services; and (without prejudice to **Exhibit B** and **Exhibit C**) De-Identified Data for our own use, including statistical analyses, surveys and research (such as clinical and market research), to enhance existing and develop new products and services, for benchmarking and analytics as well as any other purposes in accordance with applicable law. You are responsible to obtain any necessary consent from patients for Nox's use of Patient Data, Device Data and De-Identified Data in accordance with these Terms.

As used in these Terms, “**De-Identified Data**” means data that has been de-identified in accordance with 45 CFR 164.514 (or other applicable law if outside the United States) such that the data does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual.

### **14. Intellectual Property Rights and Confidential Information**

Nox Connect Services are the proprietary property of Nox. Nox Connect Services comprise Intellectual Property Rights, all of which will remain the exclusive property of Nox, a Nox affiliate, and/or their respective licensors. You and your Authorized Users, patients, employees, agents and representatives will use Nox Connect Services as provided in these Terms. Except as otherwise disclosed, Nox owns all rights, title, and interest in and to all Intellectual Property Rights worldwide in and to Nox Connect Services.

You and Nox acknowledge and agree that the Nox Connect Services and any information relating thereto (excluding Customer Data and Patient Data) are Nox's confidential information (“**Nox Confidential Information**”). Customer Data and Patient Data are Customer’s confidential information (“**Customer Confidential Information**”).

Neither party will use the other party’s Confidential Information for any purpose not expressly permitted or contemplated by these Terms and will only disclose Confidential Information to its employees and Authorized Users (in the case of Customer) who have a need to know such Confidential Information and who are under a duty of confidentiality no less restrictive than what is imposed by these Terms.

Each party agrees to protect the other party’s Confidential Information in the same manner as it protects its own Confidential Information of a similar nature and with no less than reasonable care. Upon termination of these Terms, a party shall cease using the other party’s Confidential Information and shall promptly return, or certify in writing to the other party that it has destroyed, all relevant Confidential Information, with the exception of any of Confidential Information that it is necessary to keep for legally required purposes.

The obligations in this **Section 14** will not apply to any information which a party can demonstrate to the reasonable satisfaction of the other party: (i) is or becomes available to the public other than by breach by it or any third-party of these Terms; (ii) is rightfully received by a party from a third-party without confidential limitations; (iii) is independently developed by a party without access to the other party’s Confidential Information; (iv) is known to a party without any restriction on its use or disclosure prior to first receipt of it from the other party; or (v) is disclosed as required by a court order (in which case the party subject to the court order agrees to provide the other party with notice of such court order and reasonably cooperate with Nox, if requested, to challenge or seek to limit the court order).

## **15. Warranty Disclaimer**

Nox does not and will not provide medical advice or services to you, your Authorized Users or your patients. Unless otherwise specified in the Documentation content available through Nox Connect Services is solely for informational and educational purposes. Neither the content nor any reports from Nox Connect Services are to be used as a substitute for the professional judgment of healthcare providers in diagnosing and treating patients.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EXCEPT AS PROVIDED IN THESE TERMS (INCLUDING **SECTION 11** ABOVE), NOX CONNECT SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RESULTS, ACCURACY, COMPLETENESS, ACCESSIBILITY, COMPATIBILITY, SECURITY, FREEDOM FROM COMPUTER VIRUS OR CONTINUED AVAILABILITY, AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF NOX CONNECT SERVICES IS WITH YOU. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THEREFORE THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

Nox does not warrant that the functions contained in the Nox Connect Services will meet your requirements or that its operation will be uninterrupted or compatible with the other software or hardware of your systems. NOX'S SOLE OBLIGATION OR LIABILITY UNDER THIS SECTION AND THE FOREGOING LIMITED WARRANTY IS THE REPAIR OR REPLACEMENT OF THE NOX CONNECT SERVICES, OR AT NOX'S DISCRETION, REFUND OF SERVICE FEES PAID BY YOU FOR NOX CONNECT SERVICES IN THE TWELVE (12) MONTHS PRECEDING SUCH AN EVENT.

## **16. Limitation of Liability**

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT WILL NOX BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, LOSS OF PROFITS OR LOST SAVINGS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE ARISING OUT OF THESE TERMS OR CONNECTED IN ANY WAY WITH THE USE, MISUSE OR INABILITY TO USE NOX CONNECT SERVICES, EVEN IF NOX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SHOULD WE HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY DIRECT LOSS, HARM OR DAMAGE, (EXCEPT INSURED CLAIMS), OR IF REQUIRED BY APPLICABLE LAW FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, THE TOTAL LIABILITY OF NOX FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE SERVICE FEES YOU HAVE PAID TO US FOR NOX CONNECT SERVICES DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO THE CLAIM; PROVIDED THAT, IN THE EVENT OF A BREACH OF THE APPLICABLE EXHIBITS TO THESE TERMS (IF ANY), NOX'S LIABILITY WILL NOT EXCEED \$3,000,000.00 USD. YOU UNDERSTAND AND ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE YOU ACCESS TO NOX CONNECT SERVICES. THE LIMITATIONS PROVIDED IN THIS SECTION WILL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

Your exclusive remedy in the event of the complete and unrecoverable failure of Nox Connect Services to operate or perform is limited to refunding the fees you have paid for Nox Connect Services during the 12 months immediately preceding the date of such failure.

Nox Connect Services relies on third-party products and services to provide parts of the Nox Connect Services. These third-party products and services are beyond our control, and they may not operate in a reliable manner or be available 100% of the time, or become obsolete due to newer technology. Nox is not responsible for any damages or losses, whether foreseeable or remote, due to the operation of third-party products.

Nothing in these Terms limits or excludes any liability that cannot be excluded or limited under applicable laws.

## 17. Indemnity

Each party to these Terms (the “**Indemnifying Party**”) will defend the other party (the “**Indemnified Party**”) and its officers, directors, and employees (“**Related Parties**”) from and against any claim, allegation or action brought against the Indemnified Party by a third-party (which is not a Related Parties) (each, an “**Action**”) to the extent relating to, resulting from, or arising out of (i) the breach of these Terms, or any Exhibit(s) by the Indemnifying Party, (ii) use of the Nox Connect Services or any Customer Data, Patient Data or Device Data (including Customer’s failure to obtain all permissions, authorizations or consents from each patient required under applicable law), or (iii) the gross negligence or willful misconduct of the Indemnifying Party in the performance (or failure to perform) any of its obligations under these Terms. The Indemnifying Party will further pay those losses, liabilities, damages, fees, expenses, and costs (including reasonable attorneys' fees and court costs) (“**Losses**”) finally awarded against the Indemnified Party or one of its Related Parties in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable.

All obligations of each party to defend or indemnify the other party or any Related Party under these Terms are conditioned upon the Indemnified Party providing the Indemnifying Party with: (i) prompt notice of any such claim for indemnification or defense after receiving notice thereof; (ii) the option to take sole control over the defense and settlement of such claim, provided that any settlement that will require the Indemnified Party to assume any liability, other than the payment of monies, will be subject to the Indemnified Party’s prior written consent; and (iii) reasonable assistance in such defense or settlement (at the indemnifying or defending Party’s expense).

## 18. Relationship of the Parties

Nothing in these Terms will be construed to constitute either party as the partner, employee, or agent of the other, except that if Nox contacts any patient at your request or as required by our obligations to you under these Terms and based on the consent you obtained from the patient, Nox will be considered your agent authorized to contact the patient within the scope of consent provided by the patient. Neither party has any authority to bind the other in any respect. Each party will remain an independent contractor, responsible only for its own actions. Each party will conduct all of its business in its own name and in such manner as such party may see fit, at its own expense.

## 19. Governing Law

These Terms will be governed by and construed in accordance with the laws of the Customer’s Territory without regard or giving effect to its conflict of laws principles.

## 20. Dispute Resolution

Any controversy or claim relating to these Terms, including the construction or application of these Terms, will be finally settled by binding arbitration under the prevailing international arbitration rules for the applicable Territory shown in **Exhibit F**. The language of the arbitration shall be English. The tribunal shall consist of one (1) arbitrator. All proceedings and awards shall remain confidential unless disclosure is required by law.

## **21. Notices**

Notices from Nox shall be in writing and may be sent by email or posted by any other method that Nox reasonably determines provide appropriate notice. Notices from you shall be in writing and may be sent by email to [info@noxmedical.com](mailto:info@noxmedical.com). Notices from Nox to you shall be effective: (i) in the case of notices by email when sent to the Customer Notice Email Address (as defined herein) or to any other email address known or made available to Nox by you or on your behalf; or (ii) in the case of postings by other methods deemed reasonable by Nox, 10 business days after such notices are sent in the manner reasonably determined by Nox. Notices from you to Nox shall be effective when received by Nox.

## **22. Assignment**

You may not assign, novate or otherwise transfer any of your rights or obligations under these Terms without our prior written consent (such consent not to be unreasonably withheld), and any such attempt to do so without our consent will be null and void.

We may in our discretion assign, novate, subcontract or otherwise transfer without further consent any of our rights and delegate any of our duties under these Terms to a company affiliated with us or to any other party who acquires all or substantially all of the assets or at least 51% control (which may be by an acquisition of voting stock or merger) of us or our parent. Where we do so, we will use reasonable endeavors to notify you within a reasonable time following the sale or disposal.

## **23. Severability and Surviving Provisions**

If any portion of these Terms is held to be invalid or unenforceable, the remaining portions of these Terms will remain in full force and effect. Any invalid or unenforceable portions will be deemed modified to the extent necessary to render such term or provision enforceable while still preserving to the fullest permissible extent the intent of the original provision. If such construction is not possible, the invalid or unenforceable provision(s) will be severed from these Terms but the rest of these Terms will remain in full force and effect.

The provisions of these Terms that by their express wording or inherent nature are intended to survive the termination of these Terms shall survive their termination, including, but not limited to, the provisions contained in **Sections 14, 16, 17, 19, 20, 21, 22 and 26**.

## **24. Modification of Terms**

These Terms and the Nox Connect Services are subject to change from time to time. In such cases, Nox will provide you with details of any changes to these Terms and you will be asked to reaccept them. If you do not agree to the modified Terms, we may elect to suspend or terminate your access to, and use of, the Nox Connect Services or to the applicable functionality, feature or product, and (if applicable) refund any corresponding fees paid by you which are attributable to the unexpired portion of the period for which you paid those fees.

## **25. Force Majeure**

Nox will not be liable for delays or failures in performance due to any cause beyond our reasonable control including labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, power outages, strikes or other labor unrest, delays caused by payees, pandemics, fires, floods, earthquakes, storms, or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism or war.

## **26. Waiver and Entire Agreement**

A waiver of any term or provision of these Terms at any time will not be deemed a waiver of the term or provision in the future.

These Terms (and the documents referred to herein) constitute the full and final agreement between you and Nox and supersede all prior negotiations, agreements, discussions and understandings between the parties, if any, whether oral or in writing, with respect to the subject matter hereof, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in these Terms. You further acknowledge that no terms or conditions, usages of trade, courses of dealing or agreements purporting to modify, vary, explain or supplement these Terms shall be binding on Nox unless specifically agreed to in writing by an authorized representative of Nox. For the avoidance of doubt, nothing in these Terms is intended to exclude liability for fraud or fraudulent misrepresentation or any other representation which cannot be excluded by law.

**If your Territory is in Canada:** You acknowledge that if you are a resident of Quebec, you were provided with the French version of these Terms and that, after first having had the opportunity to examine the French version, you have expressly requested to be bound only by the English version of these Terms and that all documents and communications related to it be drawn up in English exclusively. Vous reconnaissez que si vous êtes un résident du Québec, une version en français des présentes Conditions d'abonnement vous a été remise et qu'après avoir eu la possibilité de prendre connaissance de la version en français, vous avez expressément demandé d'être lié uniquement par la version en anglais des présentes Conditions d'abonnement et que tous les documents et communications s'y rattachant soient rédigés exclusivement en anglais.

**TABLE 1**

<b>Territory</b>	<b>Location of Secure Data Server</b>
United States	United States
Canada	Canada
Australia	Australia
European Economic Area, Switzerland or the United Kingdom	Germany

## EXHIBIT A

### THIS EXHIBIT IS APPLICABLE TO CUSTOMERS WHOSE ORDERS INCLUDE SOFTWARE AS A MEDICAL DEVICE

#### Medical Device Addendum

This Medical Device Addendum (the “**Medical Device Addendum**”) supplements the Nox Connect Services – Terms of Use (the “**Terms**”) and applies to any use of components of the Nox Connect Services that are Medical Device Services. All terms defined in the Terms and used in this Addendum shall have the same meanings as in the Terms. By accessing or using the Medical Device Services, the Authorized User agrees to the terms set forth in this Addendum, which shall prevail in the event of any conflict with the Terms.

#### 1. Regulatory Status and Intended Use

Authorized User acknowledges that Medical Device Services is a medical device and agrees to use it solely in accordance with its intended use, as specified in the applicable Products Instruction for Use (“**Product Instruction for Use**”) which can be found at <https://noxmedical.com/resources-nox-connect>. The Medical Device Services is not intended for any purpose other than those expressly stated in the applicable Products Instruction for Use.

#### 2. Warranty Disclaimer

The Medical Device Services is not a substitute for professional medical judgment or diagnosis. Authorized Users are solely responsible for analyzing any data generated from the Medical Device Services based on their professional medical judgement. Any diagnosis, treatment, or other medical decision made based on such analysis of the output of the Medical Device Services is the sole and exclusive responsibility of the Authorized User. Nox does not guarantee the accuracy or applicability of the Medical Device Services’ other than what is stated in the applicable Product Instruction for Use.

#### 3. User Responsibilities and Training

Authorized Users are solely responsible for ensuring that any individuals who operate or interpret output from the Medical Device Services are properly trained and qualified. Misuse, including among other things unauthorized and unqualified use, of the Medical Device Services or failure to follow instructions may result in inaccurate data which could potentially lead to patient harm.

#### 4. Limitation of Liability

In addition to the limitations provided in the Terms, including, without limitation, Section 16, to the maximum extent permitted by applicable law, Nox shall not be liable for any injury, loss, or damage arising out of or related to (a) use of the Medical Device Services outside its labeled indications or in violation of the terms of this Medical Device Addendum; (b) integration with third-party devices, software, or hardware systems other than as specified in the applicable

Products Instruction for Use; or (c) data interpretation, including diagnosis or treatment, by the Authorized User.

## **5. Compliance with Laws**

Authorized Users agree to comply with all applicable laws and regulations relating to healthcare, data protection, and medical devices in the jurisdictions where they use the Medical Device Services.

## **6. Software Updates and Recalls**

Nox may issue updates, patches, safety notices or field corrective actions for the Medical Device Services as part of ongoing regulatory obligations. Nox reserves the right to modify, suspend, or deactivate the Medical Device Services in response to safety concerns, cybersecurity risks, recalls, or to comply with applicable regulatory requirements. Nox will notify Authorized Users of such actions in accordance with applicable regulations and these Terms.

## **7. Survival and Incorporation**

This Addendum shall survive termination of the Terms and is incorporated by reference into the Terms.

## EXHIBIT B

### THIS EXHIBIT IS APPLICABLE TO CUSTOMERS WHOSE TERRITORY IS UNITED STATES

#### HIPAA Business Associate Addendum

**THIS HIPAA BUSINESS ASSOCIATE ADDENDUM** (the “**HIPAA Addendum**”) is entered into as of the Effective Date of Customer’s initial Order by and between Customer (“**Covered Entity**”), and Nox Medical, LLC (“**Nox**”), a Delaware corporation, on behalf of itself and its affiliates, if any (individually and collectively, the “**Business Associate**”), and adds to any current or future agreement(s) for services entered into between Business Associate and Covered Entity which involve the creation, use, receipt, or disclosure of PHI (the “**Agreement**”).

Pursuant to the Agreement, Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from, or created or received by, Business Associate on behalf of Covered Entity (“**PHI**”). Therefore, if Business Associate is functioning as a business associate to Covered Entity, Business Associate agrees to the following terms and conditions set forth in this HIPAA Addendum.

1. **Definitions and Regulatory References.** For purposes of this HIPAA Addendum, the terms used herein, whether or not capitalized, unless otherwise specifically defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations (“**HIPAA**”, inclusive of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and 164), and the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations (“**HITECH**”). A reference in this HIPAA Addendum to any provision of a law or regulation means the provision as then in effect, amended, or implemented via regulation.
2. **Compliance with Applicable Law.** The parties acknowledge and agree that Business Associate shall comply with its obligations under this HIPAA Addendum and with all obligations of a business associate under HIPAA, HITECH, and other related laws and regulations, as they exist at the time this HIPAA Addendum is executed and as they are amended, for so long as this HIPAA Addendum is in place.
  - (a) Pursuant to HITECH §§ 13401(a) and 13404(a) and the HIPAA implementing regulations, the provisions of HITECH that impose requirements and standards on covered entities with respect to security and privacy shall also be applicable to Business Associate, and shall be and by this reference hereby are incorporated into this HIPAA Addendum. All other provisions of HITECH that are applicable to Business Associate, and its relationship with Covered Entity under this HIPAA Addendum and the Agreement, shall be and by this reference hereby are incorporated into this HIPAA Addendum.
3. **General Limitation on Uses and Disclosures of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors and agents do not, use or disclose PHI in any manner that is not permitted or required by the Agreement, this HIPAA Addendum, or

required by law. Business Associate may also not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 of HIPAA if done by Covered Entity, except, only if such use or disclosure is specifically allowed in Sections 5 and/or 6 below, Business Associate may use or disclose PHI for Business Associate's own management and administration and legal responsibilities or for data aggregation services. Further, Business Associate may not use or disclose PHI for marketing or sales purposes, unless such marketing and/or sale is approved in writing by Covered Entity and is otherwise conducted in compliance with HIPAA.

4. **Permissible Use and Disclosure of Protected Health Information.** Business Associate may only use and disclose PHI as is specifically and minimally necessary to carry out its duties to Covered Entity pursuant to the terms of the Agreement and as otherwise allowed by this HIPAA Addendum.
5. **Uses and Disclosures for Management and Administration.** Business Associate may use and disclose PHI: (a) for its own proper management and administration; and/or (b) to carry out its legal responsibilities.
6. **Data Aggregation Services.** Business Associate may provide data aggregation services related to the health care operations of Covered Entity.
7. **De-Identified Data.** Business Associate may use PHI to de-identify the PHI in accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c).
8. **Minimum Necessary.** All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the HIPAA Privacy Rules, and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.
9. **Required Safeguards to Protect PHI.** Business Associate agrees that it will implement appropriate safeguards in accordance with the HIPAA Privacy and Security Rules to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this HIPAA Addendum. In doing so, without limitation, Business Associate shall comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI.
10. **Reporting of Improper Uses and Disclosures of PHI and Security Incidents.** Business Associate shall report to Covered Entity any security incident, or any use or disclosure of PHI which is not provided for in this HIPAA Addendum or is otherwise violative of HIPAA, of which it becomes aware. This provision applies regardless of whether such unauthorized use or disclosure was by Business Associate, its officers, directors, employees, agents, subcontractors, or by any third party. For purposes of this HIPAA Addendum, a "security incident" shall not include a request-response utility used to determine whether a specific Internet Protocol [IP] address, or host, exists or is accessible (i.e., a "ping").
11. **Securing PHI and Reporting of Breaches of Unsecured PHI.**
  - (a) To the extent reasonable and appropriate for its business operations, and to the extent required by its HIPAA Security Rule risk analysis required under HITECH § 13401(a) and

45 C.F.R. § 164.306 et seq., Business Associate shall encrypt PHI that it maintains and transmits such that it is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5 (i.e., ensure that the PHI is not “Unsecured PHI” as defined in 45 C.F.R § 164.402).

(b) Business Associate shall promptly report to Covered Entity a Breach of Unsecured PHI, in accordance with 45 C.F.R. §§ 164.400-414. Business Associate shall cooperate with Covered Entity’s breach notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities. At Covered Entity’s express written election, and then subject to Covered Entity’s direction, Business Associate shall be responsible for fulfilling the Breach notification obligations set forth in 45 C.F.R. §§ 164.400-414.

(i) Business Associate acknowledges and agrees that the foregoing provision does not in any way limit Business Associate’s requirements to report security incidents and unauthorized uses/disclosures to Covered Entity in accordance with Section 10 above. Further, Business Associate acknowledges that Covered Entity shall make the final determination as to whether any particular acquisition, access, use, or disclosure of PHI in violation of the HIPAA privacy rules meets the definition of Breach at 45 C.F.R. § 164.402, or is excluded from the same pursuant to the enumerated Breach exclusions or a risk assessment, all in accordance with 45 C.F.R. § 164.402. Business Associate shall not provide notices to patients and the government of Breaches of Unsecured PHI, unless directed to by Covered Entity in the manner set forth above, after Covered Entity has determined that the HIPAA regulatory definition of “Breach” has been met with respect to Unsecured PHI.

12. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of an unauthorized use or disclosure of PHI by Business Associate, its employees, agents, contractors, or subcontractors in violation of the requirements of this HIPAA Addendum or HIPAA, including, but not limited to, compliance with any state law or contractual data breach requirements.
13. **Business Associate Agreements Required with Third Parties.** Business Associate shall enter into a written agreement with any agent or subcontractor of Business Associate that will have access to PHI, or who will create, receive, maintain, or transmit PHI on behalf of Business Associate. Pursuant to such written agreement and 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), the agent or subcontractor shall agree to be bound by the same restrictions, terms, conditions, and requirements that apply to Business Associate under this HIPAA Addendum with respect to such PHI.
14. **Access to Information.** Within 10 days of a request by Covered Entity, Business Associate shall make available PHI in a Designated Record Set, to Covered Entity (or, at Covered Entity’s direction, to an individual or the individual’s designee), as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. § 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within 5 days forward such request to Covered Entity.

15. **Availability of PHI for Amendment.** Within 10 days of receipt of a request from Covered Entity, Business Associate shall make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within 5 days forward such request to Covered Entity.
16. **Documentation and Accounting of Disclosures.** Business Associate shall maintain, and make available within 10 days of a request by Covered Entity, the information required to provide an accounting of disclosures, to Covered Entity (or, at Covered Entity's direction, to an individual or the individual's designee), as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within 5 days forward such request to Covered Entity.
17. **Business Associate Performing Covered Entity's Obligations (If Applicable).** To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
18. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate's response to such request. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within 5 days of receipt of such request.
19. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with HIPAA.
20. **Term and Termination.** The Term of this HIPAA Addendum shall be effective as of the effective date of the underlying Agreement(s), and shall terminate on the termination or expiration of the last of the underlying Agreement(s), or on the date Covered Entity terminates for breach/cause as authorized below, whichever is sooner. In addition to any other rights Covered Entity may have in the Agreement, this HIPAA Addendum or by operation of law or in equity, Covered Entity may: (a) immediately terminate for cause the Agreement and this HIPAA Addendum if Covered Entity determines that Business Associate has violated a material term of HIPAA or this HIPAA Addendum; or (b) at Covered Entity's option, Covered Entity may permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's option to have cured a breach of this HIPAA Addendum shall not be construed as a waiver of any other rights Covered Entity has in the Agreement, this HIPAA Addendum or by operation of law or in equity.
21. **Effect of Termination of Addendum.** Upon the termination or expiration of this HIPAA Addendum for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall do the following:

- (a) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities or for which it is not feasible for Business Associate to return or destroy;
- (b) Return to Covered Entity, or, if agreed to by Covered Entity, destroy, other remaining PHI that the Business Associate still maintains in any form, recorded on any medium, or stored in any storage system;
- (c) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- (d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth in this HIPAA Addendum which applied prior to termination; and
- (e) Return to Covered Entity, or, if agreed to by Covered Entity, destroy, the PHI retained by Business Associate when it is feasible to do so and the PHI is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The provisions of this Section shall apply to PHI that is in the possession of agents or subcontractors of Business Associate. Business Associate shall remain bound by the provisions of this HIPAA Addendum, which shall survive even after termination or expiration of the Agreement or HIPAA Addendum.

- 22. **Third Party Rights.** The terms of this HIPAA Addendum do not grant any rights to any parties other than Business Associate and Covered Entity.
- 23. **Changes in the Law.** The parties agree that this HIPAA Addendum shall be amended to include and incorporate amendments or revisions to HIPAA and/or HITECH, so that the parties remain in compliance with such amendments or revisions. All references to regulations or provisions of HIPAA and/or HITECH herein shall be deemed to also refer to any amendment or revision thereto and/or to any successor regulation.
- 24. **Interpretation and Conflicts.** Any ambiguity in this HIPAA Addendum shall be interpreted to permit compliance with HIPAA and HITECH. If there is any direct conflict between the Agreement and this HIPAA Addendum, the terms and conditions of this HIPAA Addendum shall control.

## EXHIBIT C

### THIS EXHIBIT IS APPLICABLE TO CUSTOMERS WHOSE TERRITORY IS CANADA

#### Personal Information and Personal Health Information Addendum

Customer and Nox have entered into one or more Agreements, including the Nox Connect Terms of Use (the “**Terms**”) under which Nox may collect, use, retain, store, disclose, de-identify and dispose of and otherwise process certain personal information (“**PI**”) and personal health information (“**PHI**”) of Customer's patients. Nox and Customer acknowledge that Customer is a “health information custodian,” “custodian,” “trustee” or “organization” (as those terms are defined under Privacy Legislation (as defined below) ) that provides PI and/or PHI of its patients to a Nox entity that is an “agent,” “information manager,” “affiliate,” “trustee” or “organization” (as those terms are defined under Privacy Legislation) as part of the provision of Nox Connect to and on behalf of Customer. Customer and Nox agree as follows with respect to the exchange of PI and/or PHI through use of Nox Connect or otherwise:

#### I. GENERAL PROVISIONS

**Section 1. Effect.** This Personal Information and Personal Health Information Addendum (“**Addendum**”) defines, supplements, modifies and amends the Terms with respect to PI and/or PHI. The terms and provisions of this Addendum will supersede any other conflicting or inconsistent terms and provisions in the Terms with respect to PHI and shall govern Nox's obligations with respect to all PI and/or PHI received from Customer.

**Section 2. Definitions.** All capitalized terms used herein that are not otherwise defined shall have the following meanings:

“**Breach**” means (a) the loss or misuse of PI and/or PHI, (b) the accidental, unauthorized and/or unlawful access, disclosure or handling of PI and/or PHI, or (c) any other act or omission that compromises the security, confidentiality and/or integrity of PI and/or PHI.

“**CASL**” means an Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23, commonly known as “Canada's Anti-Spam Legislation.”

“**Commercial Electronic Message**” has the meaning as assigned to the term in CASL.

“**Individual**” means the identified or identifiable individual whose PI and/or PHI is processed; an identifiable individual is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity. For the purposes of this Addendum, Individual includes a patient of the Customer.

“**Legal Action**” means any demand, claim, action, complaint, investigation or audit by a third party relating to the collection, use, retention, storage, protection, disclosure, de-identification, destruction

or other processing of PI and/or PHI in connection with Nox's services or as otherwise authorized under the Terms and this Addendum by Customer.

**"Privacy Legislation"** means applicable federal and provincial privacy and data protection legislation and the regulations enacted thereunder, including, but not limited to: Personal Information Protection and Electronic Documents Act, SC 2000, c 5; Personal Health Information Protection Act, 2004, SO 2004, c 3, Sch A; Personal Information Protection Act, SBC 2003, c 63; Personal Information Protection Act, SA 2003, c P-6.5; Personal Health Information Act, SNS 2010, c 41; The Personal Health Information Act, CCSM c P33.5; The Health Information Protection Act, SS 1999, c H-0.021; and an Act respecting the Protection of Personal Information in the Private Sector, CQLR c P-39.1.

**"PHI"** means any personal health information (as defined by Privacy Legislation) relating to an Individual, including, without limitation, electronic data and paper-based files that contain such information. PHI may include information such as patient name, date of birth, social insurance number, health identification numbers, and disease or treatment information.

**"PI"** means any personal information (as defined by Privacy Legislation) relating to an Individual (including any information that can be reverse-engineered, cross-linked or combined with other available information to identify an Individual), including, without limitation, electronic data and paper-based files that contain such information and depending on the applicable Privacy Legislation, may further include, without limitation, PHI. PI may include information such as name, address, telephone number, email address, and payment information.

**"Unsuccessful Security Incident"** means, without limitation, pings and other broadcast attacks on Nox's firewall, port scans, unsuccessful log-in attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Customer's electronic PI and/or PHI.

**Section 3. Amendment.** Nox and Customer agree to amend this Addendum to the extent necessary to allow either Nox and/or Customer to comply with Privacy Legislation as may be amended from time to time.

## II. OBLIGATIONS OF NOX

**Section 1. Collection, Use and Disclosure of PI and/or PHI.** Nox is permitted to collect, use, retain, store, disclose, de-identify or dispose of and otherwise process PI and/or PHI for purposes that a reasonable person would consider appropriate in the circumstances provided that such collection, use, retention, storage, disclosure, de-identification, disposal or other processing of PI and/or PHI is only as authorized under the Terms and this Addendum or otherwise by Customer (and by the Individual who is the subject of the PI and/or PHI, with such Individual's consent having been given to Customer), or as required by law. Nox shall not otherwise collect, use, retain, store, disclose, or dispose of any PI and/or PHI unless authorized by Customer. The parties agree that Nox may disclose PI and/or PHI to its affiliates (or other related entities), agents and subcontractors who will only use such PI and/or PHI for the same purposes as permitted by Nox in connection with Nox's services, the Terms or this Addendum. Nox shall not, and shall take reasonable steps to ensure that its directors, officers, employees, affiliates, subcontractors and agents do not, collect, use, retain, store, disclose, de-identify

or dispose of any PI and/or PHI received from Customer in any manner that would constitute a violation of Privacy Legislation.

Except as otherwise limited in the Terms or this Addendum and provided that Nox complies with Privacy Legislation and CASL, Customer permits Nox to collect, use, retain, store, de-identify, dispose of and otherwise process PI and/or PHI: (a) for performance, management and/or administration of Nox, Nox's services, the Terms or this Addendum; (b) to fulfill Nox's legal obligations in connection with Nox's services, the Terms or this Addendum; (c) to provide PI and/or PHI aggregation services; (d) to communicate with Customer and Individuals for the purposes of marketing Nox's new and existing products and services; (e) to develop and improve Nox's new and existing products and services; (f) as required or authorized by applicable law; and (g) as otherwise authorized by Customer in writing. Notwithstanding the foregoing, nothing herein shall permit Nox to send Commercial Electronic Messages to any person unless Nox has express or implied consent to do so in accordance with CASL (or an exception to CASL's consent requirements applies) and with Privacy legislation.

Except as otherwise limited in the Terms or this Addendum, Nox may disclose PI and/or PHI: (a) for performance management and/or administration of Nox, Nox's services, the Terms or this Addendum; (b) to fulfill Nox's legal obligations, if the disclosure is required by law; and (c) as otherwise authorized by Customer. Except where disclosure is required by law, Nox shall obtain reasonable assurances from the person to whom the PI and/or PHI is disclosed that: (i) the PI and/or PHI will remain confidential and will be used or further disclosed only as required to comply with the law or a binding order of a governmental body or for the purpose for which it was disclosed to the person; and (ii) the person agrees, as required by the applicable law, to notify Nox of known unauthorized access to PI and/or PHI that is subject to applicable data breach notification law where such access is caused by a confirmed breach of the person's security measures and renders misuse of the PI and/or PHI reasonably likely.

Notwithstanding any other provision contained in this Addendum, Customer expressly authorizes Nox to: (a) disclose PI and/or PHI for the purposes of treatment activities of a healthcare provider; (b) disclose PI and/or PHI to third-party service providers or subcontractors authorized pursuant to this Addendum for the payment activities of the third-party service provider or subcontractor; (c) disclose PI and/or PHI to the Institute for Clinical Evaluative Sciences, located in Ontario, Canada, for the purpose of investigating the correlation between sleep apnea or other respiratory conditions, and other chronic diseases; (d) disclose PI and/or PHI to third-party service providers or subcontractors authorized pursuant to this Addendum for healthcare operations activities of the entity that receives the PI and/or PHI, if each entity either has or had a relationship with the Individual who is the subject of the PI and/or PHI being disclosed, the PI and/or PHI pertains to such relationship and the disclosure is necessary for the third-party service provider or subcontractor to carry out its obligations; (e) disclose PI and/or PHI to third-party service providers or subcontractors that provide data hosting and/or storage services, including, without limitation, Amazon Web Services (if applicable); and (f) disclose PI and/or PHI with our corporate affiliates for the purposes set out herein; and (g) disclose PI and/or PHI as an asset in connection with a proposed or completed merger or sale (including transfers made as part of insolvency or bankruptcy proceeding) involving all or part of Nox or as part of a corporate reorganization or other change in corporate control.

**Section 2. Compilation of Reports; De-identification.** Notwithstanding any other provision contained in this Addendum, Customer expressly authorizes Nox to de-identify any and all PI and PHI for: (a) the purpose of generating reports for distribution to Customer; (b) the purpose of linking such de-identified data with other third-party databases for analytics; and (c) Nox's internal purposes, including to develop, improve, market and offer to Customer Nox's new and existing products and services.

**Section 3. Safeguards Against Misuse of Information.** Nox shall use appropriate administrative, technical and physical security safeguards to prevent the theft, loss and unauthorized access, copying, modification, use, disclosure or disposal of PI and/or PHI and shall comply with applicable provisions of Privacy Legislation in such regard.

**Section 4. Privacy Policies and Employee Training.** Nox shall maintain privacy policies in accordance with Privacy Legislation, which will include without limitation a process to respond to complaints arising under Privacy Legislation, and these policies will be made available for Customer's inspection on reasonable request. Nox shall educate its employees on Privacy Legislation and CASL, on handling PI and PHI in accordance with Privacy Legislation, and on Nox's privacy policies, and shall take reasonable steps to ensure employee compliance through staff training, confidentiality and data protection agreements and employee sanctions for material non-compliance. Nox shall take reasonable steps to ensure that its employees who are terminated, resign or no longer require access to PI and/or PHI from Customer return all PI and/or PHI and cannot, thereafter, access any applications, hardware, software, network and facilities belonging to either Nox or Customer.

**Section 5. Reporting of Breaches.** Nox will report to Customer if it becomes aware of any Breach of PI or PHI of Customer's patients if the Breach may reasonably be reportable pursuant to Privacy Legislation, including if it is reasonable in the circumstances to believe that the Breach creates a real risk of significant harm to an Individual. Nox shall, following discovery of such a Breach of PI and/or PHI, notify Customer of such Breach at the first reasonable opportunity. Such notice shall include the identity of each Individual whose PI and/or PHI has been, or is reasonably believed to have been, subject to a Breach and any other requirements as set out in Privacy Legislation. Nox's obligation to report Breaches under this section is not and will not be construed as an acknowledgement by Nox of any fault or liability with respect to any Breach including, but not limited to, with respect to any Legal Action relating to a Breach. Notwithstanding the foregoing, the parties acknowledge and agree that this section constitutes notice by Nox to Customer of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Customer shall be required.

**Section 6. Agreements by Third Parties.** Nox shall obtain and maintain a written agreement with each affiliate, agent or subcontractor that collects, holds, uses, communicates or discloses Individuals' PI and/or PHI on behalf of Nox. Under each such agreement, such affiliate, agent or subcontractor shall agree to restrictions and conditions that support Nox's obligations pursuant to this Addendum with respect to such PI and/or PHI.

**Section 7. Access to Information.** Subject to any restrictions under applicable laws, if Nox maintains a record of PI and/or PHI (as defined in Privacy Legislation) in connection with Nox's services, the Terms or this Addendum, upon request of Customer, Nox shall provide access to such record of PI and/or PHI to Customer, to the extent necessary for Customer to comply with its obligations under Privacy Legislation. If Nox receives a direct request from an Individual for access to PI and/or PHI,

subject to Nox's obligations pursuant to Privacy Legislation, Nox will verify the request and it will forward the request in writing to Customer to fulfill.

**Section 8. Availability of PI and/or PHI for Amendment.** Subject to any restrictions under applicable laws, if Nox maintains a record of PI and/or PHI in connection with Nox's services, the Terms or this Addendum, Nox agrees to make available such record of PI and/or PHI to Customer for amendment and correction, to the extent necessary for Customer to comply with its obligation under Privacy Legislation. Depending on an Individual's province or territory of residence, the Individual may be entitled to additional rights and choices regarding the processing of their PI or PHI. If Nox receives a direct request from an Individual for amendment or correction to that Individual's PI and/or PHI or an expressed wish of an Individual relating to their privacy rights or disclosure of that Individual's PHI, subject to Nox's obligations pursuant to Privacy Legislation, Nox will verify the request and will forward the request or expressed wish in writing to Customer to fulfill. Nox shall amend its records to reflect any amendments or corrections to PI and/or PHI under this section and will forward the amended or corrected PI and/or PHI to any third parties which may have received such PI and/or PHI under the terms and provisions of this Addendum within 30 days following receipt of such amendment or correction, or otherwise in accordance with Privacy Legislation.

**Section 9. Disclosure Log.** Nox shall maintain a log of access to, and disclosure by Nox and Nox's employees of PI and/or PHI in connection with Nox's services, the Terms or this Addendum and make such log available to Customer as and when reasonably requested.

**Section 10. Availability of Books and Records.** Nox agrees to make its internal practices, books and records relating to the use and disclosure of PI and/or PHI received from, or created or received by Nox on behalf of, Customer available to Customer for purposes of determining compliance with the Privacy Legislation. In addition, notwithstanding any other provisions of the Terms or this Addendum, if Nox uses PI and/or PHI to make a decision directly affecting an Individual based on automated processing, the records in respect of such decision shall be retained by Nox for at least three years after such a decision has been made or such longer period required by applicable law.

**Section 11. Remuneration in Exchange for PI and/or PHI.** Except for the purposes set forth in the Terms and this Addendum and as otherwise permitted or provided by law, Nox shall not directly or indirectly receive remuneration in exchange for any PI and/or PHI of an Individual.

**Section 12. Minimum Necessary.** Nox shall limit its collection, use or disclosure of PI and/or PHI to the minimum necessary to accomplish those purposes authorized under the Terms, this Addendum and otherwise by Customer, or as required by law, and will make PI and/or PHI available only to those employees and/or subcontractors of Nox who require access in order to fulfill such purposes.

**Section 13. Communication regarding Privacy Matters.** Nox shall provide Customer with the name of a contact person at Nox responsible for Nox's privacy compliance that is available to respond to inquiries or complaints regarding Nox's privacy practices, and Nox shall notify Customer within twenty-four (24) hours of any changes in the identity of the responsible person.

**Section 14. Retention of PI and/or PHI:** Nox will retain PI and PHI only for as long as is necessary for the purpose for which it was collected or as required or permitted by applicable law. Once PI and PHI is no longer required, it will be destroyed or de-identified. For greater certainty, Nox may retain

de-identified information and continue to use this information in accordance with this Addendum, the Terms and applicable law.

### III. OBLIGATIONS OF CUSTOMER

**Section 1. Disclosure of PI and/or PHI to Nox.** The Customer shall disclose PI and/or PHI to Nox only as permitted under Privacy Legislation and only to the extent such PI and/or PHI is necessary for Nox to perform Nox's services or fulfill Nox's legal obligations in connection with Nox's services, the Terms or this Addendum.

**Section 2. Disclosure of PI and/or PHI to Third Parties.** By entering into the Terms, Customer agrees to the collection, storage, use and disclosure of PH and PHI as set out in the Terms and this Addendum, including Nox's disclosure of PI and PHI to Nox's subcontractors, subject to the conditions set out in this Addendum.

**Section 3. Consent of Individuals.** The Customer shall provide all necessary notices to and obtain all necessary consents from Individuals, each in a form or forms that comply with all applicable laws (including, without limitation, Privacy Legislation and CASL), in order for Customer and Nox to collect, use, retain, store, de-identify, disclose or dispose of and otherwise process PI and/or PHI for all purposes permitted by the Terms, this Addendum and otherwise by Customer (including, without limitation, to permit Nox to perform Nox's services and to otherwise satisfy its obligations under the Terms and this Addendum) or as otherwise permitted or required by law. Customer shall keep appropriate records of such notices and consents and shall promptly provide copies of such records to Nox upon request. If an Individual withdraws their consent to the collection, storage, use and disclosure of their PI or PHI or in connection with Nox services, Customer will immediately notify Nox.

**Section 4. Hosting of PI and/or PHI outside Canada.** Customer agrees that Nox and its affiliates, agents, subcontractors and service providers may transfer PI and/or PHI and access, retain, store, use, de-identify, dispose of and otherwise process PI and/or PHI outside Canada, including, without limitation, in the United States. Customer shall notify Individuals that their PI and/or PHI: (a) may be transferred to, accessed, retained, stored, used, de-identified, disposed of and otherwise processed by Nox and its affiliates, agents, service providers and subcontractors outside Canada, including the United States, for the same purposes as Nox in connection with Nox's services, the Terms or this Addendum; (b) will be subject to applicable foreign laws and disclosure requirements, including in the United States, which may not offer comparable protections as Canadian laws; and (c) may be accessed by foreign courts, law enforcement and national security authorities, including the United States. Customer shall provide notice and obtain individuals' consent for such transfer and activity in the form(s) required by applicable laws (including, without limitation, Privacy Legislation).

**Section 5. Changes in Policies and Procedures.** Customer shall notify Nox prior to implementing any changes in Customer's privacy and/or security policies and procedures, including its "Notice of Privacy Practices," which may affect Nox's obligations hereunder.

**Section 6. Accuracy of PI and/or PHI.** Customer shall ensure that the PI and/or PHI collected from Individuals and disclosed to Nox is accurate, up to date and complete.

**Section 7. Cooperation.** Subject to any legal restrictions, Customer shall reasonably cooperate with Nox to respond to any Legal Action, including, but not limited to, any Legal Action by any Individual or regulatory authority.

#### **IV. TERM AND TERMINATION**

**Section 1. Term.** This Addendum will become effective on the effective date of the Terms and unless otherwise terminated as provided herein, will have a term that will run concurrently with that of the last expiration date or termination of the Terms.

**Section 2. Termination Upon Breach of Provisions Applicable to PI and/or PHI.** Any other provision of the Terms notwithstanding, this Addendum and the Terms may be terminated by Customer upon 30 days' written notice to Nox in the event that Nox breaches any material provision contained in this Addendum and such breach is not cured within 30 days of the date Customer provides written notice of the alleged material breach.

**Section 3. Effect of Termination.** Upon termination of the Terms and this Addendum, subject to any legal restrictions, Nox shall return or permanently, irretrievably and securely delete, destroy and/or dispose of all PI and/or PHI received from Customer or created or received by Nox on behalf of Customer and which Nox maintains in any form. Nox shall not retain any copies of such PI and/or PHI unless required by applicable law or to satisfy a regulatory or reporting obligation. Notwithstanding the foregoing, to the extent that it is not possible to return or destroy such PI and/or PHI, this Addendum shall survive such termination and such PI and/or PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PI and/or PHI or as required by applicable law.

## EXHIBIT D

### THIS EXHIBIT IS APPLICABLE TO CUSTOMERS WHOSE TERRITORY IS THE EUROPEAN ECONOMIC AREA, SWITZERLAND AND THE UNITED KINGDOM

#### Data Processing Agreement

This Data Processing Agreement (“**DPA**”) forms part of the Nox Connect Terms of Use (“**Terms**”) between you, the Customer, and Nox (“**Nox**” or “**Processor**”).

The terms used in this DPA have the meanings set forth in this DPA. Capitalized terms not otherwise defined herein, have the meaning given to them in the Terms.

#### 1. Scope of Agreement

- 1.1 Nox and the Customer have entered into the Terms which govern the Customer's access to and use of the Nox Connect Services.
- 1.2 This DPA governs the relationship between the Customer and Nox with respect to the Processing of Customer Personal Data in connection with the Terms. Under this DPA, the Customer appoints Nox as a Processor to Process the Customer Personal Data for the purposes described in Clause 4.
- 1.3 The parties hereby agree that this Data Processing Agreement forms part of the Terms and undertake to comply with all its terms and conditions.
- 1.4 This DPA shall remain in force until the expiration or termination of the Terms, or (if later) when Nox ceases to process Customer Personal Data on behalf of the Customer under the Terms.

#### 2. Definitions

- 2.1 In this DPA, the following terms have the meanings set out below:
- 2.2 “**Affiliate**” means in relation to either Customer or Nox, an entity that owns or controls, is owned or controlled by or is or under common control or ownership of such entity, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity;
- 2.3 “**Applicable Data Protection Law**” means, as applicable to the parties’ Processing of Personal Data: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (the EU General Data Protection Regulation) (the “**GDPR**”); (ii) the EU e-Privacy Directive (Directive 2002/58/EC); (iii) the UK GDPR; (iv) the Swiss Federal Data Protection Act; and (v) any and all applicable national data protection laws made pursuant to (i) to (iv) in each case as may be amended or superseded from time to time;

- 2.4 “**Customer Personal Data**” means Patient Data and Device Data but not Customer User Data (as such terms are defined in the Terms), including Patient Data or Device Data entered by or on behalf of the Customer or Customer’s Authorized Users into the Nox Connect Services or equivalent Nox or Nox Affiliate services prior to the date of this DPA for Processing by Nox or any Nox Affiliate under either the Terms or any prior agreement governing the Nox Connect Services or equivalent Nox or Nox Affiliate services (whether with Nox or any Nox Affiliate);
- 2.5 “**Customer User Data**” means Customer Data (as such term is defined in the Terms);
- 2.6 “**EEA**” means the European Economic Area;
- 2.7 “**HDS**” means Hébergeurs de Données de Santé;
- 2.8 “**Legal Process**” means any criminal, civil, or administrative subpoena, mandatory request, warrant or court order issued by a Public Body, including but not limited to subpoenas, warrants and orders authorized under local, regional, state, national or federal laws or regulations or any other laws applicable to Nox, any Nox Affiliate or a Subprocessor in any Third Country;
- 2.9 “**Public Body**” means any local, regional, state, national or federal law enforcement authority, regulator, government department, agency or court in any Third Country;
- 2.10 “**Standard Contractual Clauses**” means standard contractual clauses for the transfer of personal data to third countries valid for the purposes of Article 46(2) GDPR, in each case as amended, updated and replaced from time to time;
- 2.11 “**Subprocessor**” means any person (including any third party and any Nox Affiliate, but excluding an employee or other agent of Nox or any of its subcontractors) appointed by Nox to Process Customer Personal Data;
- 2.12 “**Third Country**” means a country which is not: (i) a Member State of the EEA; or (ii) the recipient of an adequacy decision under Article 45 of the GDPR;
- 2.13 “**UK GDPR**” means the GDPR as transposed into the national laws of the United Kingdom by operation of section 3 of the European Union (Withdrawal) Act 2018, and as further amended from time to time. In circumstances where the UK GDPR applies to the Processing of Personal Data under this DPA, references to the GDPR and to its provisions shall be interpreted as references to the UK GDPR and its corresponding provisions; and
- 2.14 The terms, “**Commission**,” “**Controller**,” “**Data Subject**,” “**Member State**,” “**Personal Data**,” “**Personal Data Breach**,” “**Process(ing)**,” “**Processor**” and “**Supervisory Authority**” have the same meaning as in the GDPR.

### 3. Parties' respective roles

- 3.1 Each Party undertakes to comply with its respective obligations under Applicable Data Protection Law in relation to the performance of its respective obligations under the Terms.

3.2 Each party may collect and further Process Personal Data, and more specifically Nox:

3.2.1 Processes Customer Personal Data on the Customer's behalf as a Processor in relation to its provision of the Nox Connect Services. Such Customer Personal Data Processing operations are described in Clause 4 of this DPA;

3.2.2 Processes Customer User Data as a Controller for the purposes identified in the Privacy Policy referenced in the Terms; and

3.2.3 Processes Customer Personal Data as a Controller to comply with its quality and regulatory obligations under applicable laws.

3.3 The Customer, in its capacity as Controller:

3.3.1 May issue reasonable and lawful instructions as to the Processing of Customer Personal Data by Nox, in addition to those specified in this DPA. Such instructions must be issued in writing, including (but not limited to) by email, and must be consistent with the Terms. To the extent any such written instructions conflict with the Processing purposes set out in this DPA, the purposes set out in this DPA shall take precedence (unless otherwise agreed in writing by Nox, including, but not limited to, by email).

3.3.2 Shall, without prejudice to the generality of its obligations under Clause 3.1, ensure it has taken all steps necessary under Applicable Data Protection Law to permit the Processing of Customer Personal Data by Nox, including in particular that it has established a legal basis for the Processing, has adequately informed its patients about the Processing and that it has ensured that the Processing is not prohibited by Article 9.1 of the GDPR. The Customer must inform Nox immediately if it believes that the continued Processing of Customer Personal Data by Nox may no longer be lawful.

3.4 Nox, in its capacity as Processor shall not Process Customer Personal Data other than as set out in this DPA or on the Customer's documented instructions, unless Processing is required or permitted by applicable laws to which Nox is subject, in which case Nox will to the extent required and/or permitted by applicable laws inform the Customer of that relevant Processing before undertaking the Processing of that Customer Personal Data.

#### **4. Nature and purposes of Processing and the categories of Personal Data**

In the provision of the Nox Connect Services, Nox is authorized to Process Customer Personal Data for the following purposes:

<b>Nox's Processing Activities</b>	<b>Purpose</b>	<b>Type of Customer Personal Data</b>	<b>Retention Duration for Purpose of Processing Activity</b>	<b>Data Subjects</b>
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Provision of the Nox Connect Services	To provide the following Services: cloud-based data hosting, patient therapy management, billing-related activities and all related functionalities.	Identification data, private data and health data	The duration of data retention by Nox is 3 years upon data collection of the Data by the Customer. Retention can be shortened if the Customer deletes the Data.	Patients equipped with one or more Nox Devices
Customer Support Management	To provide assistance and support in relation to the use of the Nox Connect Services.	Identification data, private data and health data (including, but not limited to, Patient Data and Device Data)	The duration of data retention by Nox is 3 years upon data collection of the Data by the Customer. Retention can be shortened if the Customer deletes the Data.	Patients equipped with one or more Nox Devices
Platform Support Management	To manage, maintain, test, improve and secure the Nox Connect Services on-site or remotely.	Identification data, private data and health data (including, but not limited to, Patient Data and Device Data)	The duration of data retention by Nox is 3 years upon data collection of the Data by the Customer. Retention can be shortened if the Customer deletes the Data.	Patients equipped with one or more Nox Devices

## 5. Retention periods

- 5.1 With respect to Customer Personal Data Processed in connection with the Nox Connect Services, the Customer is able to determine the period for which that Customer Personal Data is retained, subject to (i) a maximum period of 3 years for which Customer Personal Data will be available within the Nox Connect Services; and (ii) termination or expiration of the Nox Connect Services for any reason (at which point the provisions of Clause 12 shall apply).
- 5.2 With respect to Customer Personal Data Processed by Nox as a Controller pursuant to Clause 3.2.3, Customer Personal Data shall be retained in archive by Nox for 10 years from receipt of that Customer Personal Data by Nox. Nox has a legal obligation to comply with this 10-year retention period pursuant to applicable laws (including, but not limited to, the Medical Device Regulation (EU) 2017/745 of 5 April 5th, 2017).

## 6. Confidentiality

Nox will ensure that access is limited to those individuals who need to access the relevant Customer Personal Data, as necessary for the purposes of providing the Nox Connect Services under the Terms, and to comply with applicable laws in the context of that individual's duties to Nox. Nox will ensure that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## 7. Technical and Organizational Measures

- 7.1 Nox will, in relation to Customer Personal Data, implement the security measures set out in this Clause 7 which are designed to be appropriate technical and organizational measures to ensure a level of security appropriate to the risk of Processing.
- 7.2 Customer Personal Data is hosted on a secure data center located in the European Economic Area, Switzerland or the United Kingdom, as applicable, by an HDS Certified Health Hosting Provider (“**Hosting Subprocessor**”). The Hosting Subprocessor operates under our strict and precise instructions. The Hosting Subprocessor is audited on a regular basis by independent third-party auditors (for example, for penetration testing and certification audits). The Hosting Subprocessor is responsible for maintenance, physical hardware and network security for the Customer Personal Data that it hosts.
- 7.3 The following technical and organizational measures are implemented in relation to the Nox Connect Services:
- 7.3.1 Two-Step Verification (2SV) or Multi-Factor Authentication (MFA). Nox Connect Services can be accessed only after a user passes multiple levels of security authentication.
- 7.3.2 Confidentiality. A confidentiality agreement signed by all relevant Nox employees.
- 7.3.3 Training. All relevant employees receive specific training in relation to security and management of Customer Personal Data (for example, through e-learning and privacy champions training).

- 7.3.4 Encryption. Customer Personal Data is protected by using encryption controls. These controls cover Customer Personal Data at rest and in transit. Encryption policies are in place to ensure the adequacy of the implemented controls.
- 7.3.5 Backups. Backups are implemented to ensure the availability of Customer Personal Data. The backup operations are monitored, secured and documented. Additionally, a disaster recovery plan and a business continuity plan are implemented and tested. Despite the fact that backups are made by Nox, Nox Connect Services are not intended to be a permanent medical record archive or storage system and, pursuant to the Terms, the Customer is responsible for downloading, backing up or otherwise retaining any data created using the Nox Connect Services and for storing such data separately on the Customer's own system(s).
- 7.3.6 Firewalls. Protection against security vulnerabilities is in place through the implementation of firewall solutions and anti-malware/antivirus solutions, as well as vulnerability scanning, penetration testing and system patching.
- 7.3.7 Disposal. A secure disposal process is in place to ensure the secure deletion of Customer Personal Data.
- 7.3.8 Restricted Access. Access to the Nox Connect Services system components is limited to authorized stakeholders based on the principles of least privilege, need-to-know and segregation of duties. Nox applies authorization controls within the application and database tier to ensure that data from one organization can never be viewed or altered by any other organization.
- 7.3.9 Unauthorized access. A traceability mechanism is put in place to review logs for malicious activity using the appropriate tools.
- 7.3.10 Testing. Nox has a change management procedure in place. It aims to ensure that before any new release, a security check is performed.
- 7.3.11 Security incidents. A security incident response plan is implemented and tested. Moreover, Nox has implemented a security incident and events management tool that aims to report unauthorized accesses and alert if a forbidden action occurred.
- 7.4 In cases where additional technical or organizational security measures are required to respond to new security risks or to improve Nox products and services security, Customer authorizes Nox to implement these improvements, subject to informing the Customer with prior to any substantial change.
- 7.5 Nox shall provide reasonable assistance to the Customer in relation to its obligations under Article 32 of the GDPR (or equivalent provisions of Applicable Data Protection Law), taking into account the nature of the Processing and information available to Nox.

7.6 Customer acknowledges that it also has an obligation to ensure that appropriate technical and organizational security measures are in place in relation to its use of the Nox Connect Services.

## **8. Subprocessing**

8.1 The Customer authorizes Nox to appoint Subprocessors in accordance with this clause.

8.2 The Customer specifically authorizes Nox to appoint as Subprocessors:

8.2.1 each Nox Affiliate.

8.3 Nox will provide the Customer with at least 10-days' prior notice of any appointment or replacement of a Subprocessor. The Customer may object to Nox's appointment or replacement of a Subprocessor prior to its appointment or replacement, provided such an objection is based on reasonable grounds relating to data protection. In such an event, Nox will either not appoint, or replace, the Subprocessor or, if this is not reasonably, commercially and technically possible, the Customer may suspend or terminate the Terms (without prejudice to any fees incurred by the Customer prior to suspension or termination).

8.4 In relation to each Subprocessor appointed by Nox under this Clause 8, Nox shall:

8.4.1 Include terms in the contract between Nox and the Subprocessor which offer at least the same level of protection as this DPA; and

8.4.2 Remain fully liable to the Customer for the performance of the Subprocessor, subject always to any limitations on liability agreed under the Terms.

## **9. Data Subject Rights**

9.1 Taking into account the nature of the Processing, Nox will assist the Customer by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Customer's obligations to respond to requests to exercise Data Subject rights under Applicable Data Protection Law.

9.2 Nox will:

9.2.1 Redirect any Data Subject that sends Nox such a request to the Customer; and

9.2.2 Not respond to that request except on the documented instructions of the Customer or as required by applicable laws to which Nox is subject, in which case Nox will to the extent permitted by applicable laws inform the Customer of that legal requirement before Nox responds to the request.

9.3 Where the Customer deletes Customer Personal Data, it is the Customer's responsibility to validate that Customer Personal Data has been deleted from the Nox Connect Services (including, but not limited to, any Customer Personal Data restored to the Nox Connect Services from back-up following a disaster recovery event).

## **10. Personal Data Breach**

- 10.1 Nox will notify the Customer without undue delay upon Nox becoming aware of a Personal Data Breach affecting Customer Personal Data, providing the Customer with sufficient information to allow the Customer to meet any obligations to inform a Supervisory Authority or Data Subjects of the Personal Data Breach under Applicable Data Protection Law. Such information may be provided to Customer in phases, as it becomes available to Nox.
- 10.2 Nox shall provide any further reasonable assistance to the Customer in relation to its obligations under Article 33 and 34 of the GDPR, or equivalent provisions of Applicable Data Protection Law, as the Customer requests, taking into account the nature of the Processing and information available to Nox.

## **11. Data Protection Impact Assessment and Prior Consultation**

Nox will provide reasonable assistance with any data protection impact assessments, and prior consultations with Supervisory Authorities or other competent data privacy authorities, which the Customer reasonably considers to be required under Articles 35 or 36 of the GDPR or equivalent provisions of Applicable Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, Nox.

## **12. Deletion or return of Personal Data**

- 12.1 Subject to Clause 12.2 and Clause 12.3, Nox will promptly, and in any event within 30 working days of the date of cessation of any Nox Connect Services involving the Processing of Customer Personal Data, delete and procure the deletion of all copies of Customer Personal Data.
- 12.2 Subject to Clause 12.3, the Customer may in its absolute discretion by written, reasonable advance notice to Nox require Nox to return a complete copy of all Customer Personal Data to the Customer by secure file transfer in such format as is reasonably notified by the Customer to Nox.
- 12.3 Nox may archive and Process Customer Personal Data for the period and to the extent required and/or permitted by applicable laws (including but not limited to for the period and purpose stipulated in Clause 5.2), and always provided that Nox will ensure the confidentiality of all such Customer Personal Data and will ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the applicable laws requiring or permitting its storage.
- 12.4 If Nox were to lose its HDS certification, Nox shall promptly inform the Customer if the Customer handles Customer Personal Data relating to French patients. Upon the Customer's written instruction, Nox shall implement the process described in Clause 12.1 or Clause 12.2.

## **13. Audit rights**

- 13.1 On a regular basis Nox will commission an independent audit to assess and document the appropriateness of its technical and organizational measures in relation to the Nox Connect Services, and will share a summary of the results of that audit and/or other related information reasonably required by Customer on written request so that the Customer can verify Nox's compliance with this DPA. Any such information shall be considered Nox's Confidential Information and may be subject to Nox's further reasonable confidentiality requirements (including, but not limited to, execution of a separate non-disclosure agreement). Should Nox fail to commission such audits or to share those summary results as aforesaid, then the Customer shall be entitled, at its own cost and expense, once a year, upon reasonable advance written notice and during regular business hours, to audit the appropriateness of Nox's technical and organizational measures itself or through the Customer's authorized representative. If the Customer so decides to audit Nox as aforesaid, the Customer shall provide Nox with a written audit plan (including comprehensive technical details which might have an impact on the Nox Connect Services) for Nox's approval (such approval not to be unreasonably withheld) with 3 months' advance written notice, and any/all aspects of such audit shall at all times be considered Nox's Confidential Information and may be subject to Nox's further reasonable confidentiality and other requirements (including but not limited to execution of a separate non-disclosure agreement).
- 13.2 Nox shall also respond to any written audit questions submitted to it by the Customer, provided that the Customer shall not exercise this right more than once per year. Such responses shall be considered Nox's Confidential Information and may be subject to Nox's further reasonable confidentiality and other requirements (including, but not limited to, execution of a separate non-disclosure agreement).

#### **14. International Transfers**

- 14.1 In accordance with Clause 7.2, Customer Personal Data will at all times be hosted on data centers within the EEA.
- 14.2 Subject to Clause 14.3 and Clause 14.5, the Processing of Customer Personal Data by Nox or any Subprocessor will, unless otherwise instructed by the Customer, take place in the territory of a Member State of the EEA, the United Kingdom, Switzerland and/or any other country that has received an adequacy decision under Article 45 of the GDPR, or an equivalent provision of Applicable Data Protection Law.
- 14.3 The Customer acknowledges that Customer Personal Data may, on an exceptional basis, be Processed by a Subprocessor in a non-adequate country, to the extent such Processing is necessary to provide the Nox Connect Services (including, as required to provide maintenance or customer support, or for compliance or data security reasons), subject to Nox implementing any safeguards required under the Data Protection Laws.
- 14.4 Where, in accordance with Clause 14.3, Customer Personal Data is transferred to a non-adequate country, Nox shall enter into the Standard Contractual Clauses with the relevant Subprocessor, and take such other steps as are required by Data Protection Laws to ensure a lawful transfer of Customer Personal Data.

14.5 Clause 14 is without prejudice to Nox's obligations in respect of Legal Processes, as set out in Clause 15.

## **15. Legal Processes**

15.1 If Nox or a Nox Affiliate receives a Legal Process requiring disclosure of Customer Personal Data to a Public Body (or receives notice that a third-party Subprocessor has received such a notice):

15.1.1 Nox or that Nox Affiliate shall attempt, or shall use reasonable endeavors to require the third-party Subprocessor to attempt, to redirect the Public Body issuing such Legal Process to request that Customer Personal Data directly from the Customer; and

15.1.2 Promptly notify the Customer of the Legal Process, unless legally prohibited from doing so.

15.2 Where Nox, a Nox Affiliate or any third-party Subprocessor is prohibited under applicable laws from taking the steps described in Clause 15.1.1 to Clause 15.1.2 above, it shall instead use all reasonable efforts to challenge the Legal Process if, after careful assessment, it determines there are grounds for doing so.

15.3 In the absence of any such grounds, Nox or Nox Affiliate shall, or shall use reasonable endeavors to require the third-party Subprocessor to: (i) make such disclosure; (ii) conduct such disclosure insofar as possible in compliance with Applicable Data Protection Law; and (iii) provide the minimum amount of Customer Personal Data permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

## **16. General Terms**

16.1 Nox may, to the extent permitted by applicable law, require the Customer to reimburse Nox for all costs (including internal and third-party costs) which are reasonably and properly incurred by Nox in the performance of Nox's obligations under Clause 7.5, Clause 9, Clause 10.2 and Clause 11 of this DPA, where a Customer's request for assistance under those clauses is, in the reasonable opinion of Nox, disproportionate. Nox may charge for internal resources at Nox's then current professional day rates as set by Nox in the Customer's country of residence from time to time.

16.2 Nothing in this DPA reduces Nox's obligations under the Terms in relation to the protection of Customer Personal Data or permits Nox to Process, or permit the Processing of, Customer Personal Data in a manner which is prohibited by the Terms.

16.3 With regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and any other agreements between the parties, including the Terms and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this DPA, the provisions of this DPA will prevail.

- 16.4 Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA will remain valid and in force. The invalid or unenforceable provision will be either: (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or if this is not possible; (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.
- 16.5 Notwithstanding the provisions of any prior agreement governing the Nox Connect Services or equivalent Nox or Nox Affiliate services (whether with Nox or any Nox Affiliate) regarding return or deletion of Customer Personal Data, the Customer agrees that Nox may continue to Process Customer Personal Data pursuant to these Terms (including but not limited to this DPA) on and from the effective date of this DPA.

## EXHIBIT E

### THIS EXHIBIT IS APPLICABLE TO CUSTOMERS WHOSE TERRITORY IS AUSTRALIA

This Exhibit applies if your Territory is any Australian state or territory.

#### 1. Definitions

The definition of "Territory" is deleted and replaced with:

“**Territory**” means the Australian state or territory that you designate on the applicable Order Form for your access to the Nox Connect Services. Where the Order Form does not designate a Territory, the Territory shall be the Australian state or territory of Customer’s address listed on the Order Form.

References to "personal data" and "personal information" in the Terms means personal information as that term is defined in the *Privacy Act 1988* (Cth).

#### 2. Amendments to Terms

The words in Section 3 (Privacy) are deleted and replaced with:

Nox collects, uses and discloses Customer Data in accordance with its privacy policy at: <https://noxmedical.com/privacy-policy/>.

The servers that host the Nox Connect Services are hosted on a secure data server located inside the country or geopolitical area (e.g., EEA or EU) listed in Table 1 that corresponds to your Territory. In limited circumstances, Nox technical support located outside of your Territory may access and disclose your patients’ personal data to provide you with technical support.

The words in Section 4 (License to access and use Nox Connect Services) are deleted and replaced with:

Nox grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use Nox Connect Services solely within the Territory in accordance with these Terms. The use of the Nox Connect Services and any third-party software or content (“Third-Party Software”) included in Nox Connect Services may be further limited or conditioned pursuant to the terms of any click-through or similar license applicable to the Nox Connect or Third-Party Software (collectively, “Click-Through Licenses”), should you choose to accept such additional licenses. In the event of a conflict between these Terms and the terms and conditions of any Click-Through Licenses, the terms and conditions of such Click-Through Licenses shall control as such terms or conditions relate to Nox Connect or any Third-Party Software, as applicable.

Nox may modify the Nox Connect Services from time to time to enhance, update or remove existing Services, and to include additional Services (each a “Modification,” and collectively, “Modifications”), provided, however, that a Modification will not materially degrade the Nox

Connect Services. To receive or access a Modification may require Customer to affirmatively accept or subscribe to the Modification. Access and use of Modifications may be subject to Customer accepting amended or additional terms and conditions and agreeing to pay additional fees (individually and collectively, as appropriate, "Additional Terms"). Customer will be provided advance notice of any Additional Terms associated with Modifications. Although Customer is not required to accept any additional terms, it may not be able to access or use certain Modifications until it has done so.

**EXHIBIT F**  
**ARBITRATION**

<b>Territory</b>	<b>Arbitration Rules</b>
United States	American Arbitration Association - Commercial Arbitration Rules
Canada	ADR Institute of Canada
EEA and the UK	London Court of International Arbitration
Switzerland	Swiss Chambers' Arbitration Institute
Australia	Australian Centre for International Commercial Arbitration
Brazil	Centro de Arbitragem da Câmara de Comércio Brasil-Estados Unidos (AMCHAM Brasil)