

TELESENSI HOSTED SERVICE TERMS OF USE

Version: 2.2

Effective Date: 1 August 2020

1. Important Notice

- 1.1. By using our service at <https://app.telesensi.com> or any part thereof (hereafter "Service") and/or expressly accepting the terms set out in this document, as amended from time to time (hereafter "Terms"), the user (hereafter "**User**", "**Users**" or "**User's**") signifies that they have read, understand and agree to be bound to these Terms. If the User (1) does not understand or agree to these Terms, or (2) if the User is not legally entitled to so agree for any reason, the User may not access or use any part of this Service.
- 1.2. These Terms may be amended from time to time by publication of revised terms at <https://telesensi.com> as well as <https://app.telesensi.com>. The revised terms shall take effect on the date of such publication. The User agrees to keep themselves apprised of any such changes and shall be deemed to have agreed to such changes if they continue to use the Service after the date upon which revised Terms have been published.
- 1.3. By accepting the terms set out in this document the User agrees that they have read, understand and acknowledge TeleSensi's Privacy Policy found at <https://app.telesensi.com> and consent to sharing Personal Information and data within the guidelines of the TeleSensi Privacy Policy.

2. About Us

- 2.1. This Service is offered by Diacoustic Medical Devices (Pty) Ltd (t/a Stone Three Healthcare), a private company incorporated in terms of the laws of the Republic of South Africa under registration number 2007/034050/07 (herein "**we**", "**us**" or "**our**") and with further particulars:
 - 2.1.1. Physical address: 24 Gardner Williams Avenue, Paardevlei, Somerset West, 7130, South Africa
 - 2.1.2. Telephone number: +27 21 851 3123
 - 2.1.3. Email address: info@telesensi.com

3. About this Service

- 3.1. The Service includes the TeleSensi Software Application (hereafter "**Application**"), which is a medical data acquisition, transfer and playback technology intended to be used for the transfer of auscultation sounds captured with an FDA-approved electronic stethoscope as a part of a physical assessment or monitoring of a patient by healthcare professionals for diagnostic decision support.

- 3.2. The Application is not intended for use as part of urgent or mission critical clinical care, or the long-term monitoring of a patient. It is the User's responsibility to interpret medical data for proper analysis and diagnosis.
- 3.3. We retain the right, in its sole discretion, to change the Service and/or Application from time to time without prior notice.

4. User Requirements

- 4.1. In order to use the Application, a User is required
 - 4.1.1. to have and maintain an active, paid-up subscription to the Service or should be and remain authorized to do so in terms of a current enterprise subscription.
 - 4.1.2. be at least 18 years of age;
 - 4.1.3. be a trained healthcare professional;
 - 4.1.4. not previously been suspended or removed from the Service;
 - 4.1.5. use the Service in compliance with these Terms, all applicable laws and regulations in the User's local jurisdiction, inclusive of all applicable medical-legal and ethical requirements; and
 - 4.1.6. comply with any policies, procedures and guides in respect of the Service that we may publish from time to time.
- 4.2. In the event that the User no longer maintains an active, paid-up subscription to the Service, or if the User's access is suspended or terminated, the User may no longer access the Service and we may take technical steps to prevent such access.
- 4.3. The current options for taking out a subscription to become a User will be quoted by us in writing and accepted from time to time.
- 4.4. Users may use the Application to generate reports of findings using the heart or body sound data. Any reports provided by the Application do not suggest a diagnosis. The interpreted report is intended as information for the User and to be used as a tool to provide proper diagnosis and treatment, considering the patient's complete medical history. Analysis and diagnosis based on the data can only be accomplished by a medical practitioner.
- 4.5. Users warrant and represent that they comply and will continue to comply with the requirements for Users as set out in this clause 4 and elsewhere in these Terms.

4.6. The User Agrees:

- 4.6.1. to keep their login credentials (i.e. username and password) confidential;

- 4.6.2. to immediately notify us of any incident that may compromise their account or the security or integrity of the Service; and
- 4.6.3. that any actions taken by a User of the Service having been authenticated with the User's login credentials shall be deemed to have been done by the User.

5. Trial Period

- 5.1. We may offer Users the option to test the Service by way of a 30-day trial period, subject thereto that trial users shall comply with the requirements of Users in all respects, except that:
 - 5.1.1. the User does not need a paid-up subscription for the period of the trial; and
 - 5.1.2. the User may not use the Service in respect of any real patient.
- 5.2. At the end of the trial period the User's access to the Service shall automatically terminate, unless the User subscribes for a paid-up subscription to the Service in accordance with clause 4 above.

6. Support Services

- 6.1. Users are entitled to access our prevailing support services as presented to them by their TeleSensi vendor.

7. General Service Notifications and Limitations

- 7.1. The User acknowledges and agrees that:
 - 7.1.1. we do not warrant or represent that the Service will be available at all times;
 - 7.1.2. we are not responsible for any healthcare or related decisions made by the User or the User's healthcare professional based upon data collected, transmitted or displayed by or on the Application, whether such data is accurate or inaccurate; and
 - 7.1.3. the Application is not intended to replace the skill and judgment of a qualified medical practitioner and should only be used by people that have been appropriately trained in the Application's functions, capabilities and limitations.
- 7.2. The User must comply with the minimum technical requirement set out in our prevailing policies, procedures and guides in respect of the Service from time to time.
- 7.3. The User must procure and maintain their own cost a personal computer connected to high-speed Internet access of at least 2Mbps data transfer speed to utilize the Service. Such a computer must comply with the requirements generally applicable to computing equipment used for medical purposes. This includes that the computer must be isolated from the mains power and comply to the IEC 60601-1 standard.
- 7.4. Only devices approved by us from time to time are allowed to be used with the Application.

- 7.5. We may delete all data associated with the User's profile upon the termination of the subscription as a User or trial user, as the case may be.

8. Intellectual Property Rights

- 8.1. Users are licensed to use the Service and associated Application for their internal purposes and personal use in accordance with the prevailing procedures and guides in respect of the Service that we may publish from time to time. This licence is non-exclusive, non-transferable, non-sub licensable and personal to the User.
- 8.2. The User agrees not to:
- 8.2.1. copy, disassemble, decompile, reverse engineer, disassemble, amend, modify, incorporate, create derivative works of or otherwise change the Application or any part thereof, except as expressly permitted by us in writing;
 - 8.2.2. use data mining, robots, or other data gathering devices on or through the Application, except as expressly permitted by us in writing;
 - 8.2.3. use the Application in any fraudulent or illegal way or to commit an illegal act in relation to the Application or that otherwise results in fines, penalties, and other liability to us or others; and
 - 8.2.4. remove any product identification, legal, copyright, trademark or other proprietary rights notices contained in the Application.
- 8.3. In respect of any submitted data, which shall include (without limitation) information, data and media:
- 8.3.1. the User hereby grants to us an irrevocable, perpetual, royalty-free licence to publish such submitted data on our Service;
 - 8.3.2. we will be entitled to treat such submitted data as non-confidential; and
 - 8.3.3. the User warrants and represent that submitted data shall not infringe any party's rights or contravene any applicable legislation.
- 8.4. All rights that have not been expressly granted to the User shall remain reserved to us (or its licensors, to the extent applicable).
- 8.5. The User agrees that all right, title and interest in and to the Services and associated Application, and any adaptations to or derivatives thereof, shall vest in us and to the extent required to give effect to the foregoing, are hereby assigned to us. Without limiting the foregoing, the aforesaid rights include all intellectual property and proprietary rights in and to the Service and associated Application, howsoever arising in any jurisdiction worldwide, whether registered or not and in whatever form or embodiment, made or discovered solely or in collaboration with others, including (without limitation) patents, inventions, discoveries; industrial designs, design rights, models, topography rights; copyright, moral rights, compilations of data, database schemas, customer lists, records, diagrams, documents, drawings, specifications, schematics,

applications, software (including source code and object code); registered and common law trademarks, service marks, trade names, business names, trade dress, domain names, logos, goodwill; trade secrets, confidential information, know-how, business processes, technical data and specifications, customer and supply lists, pricing information, business and marketing plans and proposals; adaptations, improvements and/or derivatives of the foregoing; and in respect of all of the foregoing, any applications (or entitlement to make application) for the protection or registration of the aforesaid rights and all renewals and extensions thereof throughout the world (to the extent possible).

9. Privacy of Personal Information

- 9.1. In this clause, "**Personal Information**" means information that could be used to identify the User, either alone or in combination with other information.
- 9.2. We will process any Personal Information in compliance with applicable privacy law and only use such information for the disclosed and/or consented purpose as outlined in the Privacy Policy.
- 9.3. If the User submits any Personally Information the User voluntarily consents to our processing thereof for such disclosed purpose, for instance if the User subscribes to our newsletter or other communications via our Service, we will use the User's information to send relevant material.
- 9.4. The Application permits the disclosure or sharing of live auscultation sounds without disclosing the patient's identity and no personal information is embedded within the heart sound files as per guidelines of the Policy Statement.
- 9.5. In making available the Service, we will process certain Personal Information on the User's behalf and in doing so, we must rely on the User's compliance with applicable privacy law and the User accordingly hereby undertakes that they will:
 - 9.5.1. comply with the requirements of applicable privacy law and the requirements for the lawful processing of Personal Information;
 - 9.5.2. provide reasonable evidence of its compliance with applicable privacy law upon request by us.
 - 9.5.3. indemnify us from any cost, claim, damage, loss, expense or penalty that may arise from a breach of the User's obligations of this clause 9.

10. Security

- 10.1. It is a criminal offence to gain unauthorized access to any restricted areas of the Service, or to otherwise interfere with the proper functioning of the Service or any data originating or being received by the Service.
- 10.2. The User may not attempt to compromise, overcome, defeat or modify any data or security features of this Service, or render the Service partially or fully inaccessible, or gain unauthorized access to a portion or feature of the Service or any system, server or network connected to us through any unauthorized or unlawful means,

or by delivering or attempting to deliver any unauthorized, damaging or malicious virus, code, software, data, Trojan or program to the Service or any system, server or network connected to us.

- 10.3. The User may not take any action that will place an unreasonably large load on the infrastructure of the Service or any system, server or network connected to us.
- 10.4. The User is prohibited from accessing the Service by means of 'web crawlers', 'web spiders', 'web robots' or similar web indexing and/or data collecting technologies, whether automatic or manual, for purposes of extracting data, information, content or material from this Service, unless such extraction is by *bona fide* public search engines, or the User has obtained our prior written consent.
- 10.5. While we employ anti-virus software, we can make no warranty that this Service and its contents is free of viruses or other material which may be able to compromise the User's computer system, and therefore encourage that the User employs their own protection.
- 10.6. We reserve the right to take any steps necessary to preserve the security, integrity and reliability of the Service, or any system or server connected to us.

11. Breach or Cancellation

11.1. We may limit, suspend or terminate the User's access and use of the Service without further notice if:

- 11.1.1. the User breaches any of these Terms;
- 11.1.2. we are required by law to do so; or
- 11.1.3. we decide in our sole discretion.

11.2. In the event that we terminate the User's access to the Service due to clause 11.1.3, we will refund any prepaid subscription fees that have been paid on a pro rata basis. Hence the User agrees to forfeit any amount in their credit. The User agrees that they will have no other claim against us.

11.3. The above termination is without prejudice to any other rights or remedies that we may have in law, to claim specific performance of any obligation whether or not the due date for performance has arrived, to obtain an interdict against the User or to claim damages.

12. Force Majeure

Notwithstanding anything to the contrary, we will not be liable for a failure to perform our obligations insofar as that the failure was due to an impediment beyond our reasonable control. Relief from liability for non-performance by reason of the provisions of this clause shall terminate upon the date upon which such impediment ceases to exist.

13. Notices

- 13.1. The Parties choose as their address for service and/or receipt of notices (i.e. *domicilia citandi et executandi*) for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communications of whatsoever nature, the addresses set forth in this Agreement, provided that any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and delivered to the relevant Party's physical address or email address (hereafter each a "**Notice Address**").
- 13.2. Any Party may by notice in writing to any other change its Notice Address, provided that in respect of its physical address should not be a forwarding address. The change shall become effective on the 7th Business Day from the deemed receipt of the notice in accordance with clause 13.3.
- 13.3. Unless the contrary is proved by a recipient, any notice to a party to a Notice Address on Business Days:
- 13.3.1. delivered by hand to a responsible person at its physical address shall be deemed to have been received on the day of delivery; or
- 13.3.2. sent by email shall be deemed to have been received on the date the message left the sender's email system, as may be optionally evidenced by a delivery or read receipt emanating from the recipient's email system.
- 13.4. In the event a facsimile or email notice to a Party is delivered later than 17h00 in the recipient's time zone, delivery shall be deemed to have taken place on the next Business Day.
- 13.5. Notwithstanding anything to the contrary, a written notice or communication actually received by a Party's nominated reference or functionary in this Agreement shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at a Notice Address.

14. Dispute Resolution & Governing Law

- 14.1. If a dispute arises under these Terms between the User and us, such a dispute shall be resolved, at the filing party's election, in either a small claims court or by final and binding arbitration administered by the National Arbitration Forum or the American Arbitration Association, under their rules for consumer arbitrations. All disputes will be handled solely between the named parties, and not on any representative, private attorney general, or class basis. ACCORDINGLY, THE USER ACKNOWLEDGES THAT THE USER WAIVES THEIR RIGHT TO ACCESS TO A COURT (OTHER THAN A SMALL CLAIMS COURT) OR JURY, TO THE EXTENT PERMITTED BY LAW. Notwithstanding any other provision of these Terms, we may resort to court action for injunctive relief at any time if, in its good faith belief, the dispute resolution procedures described in this Section 14 would permit or cause irreparable injury to us or any third party claiming against us, due to delay arising out of such dispute resolution procedures.
- 14.2. To the fullest extent permitted pursuant to applicable law, these Terms are governed by the laws of the State of Georgia without regard to conflict of law principles. If a lawsuit or court proceeding is permitted under these Terms, then the User and us agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Georgia for the purpose of litigating any dispute.

15. Limitation of our Liability and Indemnity

- 15.1. The use of and reliance on the Service and/or the Application is entirely at the User's own risk. We make no representations, covenants or warranties and offer no other conditions, express or implied, regarding any matter, including:
- 15.1.1. the merchantability, suitability, fitness for a particular use or purpose, non-infringement or results to be derived from the use of the Application or any data service, software, hardware, deliverable, work product or other materials related to the Application, or the availability of any of the foregoing; or
 - 15.1.2. whether the information available on or transmitted by the Application is true, complete or accurate, or
 - 15.1.3. access to or services provided by the Application to be uninterrupted or error-free.
- 15.2. The User acknowledges that there are risks inherent to transmitting information over and storing information on the Internet and we are not responsible for any losses of the User's data, confidentiality or privacy in connection therewith.
- 15.3. To the maximum extent permitted by law, we will not be liable for any claim, cost, damage, loss or injury arising from the use of our Service and/or the Application. Without limiting the foregoing, we will not be liable for any consequential, special, punitive or similar damages, howsoever arising.
- 15.4. To the maximum extent permitted by law, the User agrees to indemnify us from any claim, cost, damage, loss or injury arising from the use of the Service and/or the Application, as well as any breach of these Terms by the User or on the User's behalf.

16. General

- 16.1. **Neutral interpretation.** The rule of interpretation that the contract shall be interpreted against the party responsible for the drafting and preparation thereof (the *contra proferentem* rule) shall not apply.
- 16.2. **Whole Agreement.** These Terms constitute the whole agreement between us as to the subject matter hereof. The User shall have claim or right of action arising from any undertaking, representation or warranty not included in these Terms.
- 16.3. **Relaxation.** No failure on our part to enforce our rights shall in any circumstances be construed as a consent, election, limitation or waiver of rights.
- 16.4. **Cost of legal services.** Should we instruct legal representatives or collection agencies to take any steps to enforce any rights in terms of these Terms, then the User shall be liable for all legal and incidental costs, including legal fees on the attorney and own client scale, collection commission and tracing charges.

17. Interpretation

- 17.1. In these Terms:

- 17.1.1. **"Business Day"** means any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa.
- 17.2. Any reference to an enactment is to that enactment as at the effective date hereof and as amended or re-enacted from time to time.
- 17.3. When any number of days is prescribed in these Terms, it shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the following Business Day.
- 17.4. Unless the context shows otherwise, a clause which includes a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it (i.e. the application of the *eiusdem generis* rule of interpretation is excluded).
- 17.5. The termination or expiry of these Terms shall not affect those provisions which expressly provide that they will continue to operate after such termination or expiry, or those provisions which of necessity must continue to have effect after such termination or expiry, even where those clauses do not expressly provide for this.
- 17.6. In the event that any right or remedy is expressly stated to be available to us in particular circumstances, such right or remedy shall be available without prejudice to or limitation of any other right or remedy that may be available to that Party in such circumstances, unless the contrary is expressly stated.