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**1. Acceptance of the Terms**

**PLEASE READ THE RESMED NIGHTOWL TERMS OF USE CAREFULLY BEFORE USING NIGHTOWL. BY CLICKING ON THE "I AGREE" BUTTON YOU AGREE TO BE BOUND BY AND BE SUBJECT TO:**

- These Terms of Use, including its Exhibits ("Terms")
- Intellectual Property
- Privacy Notice
- Any agreement between you and ResMed which is expressed to be supplemental to these Terms

**IF YOU DO NOT AGREE, DO NOT USE NIGHTOWL AND CONTACT RESMED CUSTOMER SERVICE: [nightowl@resmed.com](mailto:nightowl@resmed.com) TO DISCUSS THE RETURN OF NIGHTOWL.**

In these Terms "we," "our," "us" and "ResMed" refer to:

- ResMed Corp., a company incorporated in the State of Delaware, United States with its principal place of business at 9001 Spectrum Center Blvd. San Diego, CA 92123 United States, if your usual place of residence when you acquired access to the Services is North, South or Central America;
- ResMed SAS, a company incorporated in France (company registration number 407775170) at Parc Technologique de Lyon, 292 Allée Jacques Monod, 69791 Saint-Priest CEDEX, France, if your usual place of residence when you acquired access to the Services is in France;
- ResMed Deutschland GmbH, a company incorporated in Germany at Haferwende 40, 28357 Bremen, Deutschland, if your usual place of residence when you acquired access to the Services is in Germany;
- ResMed (UK) Ltd., a company incorporated in England (company registration number 02863553), at Quad 1, First Floor Becquerel Avenue, Harwell Campus, Didcot, Oxfordshire, United Kingdom, OX11 0RA, United Kingdom, if your usual place of residence when you acquired access to the Services is in the United Kingdom, the Middle East or Africa;
- ResMed Sensor Technologies Ltd, a company incorporated in the Republic of Ireland (company registration number 372477) with registered address located at 70 Sir John Rogerson's Quay, Dublin 2, Ireland if your usual place of residence when you acquired access to the Services is located anywhere in Europe (including but not limited to the European Economic Area and Switzerland) other than in France or Germany or the United Kingdom; or
- ResMed Digital Health Inc., a company incorporated in the State of Delaware, United States with its principal place of business at 9001 Spectrum Center Blvd. San Diego, CA 92123 United States, if your usual place of residence when you acquired access to the Services is in Asia-Pacific.

These Terms are between ResMed and you ("**you**" or "**Customer**"). You acknowledge and agree that: (i) you accept these Terms on behalf of the entity for which you are authorized to act (e.g., an employer) and acknowledge that such entity is legally bound by these Terms (and you agree to act in a manner consistent with these Terms) or, if you are not authorized to act on behalf of such entity, then you accept these Terms either as an Authorized User of such entity or on behalf of yourself (where no such entity exists) as an individual and acknowledge that you are 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 (if any) or yourself.

## 2. Privacy

ResMed uses your Customer Data in accordance with the Privacy Notice and Cookie Notice.

### **Customers in Europe, Middle East and Africa**

The servers that host NightOwl are hosted in a secure data center located in France provided by a third-party HDS Certified Health Hosting Provider.

When you contact us, your request or information is tracked within the European Economic Area and Switzerland and addressed by ResMed personnel located in the European Economic Area and Switzerland. If you share patient information with ResMed's support services, ResMed will delete this information, in accordance with applicable law.

### **For Customers in the United States of America**

The servers that host NightOwl are hosted in secure data centers located in the United States of America. In limited circumstances, ResMed technical support located outside of your country (including but not limited

to located in the Malaysia, India, Ireland and/or Belgium) may access patients' personal data to provide you with technical support.

### **3. License to access and use NightOwl, Definitions**

ResMed grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use NightOwl in accordance with these Terms.

**"Authorized User"** means 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).

**"Benefits"** means those benefits described on or accessible from and made available to you or your Authorized Users through NightOwl and made available by ResMed in relation to that NightOwl. Benefits may include, but are not limited to, updates and upgrades, web services and other software products related to the access and use of NightOwl. Benefits may vary for different levels or types of NightOwl Services Package, if applicable.

**"Customer Data"** means personal data relating to you or your Authorized Users entered by you or your Authorized Users into NightOwl.

**"Device(s)"** includes any physical device(s) that transmit data to NightOwl.

**"Device Data"** means the data which is transmitted by a Device to NightOwl.

**"EEA"** means the European Economic Area.

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

**"Intellectual Property Rights"** means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered and including rights in semiconductor topographies), copyright, 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.

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

**"ResMed NightOwl Databases"** means all databases, collections, compilations or works which store and enable ResMed to present any of the Device Data, Patient Data and/or Customer Data stored in ResMed's cloud system.

**"NightOwl"** means the Services, Devices and the ResMed Databases and other infrastructure employed by ResMed to provide the Services (including but not limited to ResMed systems, websites, applications and online communication modules).

**"NightOwl Companion App"** means the mobile application used by patients to set up, start and stop their sleep test.

**"NightOwl Device"** means any NightOwl sensor, including devices branded as the onesleep test by ResMed.

**"NightOwl Provider Portal"** means the NightOwl web application that is intended to be used by healthcare providers to manage diagnostic tests.

**"Services"** include but are not limited to access to personal health related and other information, communication, compliance, cloud- based data hosting, retrieval, patient management system, billing- related activities, patient and customer related analytics and online support program offered by ResMed through NightOwl. The Services may be modified from time to time to add to, remove or include additional services, and/or functionality, beyond those Services offered today, and those additional services and/or functionality will be governed by these Terms.

**"Services Package"** means a type, bundle or package of specific NightOwl Devices and Services (including but not limited to functionality associated with that type or bundle) determined, and made generally commercially available by ResMed. Services Package is determined by ResMed and may be specified in the applicable Services Package Identification.

**"Services Package Identification"** means one or more designations by ResMed that set forth the Services Package (among other things) for the Customer's access to Services. The Services Package Identification may be: (a) located (i) on or with ResMed packaging; or (ii) in a written or electronic confirmation or other notice from ResMed; or (b) obtained from ResMed on request.

**"Territory"** means the country in which you acquire access to NightOwl.

#### **4. Term**

These Terms will commence on the Effective Date and will remain in effect so long as ResMed permits you to access or use NightOwl and until the Terms are terminated.

We may stop providing access to NightOwl on written notice to you (a **"Termination Notice"**) if:

providing NightOwl 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 the law or requests of governmental entities;

the use of NightOwl by you or our provision of any of NightOwl to you has become impractical or unfeasible for any legal, business or regulatory reason;

you are in breach or default of any material obligation set out in these Terms (including but not limited to non-payment of any outstanding sums owed to ResMed including Service(s) fees, if applicable) and you do not cure that breach/default within fifteen (15) days following written notice from ResMed; or

you become subject to bankruptcy proceedings, become insolvent, make an arrangement with your creditors.

On any termination of these Terms:

all your rights under these Terms will terminate within fifteen (15) days from the date of the Termination Notice; and you remain responsible for all fees and charges you have incurred through to the date of termination.

## 5. Patient Information

NightOwl 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 NightOwl Provider Portal.

Through the NightOwl Provider Portal 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 ResMed services.

ResMed, through the NightOwl Provider Portal, provides functionality intended for use by trained medical professionals to diagnose certain health conditions. NightOwl is intended to be used as directed by, and under the general supervision of a medical professional. 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 NightOwl Provider Portal. The NightOwl Provider Portal is not intended to, and does not provide, medical advice.

### The NightOwl Provider

Portal includes 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 NightOwl Provider Portal: (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 NightOwl Provider Portal 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 NightOwl.

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 NightOwl Provider Portal, 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 governing your Territory.

If you are in the United States, you represent and warrant to ResMed 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 NightOwl. You will be responsible for determining patient eligibility, coverage and replacement schedules for patient supplies. We will provide NightOwl in compliance with the HIPAA Business Associate Addendum incorporated into these Terms as

#### **Exhibit A Part 1.**

**For Customers in the EEA, Switzerland and the UK**, we will provide NightOwl in relation to the 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 B**. 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, NightOwl. 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, NightOwl.

**If you handle personal data of French patients**, you represent and warrant to ResMed that you will at all times meet the requirements of the Politique Générale De Sécurité Des Systèmes D'Information De Santé (PGSSIS) in France (as amended updated or replaced from time to time) in relation to French patient personal data collected, transmitted, stored, retrieved, accessed, used and/or disclosed by you.

**If you are located anywhere else in the world**, you represent and warrant to ResMed 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 NightOwl. You will be responsible for determining patients' eligibility, coverage and replacement schedules for patients' supplies.

## **6. Equipment and Software Requirements**

You will supply and maintain equipment to access NightOwl. Specifically, you agree to use appropriate software per ResMed's minimum system requirements (as indicated by product labelling) to access NightOwl.

## **7. Access**

To access the NightOwl Provider Portal a user account must be created for you.

If you represent a particular customer entity, the first Authorized User for your entity may add, edit and inactivate user accounts and roles for additional Authorized Users for the same entity. You are responsible for all user accounts and for all information provided by you, your Authorized Users, or on your behalf in the creation of user accounts).

Unless otherwise agreed with ResMed 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 NightOwl Provider Portal, ResMed may elect to terminate your access to the NightOwl Provider Portal, and/or the applicable ResMed affiliate that sells to you may elect to charge you for providing access to those third parties through those third-party user accounts, or both. You are responsible for any Service fees incurred by such third parties who you permit (only with written approval from ResMed) to access the NightOwl Provider Portal through user accounts created by you or on your behalf.

A user account and password are required to access the NightOwl Provider Portal. You will keep all passwords created by you confidential to prevent unauthorized access and to prevent unauthorized use of the NightOwl Provider Portal.

You will protect the security of user accounts created by you and/or on your behalf and other means of identification for access to, and use of, the NightOwl Provider Portal, including as required by applicable laws and regulations (where applicable).

Unless otherwise authorized by ResMed 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 NightOwl Provider Portal, if we reasonably believe your user accounts and/or passwords have, or may have been, obtained in an illegal or unauthorized manner or are being used, or may be used, by an 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 applicable) as if they were your acts or omissions.

If determined by the applicable ResMed affiliate that sells to you and as separately communicated to you, you agree to pay the applicable Service fee(s) for the Services Package(s) acquired by you from such affiliate.

## **8. Customer Responsibility**

You are responsible for all of the equipment and software required to access and use the NightOwl Provider Portal. ResMed reserves the right to terminate your access to the NightOwl Provider Portal, or any portion thereof, if not accessed for six consecutive months.

You will notify us immediately if you believe your account and/or your user accounts and/or passwords have been accessed, taken or used without your permission, or if there is a suspected or actual violation of the security of the NightOwl Provider Portal. In addition, you will inform

us immediately in writing of the need to deactivate a user account due to potential or actual security concerns or for any other reason.

You must not use or allow the use of any web scraping in connection with NightOwl for any purpose without our prior written approval from ResMed.

You agree to immediately report to ResMed the discovery of any type of discrepancy, anomaly or error detected in information obtained from, or delivered to, the NightOwl Provider Portal. You will also immediately report to ResMed the discovery of any virus or corruption in the NightOwl Provider Portal or on your own equipment used to connect to or otherwise access the NightOwl Provider Portal that potentially affect or do affect the NightOwl Provider Portal. Any malicious attacks from a Customer site will be addressed to protect

ResMed systems, including blocking or terminating access or connections to stop the attack, and you agree to provide all reasonable assistance and cooperation to ResMed in relation to any such attacks, as soon as requested by ResMed.

You must notify us within forty-eight (48) hours if you suspect a data breach regarding the NightOwl Provider Portal. You must keep secured:

any data retrieved from the NightOwl Provider Portal

any Authorized User passwords. You must restrict access to Authorized Users.

NightOwl Devices provided by ResMed are intended to be single-use products, and you agree to limit your use of NightOwl Devices to use by a single individual.

## **9. Prohibited Locations for Use**

You will not access and/or use the NightOwl Provider Portal for patients or Devices acquired outside the Territory, without ResMed's prior written consent.

## **10. ResMed's Responsibility**

Neither we, nor our agent(s) will be liable:

if you have not properly followed ResMed's 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 NightOwl Provider Portal or in the event of failure by you to comply with your obligations in **Section 7 (Access)** or **Section 8 (Customer Responsibility)**;

in circumstances more particularly described in **Section 25 (Force Majeure)** of these Terms.

## **11. Benefits**

During the term of this Agreement, if applicable, you will be entitled to receive the Benefits specified in separate documentation for the level or type of Services Package granted to you in the Territory.

**Benefits Terms.** Certain Benefits may include rights in addition to or different from those set forth in these Terms.

Those Benefits are subject to the ResMed terms applicable therefore ("Benefits Terms"), which Benefits Terms are separately available from ResMed.

You agree that if you or your Authorized Users request, accept, or make use of any Benefit, you will be bound by, and you agree that you shall ensure your Authorized Users are bound by, the Benefits Terms applicable to that Benefit, as they may be modified from time to time by ResMed by notice in writing provided in accordance with these Terms or in accordance with the applicable Benefits Terms (and such terms, as so modified from time to time, are a part of and incorporated by reference into these Terms).

You acknowledge that ResMed may require a further acceptance of such Benefits Terms as a condition to using or accessing any particular Benefits.

You further acknowledge and agree that if you and/or your Authorized Users do not accept and agree to be bound by the Benefits Terms applicable to a particular Benefit, then you will not be entitled to receive, or access that Benefit, even if ResMed has made that Benefit available to you. If Benefits Terms require payment, ResMed may suspend your access to said Benefits if your account is past due.

ResMed reserves the right at its discretion to change any Benefits or your Services Package from time to time, without prior notification to You. ResMed does not guarantee that it will make any particular Benefits available as part of a particular Services Package during the term of these Terms.

Unless otherwise permitted by ResMed in writing, you may not distribute, assign, rent, loan, sell, sublicense or otherwise transfer or market any Benefit to, or share any Benefit with, any other person or entity. Benefits may only be installed and/or accessed and/or otherwise used by you or your Authorized Users.

**Support.** We may, on a regular basis, perform maintenance, modifications, upgrades or other refinements of NightOwl. Such works may result in interrupted service or errors in the NightOwl Provider Portal. If we anticipate an interruption to NightOwl Provider Portal, we will attempt to provide prior notice of such interruptions but cannot guarantee that such notice will be provided. If we do not anticipate an interruption to NightOwl Provider Portal, we may not provide you prior notice.

## 12. 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 ResMed, breach any of your obligations to ResMed, or if any of your accounts or these Terms are terminated for any reason, then where permitted by applicable law your access to NightOwl may be modified, suspended, reassigned, or terminated by ResMed at its sole and absolute discretion.

Furthermore, you agree that ResMed may enable system tracking technology, including, for example, for inventory control and/or channel verification purposes. You agree that NightOwl is 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 NightOwl.

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 law. ResMed 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 ResMed'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 NightOwl. Furthermore, ResMed 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 B**.

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

To the extent necessary, you grant ResMed permission to use Customer Data, Patient Data and Device Data for the purposes of operating and supporting NightOwl; and (without prejudice to **Exhibit A, Parts 1 and 2**) 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 ResMed's use of Patient Data, Device Data and De-Identified Data in accordance with these Terms.

**"De-Identified Data"** means processed and/or unprocessed data that cannot reasonably identify an individual or be capable of being associated with a particular individual, or, where permitted under applicable law, has been determined to present a very small risk that the information could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information.

### **13. Warranty Disclaimer**

ResMed does not and will not provide medical advice or service to you, your Authorized Users or your patients. Content available through NightOwl is solely for informational and educational purposes. Neither the content nor the patient reports are to be used as a substitute for professional judgment of healthcare providers in diagnosing and treating patients.

EXCEPT AS PROVIDED IN THESE TERMS, THE NIGHTOWL PROVIDER PORTAL IS 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 AND 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 NIGHTOWL 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.

The foregoing disclaimer does not limit the application of any warranty offered on the NightOwl Device. The sole and exclusive warranty regarding the NightOwl Device is the limited warranty found at [www.ResMed.com](http://www.ResMed.com). The limited warranty is extended exclusively to authorized Customers and their patients, and is not transferable or extended to unauthorized purchasers or their customers. Unauthorized purchasers may be required by law to inform their customers that this limited warranty is void. ResMed reserves the unilateral right to modify its limited warranty at any time. Any claim a Customer submits under ResMed's limited warranty must be on behalf of the initial patient-user of the NightOwl Device.

ResMed does not warrant that the functions contained in the NightOwl Provider Portal will meet your requirements or that its operation will be uninterrupted or error-free or compatible with the other software or hardware of your systems.

#### **14. Limitations on Liability and Remedies**

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT WILL RESMED 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 NIGHTOWL SERVICES, EVEN IF RESMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. SHOULD WE HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY DIRECT LOSS, HARM OR DAMAGE, (EXCEPT INSURED CLAIMS, AND THE PARTIES' RESPECTIVE EXPRESS INDEMNITY OBLIGATIONS), OR IF REQUIRED BY APPLICABLE LAW FOR ANY

CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, THE TOTAL LIABILITY OF RESMED FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE LESSER OF THE AGGREGATE AMOUNT OF THE SERVICE FEES YOU HAVE PAID TO US FOR NIGHTOWL SERVICES DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO THE CLAIM OR USD \$3,000.00 (UNITED STATES DOLLARS). YOU UNDERSTAND AND ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE YOU ACCESS TO NIGHTOWL 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 NightOwl to operate or perform is limited to, at ResMed's discretion, providing available backup information, or refunding the Service fees you have paid for NightOwl during the twelve (12) months immediately preceding the date of such failure. NightOwl relies on third-party products and services to provide parts of NightOwl. For example, we rely on

mobile operating system vendors and mobile carriers to enable connectivity and mobile device notifications through the Service.

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

#### **Limitations on Liability and Remedies for users in the EEA, Switzerland and the UK**

To the extent permitted by applicable laws, in no event shall ResMed be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages or for loss of profits, revenues, contracts, customers, loss of use, loss of data, loss of business goodwill, business interruption, cost of replacement goods or services, or failure to realize expected cost savings which arises out of, or is in any way connected, to these Terms even if advised of the possibility of same or same were reasonably foreseeable.

If, notwithstanding the other provisions of these Terms, ResMed is found to be liable to you for any damage or loss which arises out of, or is in any way connected with, these Terms or your use of NightOwl ("Claim"), to the extent permitted by applicable laws, ResMed's liability shall in no event exceed an amount equal to the total of any/all fees for NightOwl received by ResMed from you in the twelve (12) calendar months immediately preceding your Claim.

You understand and acknowledge that absent your agreement to the foregoing limitations of liability, ResMed would not provide you with access to NightOwl.

Nothing in these Terms limits or excludes our responsibility for death or personal injury caused by our negligence or any other liability that cannot be excluded or limited under applicable laws.

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

### **15.1 Ownership of Intellectual Property Rights**

NightOwl is the proprietary property of ResMed. NightOwl comprise Intellectual Property Rights (as defined in Clause 3 above), all of which will remain the exclusive property of ResMed, a ResMed affiliate, and/or their respective licensors. You and your Authorized Users, employees, agents and representatives will not copy, reproduce, modify, reverse engineer or decompile any portion of NightOwl without the written permission of ResMed. You and your Authorized Users, patients, employees, agents and representatives will use NightOwl as provided in these Terms. Except as otherwise disclosed, ResMed owns all rights, title, and interest in and to all Intellectual Property Rights (as defined in Clause 3 above) worldwide in and to NightOwl. Access to, and use of NightOwl are provided in conjunction with software ("Device Software") included on or with Devices and licensed to the owner/user of those Devices. Device Software is owned by or licensed to ResMed. Neither the Device Software nor any intellectual property rights in the Device Software are sold or assigned by ResMed.

### **15.2 Copyright Infringement Claims**

In accordance with the Digital Millennium Copyright Act of 1998 (the text of which may be found on the US Copyright Office website), ResMed will respond promptly to any claims of copyright infringement committed through our websites or online applications. All written notices should be sent to the following Designated Agent:

Legal Department—Copyright claim  
9001 Spectrum Center Boulevard, San Diego, CA 92123 legal@resmed.com

To file a notice of infringement with us, include the following:

A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

Identification of the copyrighted work claimed to have been infringed or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to

be removed or access to which is to be disabled, and information reasonably sufficient to permit ResMed to locate the material;

Information reasonably sufficient to permit ResMed's Designated Agent to contact you such as an address, telephone number, and, if available, an electronic mail (email) address at which you may be contacted;

A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. ResMed, in appropriate circumstances, may disable or terminate the accounts of users who are repeat infringers or are repeatedly charged with infringement.

### **15.3 ResMed's Confidential Information**

You and ResMed acknowledge and agree that NightOwl and any information relating thereto are ResMed's confidential information ("ResMed's Confidential Information"). You agree that you will not disclose any of ResMed's Confidential Information to any third party and that you shall protect ResMed's Confidential Information. In the event of termination of these Terms, you shall cease using ResMed's Confidential Information and shall promptly return, or certify in writing to ResMed that you have destroyed, all of ResMed's Confidential Information, with the exception of any of ResMed's Confidential Information that it is necessary to keep for record keeping purposes. The obligations in this Section will not apply to any information which

you can demonstrate to the reasonable satisfaction of ResMed: (i) is or becomes available to the public other than by breach of these by you of these Terms; (ii) is rightfully received by you from a third party without confidential limitations; (iii) is independently developed by you without access to ResMed's Confidential Information; (iv) is known to you without any restriction on its use or disclosure prior to first receipt of it from ResMed; or (v) is disclosed as required by a court order.

### **16. Indemnity**

You, at your own expense, will indemnify and hold harmless ResMed and its assignees, and their directors, officers, employees, agents and representatives, and defend any and all actions brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, experts' fees, and court costs, to the extent that it arises from or relates to:

the acts or omissions of you, your Authorized Users, directors, officers, employees, agents, or representatives, including but not limited to the use of NightOwl or any Customer Data, Patient Data and corresponding Device Data stored or transmitted using NightOwl;

your failure or alleged failure to obtain any or all permissions, authorizations and "opt-in" consents from each patient required under applicable Federal, State or local laws and regulations; or your breach of these Terms and/or applicable Addenda/Exhibits.

any claim by a patient or patient representative that relates to or arises out of patient care, treatment, or outcomes and which is based in whole or in part on the use of (or inability to use) NightOwl, even if such Claim alleges ResMed's negligence.

any claim arising from or related to your seeking reimbursement from any public or private third-party payor based on your use of NightOwl.

## **17. 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 ResMed 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, ResMed 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.

## **18. Governing Law**

### **For users anywhere apart from Europe, the Middle East and Africa**

These Terms will be governed by and construed in accordance with the laws of the State of California, United States, without regard or giving effect to its conflict of laws principles.

### **For users in Europe, the Middle East and Africa**

These Terms and any non-contractual obligations arising out of or in connection with these Terms will be governed by and construed in accordance with the laws of the Republic of Ireland, without regard to its conflict of laws principles. We both agree to submit to the non-exclusive jurisdiction of the courts of the Republic of Ireland, which means that you may bring a claim to enforce your consumer protection rights in connection with these Terms in the Republic of Ireland or in any country in which you live.

## **19. Dispute Resolution**

To the extent permitted by applicable laws, all controversies and claims arising under or relating to these Terms are to be resolved in accordance with the governing laws set out in Clause 18 above. All proceedings shall be conducted in the language of the governing law. Subject to applicable law, each party shall bear its own costs, expenses and attorneys' fees (and all related costs and expenses) incurred in connection with any proceeding arising from or related to any transaction contemplated by these Terms, and in connection with enforcing any judgment or order thereby obtained. Each party further agrees to waive any right to pursue a dispute by asserting a disputed claim in a representative capacity, or participating in a class action with respect to NightOwl. However, in those cases where the rules governing jurisdiction and venue would be void under the laws of your respective country, the rules governing jurisdiction and venue for litigation and other disputes in your respective country will apply.

## **20. Notices**

Notices from ResMed shall be in writing and may be sent by email or posted by any other method that ResMed reasonably determines will provide appropriate notice. Notices from you shall be in writing and may be sent by email to [hcpsupport@nightowl.resmed.com](mailto:hcpsupport@nightowl.resmed.com). ResMed to you shall be effective: (i) in the case of notices by email when sent to the email address known or made available to ResMed by you or on your behalf; or (ii) in the case of postings by other methods deemed reasonable by ResMed, ten (10) business days after such notices are sent in the manner reasonably determined by ResMed. Notices from you to ResMed shall be effective when received by ResMed.

## **21. Assignment**

You may not assign, novate or otherwise transfer any of your rights under these Terms without our prior written consent, 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 or notification any of our rights and delegate any of our duties under these Terms to a company affiliated with us or to any other party.

## **22. Severability**

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 whilst preserving to the fullest permissible extent the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from these Terms but the rest of these Terms will remain in full force and effect.

## **23. Modification of Terms**

These Terms and the Services provided are subject to change from time to time. In such cases, ResMed 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 of Use, we may opt to suspend or terminate your access and use of NightOwl, and (if applicable) refund any fees paid by you which are attributable to the unexpired portion of the period for which you paid those fees.

## **24. 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 ResMed 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 ResMed unless specifically agreed to in writing by an authorized representative of ResMed.

## **25. Force Majeure**

ResMed 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.

**By clicking on the "I Agree" button below, I acknowledge that I am electronically signing these Terms and agreeing to be legally bound by all of the terms and conditions contained or referenced in these Terms.**

## **EXHIBIT A**

### **HIPAA Business Associate Addendum**

Customer and ResMed (defined above in the Terms) have entered into the ResMed NightOwl Terms of Use (the "Terms"), under which ResMed may create, receive, maintain, or transmit protected health information ("PHI") of the Customer's patients. To the extent that the Customer is a "Covered Entity," and a ResMed entity is a "Business Associate," as those terms are defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the HIPAA Omnibus Rule at 45 C.F.R. part 160 and 45 C.F.R. part 164 ("Omnibus Rule"), and the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act") and implementing regulations, then the Customer and ResMed agree as follows with respect to access to PHI through use of NightOwl or otherwise:

## I. GENERAL PROVISIONS

**Section 1. Effect.** This HIPAA Business Associate Addendum ("Addendum") defines, modifies and replaces the Terms with respect to 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. Absent a different agreement, this Addendum shall govern ResMed's obligations with respect to PHI from Customer.

**Section 2. Definitions.** All capitalized terms used herein without definition shall have the respective meanings assigned to such terms in 45 C.F.R. Parts 160 and 164 (the "HIPAA Regulations").

**Section 3. Amendment.** ResMed and the Customer agree to amend this Addendum to the extent necessary to allow either ResMed or the Customer to comply with the HIPAA Regulations promulgated or to be promulgated by the Secretary of the U.S. Department of Health and Human Services or other related regulations or statutes.

## II. OBLIGATIONS OF RESMED

**Section 1. Use and Disclosure of Protected Health Information.** ResMed and its affiliates may use and disclose PHI only as required to satisfy its obligations under the Terms, as permitted by the Customer, as directed by the patient who is the subject of the PHI, or as Required by Law, but shall not otherwise use or disclose any PHI. The parties contemplate that ResMed may disclose PHI to subcontractors as part of the Services provided under the Terms. ResMed shall not, and shall ensure that its directors, officers, employees, affiliates, subcontractors and agents do not, use or disclose PHI received from the Customer in any manner that would constitute a violation of 45 C.F.R. Parts 160 and 164, Subparts A and E (the "Privacy Standards") if used by the Customer. Except as otherwise limited in the Terms or this Addendum, ResMed may use PHI: (i) for ResMed's proper management and administration; (ii) to carry out the legal responsibilities of ResMed; or (iii) to provide Data Aggregation services relating to the Healthcare Operations of Customer if required under the Terms. Except as otherwise limited in the Terms or this Addendum, ResMed may disclose PHI: (i) for the proper management and administration of ResMed; (ii) to carry out ResMed's legal responsibilities if (a) the disclosure is Required by Law, or (b) ResMed obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and the person notifies ResMed of any instances of which it is aware in which the confidentiality of the information has been breached. Further, ResMed and its affiliates may de-identify any and all PHI in accordance with 45 C.F.R. § 164.514(b) and use such de-identified data in any manner determined by ResMed. Notwithstanding any other provision contained in this Addendum, the Customer expressly authorizes ResMed to: (i) disclose PHI for the Treatment activities of a healthcare provider; (ii) disclose PHI to another covered entity or healthcare provider for the Payment activities of the entity that receives the PHI; (iii) disclose PHI to another covered entity for Healthcare Operations activities of the entity that receives the PHI, if each entity either has or had a relationship with the Individual who is the subject of the PHI being disclosed, the PHI pertains to such relationship, and the disclosure is for certain Healthcare Operations of the covered entity in accordance with 45 C.F.R. § 164.506(c)(4)(i); or (iv) use PHI to provide patients who may be interested in additional offers by ResMed with the opportunity to complete a HIPAA Authorization to allow their PHI to be used and disclosed for the additional purposes described in any such HIPAA Authorization, which shall in all cases comply with the

requirements under 45 C.F.R. § 164.508. Customers may request the list of patients who provided authorization for the processing of their data by writing to [privacy@resmed.com](mailto:privacy@resmed.com).

**Section 2. Safeguards Against Misuse of Information.** ResMed shall use appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum and comply with applicable provisions of 45 C.F.R. Part 164, Subpart C with respect to electronic PHI that it creates, receives, maintains or transmits on behalf of the Customer.

**Section 3. Reporting of Disclosures of Protected Health Information.** ResMed will report to Customer any use or disclosure of PHI or any Security Incident in violation of this Addendum of which it becomes aware. Notwithstanding the foregoing, the parties acknowledge and agree that this Section 3 constitutes notice by ResMed to the Customer of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to the Customer shall be required. Unsuccessful Security Incidents means, without limitation, pings and other broadcast attacks on ResMed'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 the Customer's electronic PHI.

**Section 4. Notification of Breach.** ResMed shall, within sixty (60) days following discovery of a Breach of Unsecured PHI, notify the Customer of such Breach. Such notice shall include the identity of each Individual whose Unsecured PHI has been, or is reasonably believed to have been, breached. ResMed's obligation to report under Section 3 and this Section 4 is not and will not be construed as an acknowledgement by ResMed of any fault or liability with respect to any use, disclosure, Security Incident or Breach.

**Section 5. Agreements by Third Parties.** ResMed shall obtain and maintain a written agreement with each affiliate, agent or subcontractor that creates, receives, maintains, or transmits the Customer's PHI on behalf of ResMed. Under the agreement, such affiliate, agent or subcontractor shall agree to restrictions and conditions that support the obligations which ResMed are subject to pursuant to this Addendum with respect to such PHI.

**Section 6. (a) Access to Information.** If ResMed maintains PHI in a Designated Record Set, as defined in 45 C.F.R. § 164.501, then upon request of Customer, ResMed shall provide access to such PHI in a Designated Record Set to the Individual in order for the Customer to comply with the requirements under 45 C.F.R. § 164.524. Subject to Section 6(b) below, if ResMed receives a direct request from an Individual for access to PHI, it will forward the request to the Customer to fulfill. If ResMed provides copies or summaries of PHI to an Individual on behalf of the Customer, it may impose a reasonable, cost-based fee in accordance with 45 C.F.R. § 164.524(c)(4). Notwithstanding the foregoing, if the PHI that is the subject of a request for access is maintained in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such information, ResMed shall provide access to the PHI in the electronic form and format requested. Further, if an Individual's request for access directs ResMed to transmit the copy of PHI directly to another person designated by the Individual, ResMed shall provide the copy to the person designated by the Individual. The Individual's request must be in writing, signed by the Individual, and clearly identify the designated person.

**Section 7. Availability of Protected Health Information for Amendment.** If ResMed maintains PHI in a Designated Record Set, ResMed agrees to make available PHI for amendment and incorporate any amendments to PHI in a Designated Record Set, in

order for the Customer to comply with 45 C.F.R. § 164.526. If ResMed receives a direct request from an Individual for amendment to PHI, it will forward the request to the Customer to fulfill.

**Section 8. Accounting of Disclosures.** Within forty-five (45) days of notice by the Customer to ResMed that it has received a request for an accounting of disclosures of PHI, other than related to the Treatment of a patient, the processing of Payments related to such Treatment, or the Healthcare Operations of a covered entity or its business associate and not relating to disclosures made earlier than six (6) years prior to the date on which the accounting was requested, ResMed shall make available such information as is in ResMed's possession and is required for the Customer to make the accounting required by 45 C.F.R. § 164.528. If ResMed receives a direct request from an Individual for an accounting of disclosures of PHI, it will forward the request to the Customer to fulfill.

**Section 9. Availability of Books and Records.** ResMed agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by ResMed on behalf of, the Customer available to the Secretary for purposes of determining the Customer's compliance with the Privacy Standards.

**Section 10. Remuneration in Exchange for PHI.** Except for the purposes set forth in the Terms and as otherwise provided by law, ResMed shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless the Customer receives a valid HIPAA Authorization.

**Section 11. Minimum Necessary.** ResMed shall make reasonable efforts to limit the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

**Section 12. Performance of the Customer's Obligations.** If ResMed agrees to carry out an obligation of the Customer under 45 C.F.R. Part 164, Subpart E, ResMed shall comply with the requirements of 45 C.F.R. Part 164, Subpart E that apply to the Customer in the performance of such obligations.

### III. OBLIGATIONS OF THE CUSTOMER

**Section 1. Minimum Necessary.** The Customer shall disclose to ResMed only that PHI which the Customer determines is reasonably necessary to achieve the intended purpose of the disclosure.

**Section 2. Changes in Policies and Procedures.** The Customer shall notify ResMed prior to implementing any change in their privacy or security policies and procedures, including its Notice of Privacy Practices, which would affect ResMed's obligations hereunder.

### 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 Protected Health Information.** Any other provision of the Terms notwithstanding, this Addendum and the Terms may be terminated by the

Customer upon thirty (30) days written notice to ResMed in the event that ResMed breaches any material provision contained in this Addendum and such breach is not cured within such thirty (30)-day period.

**Section 3. Effect of Termination.** Upon termination of the Terms and this Addendum ResMed shall either return or destroy all PHI received from the Customer or created or received by ResMed on behalf of the Customer and which ResMed still maintains in any form. ResMed shall not retain any copies of such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Addendum shall survive termination and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

## V. MISCELLANEOUS PROVISIONS

**Section 1. Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL RES MED 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 THIS HIPAA BUSINESS ASSOCIATE ADDENDUM, EVEN IF RESMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. SHOULD RESMED HAVE ANY LIABILITY TO CUSTOMER 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 RESMED FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE ) WILL NOT EXCEED THE LESSER OF THE AGGREGATE AMOUNT OF THE SERVICE FEES CUSTOMER HAVE PAID FOR NIGHTOWL SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO THE CLAIM OR USD \$3,000.00 (UNITED STATES DOLLARS). THE CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT ABSENT THE CUSTOMER'S AGREEMENT TO THIS LIMITATION OF LIABILITY, RESMED WOULD NOT PROVIDE THE CUSTOMER ACCESS TO NIGHTOWL SERVICES OR UNDERTAKE THE OBLIGATIONS SET OUT IN THIS HIPAA BUSINESS ASSOCIATE ADDENDUM. THE LIMITATIONS PROVIDED IN THIS SECTION WILL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

## EXHIBIT B

**THIS EXHIBIT IS APPLICABLE TO CUSTOMERS WHO ARE LOCATED IN EUROPE, THE MIDDLE EAST AND AFRICA ONLY**

### Data Processing Agreement

#### **Applicable to Customers located in The European Economic Area, Switzerland and the United Kingdom only**

This Data Processing Agreement ("DPA") forms part of the ResMed NightOwl Terms of Use ("Terms") between you, the Customer, and ResMed ("ResMed" 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 ResMed and the Customer have entered into the Terms which govern the Customer's access to and use of NightOwl.

1.2 This DPA governs the relationship between the Customer and ResMed with respect to the Processing of Customer Personal Data in connection with the Terms. Under this DPA, the Customer appoints ResMed 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 ResMed 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 ResMed, 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 NightOwl or equivalent ResMed or ResMed Affiliate services prior to the date of this DPA for Processing by ResMed or any ResMed Affiliate under either the Terms or any prior agreement governing NightOwl or equivalent ResMed or ResMed Affiliate services (whether with ResMed or any ResMed 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 ResMed, any ResMed 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 ResMed Affiliate, but excluding an employee or other agent of ResMed or any of its subcontractors) appointed by ResMed 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 ResMed:

3.2.1 Processes Customer Personal Data on the Customer's behalf as a Processor in relation to its provision of NightOwl. 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 and Cookie 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. To learn more about ResMed's legal obligations in processing Customer Personal Data in this regard, please view the ResMed quality agreement entered into between Customer and ResMed or a ResMed Affiliate; and

3.2.4 Processes Customer or Patient Data as a Controller based on user or patient consent and for the purposes explained in the consent form(s).

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 ResMed, 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 ResMed [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 ResMed, 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 ResMed immediately if it believes that the continued Processing of Customer Personal Data by ResMed may no longer be lawful.

3.4 ResMed, 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 ResMed is subject, in which case ResMed 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 NightOwl, ResMed is authorized to Process Customer Personal Data for the following purposes:

| <b>ResMed'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>                        |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| Provision of NightOwl                 | 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 ResMed is three (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 Devices. |
| Customer Support Management           | To provide assistance and support in relation to the use of NightOwl.                                                                                | Identification data, private data and health data (including but not limited to Patient Data and Device Data).  | The duration of data retention by ResMed is three (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 Devices. |
| Platform Support Management           | To manage, maintain, test, improve and secure NightOwl 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 ResMed is three (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 Devices. |

## Retention periods

With respect to Customer Personal Data Processed in connection with NightOwl, the Customer is able to determine the period for which that Customer Personal Data is retained, subject to (1) a maximum period of three (3) years for which Customer Personal Data will be available within NightOwl; and (2) termination or expiration of NightOwl for any reason (at which point the provisions of Clause 12 shall apply).

4.1 With respect to Customer Personal Data Processed by ResMed as a Controller pursuant to Clause 3.2.3, Customer Personal Data shall be retained in archive by ResMed for ten (10) years from receipt of that Customer Personal Data by ResMed. ResMed has a legal obligation to comply with this ten-year (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).

## 5. Confidentiality

5.1 ResMed 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 NightOwl under the Terms, and to comply with applicable laws in the context of that individual's duties to ResMed. ResMed will ensure that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## 6. Technical and Organizational Measures

6.1 ResMed 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.

6.2 Customer Personal Data is hosted on a secure data center in France 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.

6.3 The following technical and organizational measures are implemented in relation to NightOwl:

6.3.1 Two-Step Verification (2SV) or Multi-Factor Authentication (MFA). NightOwl can be accessed only after a user passes multiple levels of security authentication.

6.3.2 Confidentiality. A confidentiality agreement signed by all relevant ResMed employees.

6.3.3 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).

6.3.4 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.

6.3.5 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 ResMed, NightOwl 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 NightOwl and for storing such data separately on the Customer's own system(s).

6.3.6 **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.

6.3.7 **Disposal.** A secure disposal process is in place to ensure the secure deletion of Customer Personal Data.

6.3.8 **Restricted Access.** Access to NightOwl system components is limited to authorized stakeholders based on the principles of least privilege, need-to-know and segregation of duties. ResMed 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.

6.3.9 **Unauthorized access.** A traceability mechanism is put in place to review logs for malicious activity using the appropriate tools.

6.3.10 **Testing.** ResMed has a change management procedure in place. It aims to ensure that before any new release, a security check is performed.

6.3.11 **Security incidents.** A security incident response plan is implemented and tested. Moreover, ResMed has implemented a security incident and events management tool that aims to report unauthorized accesses and alert if a forbidden action occurred.

6.3.12 Despite the security measures we apply, you should keep in mind that it is impossible to guarantee an absolute level of security for data transmitted over the internet.

6.4 In cases where additional technical or organizational security measures are required to respond to new security risks or to improve ResMed products and services security, Customer authorizes ResMed to implement these improvements, subject to informing the Customer with prior to any substantial change.

6.5 ResMed 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 ResMed.

6.6 The 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 NightOwl.

## **7. Subprocessing**

7.1 The Customer authorizes ResMed to appoint Subprocessors in accordance with this clause.

7.2 The Customer specifically authorizes ResMed to appoint as Subprocessors:

7.2.1 those entities listed at [ResMed.com/AirViewSubProcessors](https://ResMed.com/AirViewSubProcessors); and

7.2.2 each ResMed Affiliate.

7.3 ResMed will provide the Customer with at least ten-days' (10-days') prior notice of any appointment or replacement of a Subprocessor. The Customer may object to ResMed'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, ResMed 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).

7.4 In relation to each Subprocessor appointed by ResMed under this Clause 8, ResMed shall:

7.4.1 include terms in the contract between ResMed and the Subprocessor which offer at least the same level of protection as this DPA;

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

## **8. Data Subject Rights**

8.1 Taking into account the nature of the Processing, ResMed 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.

8.2 ResMed will:

8.2.1 redirect any Data Subject that sends ResMed such a request to the Customer;

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

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

## **9. Personal Data Breach**

9.1 ResMed will notify the Customer without undue delay upon ResMed 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 ResMed.

9.2 ResMed 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 ResMed.

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

10.1 ResMed 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, ResMed.

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

11.1 Subject to Clause 12.2 and Clause 12.3, ResMed will promptly, and in any event within thirty (30) working days of the date of cessation of any NightOwl involving the Processing of Customer Personal Data, delete and procure the deletion of all copies of Customer Personal Data.

11.2 Subject to Clause 12.3, the Customer may in its absolute discretion by written, reasonable advance notice to ResMed require ResMed 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 ResMed.

11.3 ResMed 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 ResMed 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.

11.4 If ResMed were to lose its HDS certification (such as provided by section L1111-8 et seq. of the French Health Public Code), ResMed shall promptly inform the Customer if the Customer handles Customer Personal Data relating to French patients. Upon the Customer's written instruction, ResMed shall implement the process described in Clause 12.1 or Clause 12.2.

## **12. Audit rights**

12.1 On a regular basis ResMed will commission an independent audit to assess and document the appropriateness of its technical and organizational measures in relation to NightOwl, and will share a summary of the results of that audit and/or other related information reasonably required by a Customer on written request so that the Customer can verify ResMed's compliance with this DPA. Any such information shall be considered ResMed's Confidential Information and may be subject to ResMed's further reasonable confidentiality requirements (including but not limited to execution of a separate non-disclosure agreement). Should ResMed 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

ResMed's technical and organizational measures itself or through the Customer's authorized representative. If the Customer so decides to audit ResMed as aforesaid, the Customer shall provide ResMed with a written audit plan (including comprehensive technical details which might have an impact on NightOwl) for ResMed's approval (such approval not to be unreasonably withheld) with three (3) months' advance written notice, and any/all aspects of such audit shall at all times be considered ResMed's Confidential Information and may be subject to ResMed's further reasonable confidentiality and other requirements (including but not limited to execution of a separate non-disclosure agreement).

12.2 ResMed 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 (1) per year. Such responses shall be considered ResMed's Confidential Information and may be subject to ResMed's further reasonable confidentiality and other requirements (including but not limited to execution of a separate non-disclosure agreement).

### **13. International Transfers**

13.1 In accordance with Clause 7.2, Customer Personal Data will at all times be hosted on data centers within the EEA.

13.2 Subject to Clause 14.3 and Clause 14.5, the Processing of Customer Personal Data by ResMed 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.

13.3 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 NightOwl (including, as required to provide maintenance or customer support, or for compliance or data security reasons), subject to ResMed implementing any safeguards required under the Data Protection Laws.

13.4 Where, in accordance with Clause 14.3, Customer Personal Data is transferred to a non-adequate country, ResMed 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.

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

### **14. Legal Processes**

14.1 If ResMed or a ResMed 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):

14.1.1 ResMed or that ResMed 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

14.1.2 promptly notify the Customer of the Legal Process, unless legally prohibited from doing so.

14.2 Where ResMed, a ResMed 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.

14.3 In the absence of any such grounds, ResMed or ResMed 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.

## **15. General Terms**

### **Costs**

15.1 ResMed may, to the extent permitted by applicable law, require the Customer to reimburse ResMed for all costs (including internal and third-party costs) which are reasonably and properly incurred by ResMed in the performance of ResMed'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 ResMed, disproportionate. ResMed may charge for internal resources at ResMed's then current professional day rates as set by ResMed in the Customer's country of residence from time to time.

### ***Order of precedence***

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

15.3 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.

### **Severance**

15.4 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.

### ***Customer Personal Data and Prior Agreements***

15.5 Notwithstanding the provisions of any prior agreement governing NightOwl or equivalent ResMed or ResMed Affiliate services (whether with ResMed or any ResMed Affiliate) regarding return or deletion of

Customer Personal Data, the Customer agrees that ResMed 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.