

**THRIVE HEARING CONTROL MOBILE APPLICATION  
END USER LICENSE AGREEMENT  
STARKEY LABORATORIES, INC.**

**App Version:** 3.2.0

**Last Updated:** January 2020

This End User License Agreement (“Agreement”) is a binding agreement between Starkey Laboratories, Inc. d/b/a Starkey Hearing Technologies (“Starkey,” “we,” “us,” or “our”), and the person (“User,” “you,” or “your”) downloading, installing, or using the Thrive hearing control mobile device application (“App”), and governs your use of the App. By accessing, installing, or using the App, you agree to follow and be bound by the terms and conditions of this Agreement. If you do not agree with the terms and conditions herein, you may not use the App.

**Starkey provides the App solely on the basis that you accept and comply with the terms of this Agreement. By taking action to accept this Agreement and use the App, you agree to be legally bound by its terms. If you do not agree to the terms of this Agreement, Starkey will not and does not grant you a license to the App, and you must not download, install, or use the App.**

You must be at least 16 years old and legally competent to make decisions to use the App. If a hearing aid user is not legally competent to make decisions, a legal guardian or other person with legal authorization to act on behalf of the hearing aid user (“Legal Guardian”) must create the App account. In that case, the Legal Guardian must ensure the App is used in compliance with this Agreement, and must make all decisions regarding the App including providing any necessary consents, and identifying any third-parties for data sharing functionality.

THE APP IS NOT INTENDED FOR CHILDREN YOUNGER THAN 16 YEARS OLD, AND NO ONE YOUNGER THAN 16 YEARS OLD MAY PROVIDE ANY INFORMATION TO THE APP. WE DO NOT KNOWINGLY COLLECT PERSONAL INFORMATION FROM CHILDREN YOUNGER THAN 16 YEARS OLD. IF YOU ARE YOUNGER THAN 16 YEARS OLD, DO NOT USE THE APP OR PROVIDE ANY INFORMATION ABOUT YOURSELF TO US, INCLUDING YOUR NAME, ADDRESS, TELEPHONE NUMBER, OR EMAIL ADDRESS. IF WE DISCOVER THAT WE HAVE RECEIVED INFORMATION FROM A CHILD YOUNGER THAN 16 YEARS OLD WITHOUT PARENTAL CONSENT, WE WILL DELETE THAT INFORMATION. IF YOU BELIEVE THAT WE MAY HAVE INFORMATION FROM OR ABOUT A CHILD UNDER AGE 16, PLEASE CONTACT US AT [DATA\\_PRIVACY@STARKEY.COM](mailto:DATA_PRIVACY@STARKEY.COM).

**PLEASE NOTE THAT THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISION THAT REQUIRES YOU, INDIVIDUALLY, TO USE ARBITRATION TO RESOLVE LEGAL CLAIMS, RATHER THAN COURT OR JURY TRIALS, WHICH INCLUDES CLASS ACTIONS, TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

## **Definitions**

“Thrive Care App” means Starkey’s mobile device software application that can receive information from a Thrive Sharer.

“Thrive Follower” means a user of the Thrive Care App, who has been invited to receive shared information from a Thrive Sharer.

“Thrive Share” means the App data service that allows you to share certain types of your App information, that you have specifically chosen to share, with a third-party you have identified and invited, who downloads the Thrive Care App and creates an account. Starkey may use commercial brand names, like Hearing Care Anywhere, to refer to this App data sharing service. It will be referred to as Thrive Share for the purposes of this Agreement.

“Thrive Sharer” means an App user who chooses to share some of their Thrive information with a third party.

“Personal Information” means information that can be used to identify an individual person.

“User Data” means any data or information supplied by you to Starkey or to or through the App, and any reports, data queries, responses to data queries, or other output generated by the App using or based on such data or information.

## **Using the App**

The App is intended for use only with hearing devices manufactured by Starkey. The App will communicate with Starkey hearing devices using the Bluetooth<sup>®</sup> standard communication protocol. In order to use the App, you must first pair your Starkey hearing devices with your smart mobile device (phone or tablet) via Bluetooth<sup>®</sup>. The App allows you to control certain aspects of your hearing devices with your smart mobile device, and allows you to back-up certain hearing device data and settings. The Bluetooth<sup>®</sup> trademark and logos are the property of Bluetooth Special Interest Group, Inc., and are used by Starkey under license.

Please consult with your doctor, audiologist, or other qualified healthcare provider before using the App.

## **Password Protection**

You are responsible for maintaining the security and confidentiality of your credentials to access the App. Please note that you will remain logged into the App until you manually log out. Starkey is not responsible or liable to you in any way if you do not keep your credentials confidential and secure and as a result information is intercepted by an unauthorized person, either in transit or at your home, business, or other place of access. Starkey uses appropriate measures to keep your information secure and confidential while on Starkey’s systems, but Starkey is not responsible for the security of information while on your device or during transmission from your device to Starkey. You agree to be responsible for any act or omission by any person accessing the App or other Starkey technology, using your account credentials, or from your computer or smart device.

### **Required Equipment and Services**

You are solely responsible for purchasing all hardware, software and communications services necessary for use of the App, as well as all necessary maintenance and security. You are required to utilize a suitable internet connection, compatible updated software, appropriate firewall and anti-virus software. Starkey prohibits “jailbreaking” or unauthorized removal of security restrictions on your devices used with the App, as it may cause the App to malfunction or destroy your User Data.

### **Use of Your Personal Information**

You represent, warrant and agree that all information you provide to Starkey will be accurate and complete. Your use of the App will involve sending your Personal Information, including information about your hearing condition, to Starkey in order to provide access to your hearing care professional, if you consent to such access, and other services provided by the App. We will ask for your consent to use your health information and certain other information indicated on the App. Ownership and use of User Data and Personal Information is described in our privacy policy, accessible via the App.

### **Thrive Share**

The App allows you to share certain User Data with a Thrive Follower. The Thrive Follower will be able to access your User Data through the Thrive Care App. By Using Thrive Share, you understand that you are authorizing the Thrive Follower to access your User Data. You are responsible for designating your Thrive Followers, and providing accurate information identifying them. We do not verify the accuracy of information you provide regarding your Thrive Followers. Once you establish a Thrive Follower, we share your designated information, including Personal Information, until you terminate the Thrive Follower. We have no control over what the Thrive Follower does with your Personal Information. You understand that the App is merely a conduit that you and a Thrive Follower may utilize, and that Starkey is not involved in the decisions of whether to use, or how you and a Thrive Follower use the App and share information.

### **Authorizing Your Hearing Care Professional to Access Your App Cloud Account**

With your permission, your hearing care professional can connect to and access your App cloud account. This allows your hearing care professional to provide you with remote services. You must first provide your consent, before Starkey will allow your hearing care professional to connect to and access your App cloud account. If you would like to take advantage of this service, please inform your hearing care professional. Your hearing care professional will then provide you with a unique code, only valid for a limited time (“Remote Code”). You must then access the remote programming function in the App and enter the Remote Code. The App will prompt you for your affirmative consent and authorization to allow your hearing care professional to connect to and access your App cloud account. After you provide your consent, your hearing care professional can connect to your App cloud account and will have access to the User in your App cloud account. You may terminate your hearing care professional’s access to your App cloud account by choosing that option in the App settings.

### **Access by Hearing Care Professional**

By granting access to your App cloud account, you are authorizing your hearing care professional

to access your App cloud account User Data. You understand that the App is merely a conduit that you and your hearing care professional may utilize, and that Starkey is not involved in the decisions of whether to use, or how you and your hearing professional use, the App.

### **Starkey is not Providing Healthcare Services**

You understand and agree that Starkey is not, by reason of supplying the App, providing medical or healthcare services, or acting as your medical or healthcare provider. Starkey, in providing the App, is not acting as a physician, audiologist, or any other medical services provider. The content and operation of the App is not, and should not be considered, medical or healthcare advice or services. You understand and agree that you are solely responsible for obtaining proper treatment for your health conditions, and that you will seek all appropriate treatment from healthcare professionals. The App and information generated by the App is not a substitute for regular professional care and monitoring. You may provide the information and reports from the App to your healthcare provider at your own risk, acknowledging that the App is provided without warranty except as required by law or otherwise expressly set forth in this Agreement.

### **Fall Alert, Heart Rate Monitoring, and Other App Functions are Not Emergency Services**

Some wellness features may not be available on certain products or in certain countries. But where wellness features are available, you understand that the App is simply a tool that may assist you in monitoring your wellness, and in some cases, communicating certain information to third-party contacts that you have identified. You understand and agree that Starkey is not, by reason of supplying the App, agreeing to contact or provide any type of medical, fire, law enforcement, or other emergency services. The content and operation of the App does not communicate with emergency services or provide emergency assistance, and should not be considered a substitute for contacting professional emergency services. Fall alert, heart rate monitoring, and other App features may not function for a variety of technical reasons, including, but not limited to, inadequate sensor contact, improper sensitivity settings, failure of Bluetooth<sup>®</sup> or cellular connectivity, hearing aid power problems, or mobile device power problems.

### **Accuracy of Geolocation Data**

Geolocation and mapping functionality and information provided by the App or by third-party apps that communicate with the App may not be accurate and should not be relied upon as accurate. Geolocation and mapping information results from calculated estimates, and is influenced by many variables including configuration of mobile device connectivity, speed of movement, and environment. You may disable geolocation and mapping functionality in the App by turning off the geolocation function on your mobile device.

### **Fall Alert, Heart Rate Monitoring, Heart Rate Recovery Testing, and Thrive Wellness Scores Support General Health and Wellness, and are not Intended to Diagnose or Treat Medical Conditions**

If available on your product, the fall alert features may assist you in communicating certain information to third-party contacts you identified, related to a potential fall. The fall alert features are intended only to detect a user's fall-like movement, which is a feature designed to sustain functions associated with general health. The Thrive Wellness Scores for wellness, body, and brain are also intended to sustain functions associated with general health. Likewise, if available on your product, heart rate monitoring and heart rate recovery features assist you in observing

your heart rate, which is associated with general health and wellness. The fall alert, Thrive Wellness Scores, and heart rate monitoring and testing features are not intended to detect, diagnose, treat, cure, or prevent any disease or other medical condition.

### **Heart Rate Monitoring and Heart Rate Recovery**

Consult your physician before starting any exercise program in which you plan to use the heart rate monitoring or heart rate recovery feature. Stop exercising immediately if you feel pain, or feel faint, dizzy, exhausted, or short of breath. You assume all associated inherent risks of exercising, including any injury that may result from such activity.

### **Grant of Limited License**

Starkey hereby grants you a non-exclusive, non-transferable, non-sublicensable, limited, revocable license to access and use the App as set forth in this Agreement and expressly conditioned upon your full compliance with this Agreement. You agree that the App is for your own personal use and you will not (i) allow any other person or entity to use or access the App, (ii) attempt to copy any ideas, features, functions, or graphics contained in the App, (iii) use the App in the operation of a service bureau or an application service provider, or for any other purpose intended to benefit a party other than you, (iv) alter or modify the App, (v) sell, assign, sublicense, rent, lease, or otherwise transfer the App or any rights in connection therewith, or (vi) attempt to translate, disassemble, decompile, reverse assemble, or reverse engineer all or any part of the App, or otherwise attempt to derive the source code for the App.

You will not, and will not permit any other person to, (i) bypass or breach any security device or protection used for or contained in the App, (ii) use the App in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property or other right of any person, or that violates applicable law, or (iii) attempt to use the App to access information about any hearing aid or hearing aid wearer other than yourself. Any information learned through inadvertent or unauthorized access to proximate hearing aids within the App range shall not be further used or disclosed by you and shall be treated in an ethical and confidential manner.

### **App Ownership and Intellectual Property Rights**

You have no ownership rights in or to the App. Rather, Starkey grants you a license to use the App as long as this Agreement remains in full force and effect. You acknowledge and agree that Starkey owns all intellectual property contained in the App, including Starkey's trademarks, service marks, trade names, logos, domain names, taglines, and trade dress (collectively, "Starkey IP"). Starkey reserves all rights, title, and interest in and to the App, and in and to the Starkey IP, except as expressly granted in this Agreement. Starkey's interests are protected by the copyright, trademark, and other laws of the United States and foreign countries.

### **App Updates; License Amendments**

From time to time, Starkey may publish updates to the App. Starkey recommends you install App updates whenever available. Starkey reserves the right to amend this Agreement at any time, including in connection with any update to the App.

### **Confidentiality; No Disclosure or Publication**

You acknowledge that the App, including the source code and any information derived therefrom,

comprises valuable proprietary information owned by Starkey. You agree not to attempt to gain access to such information, and further agree that should you obtain access to such information you will not publish or disclose the information, including to any other person or entity.

### **Security Measures; Troubleshooting**

Starkey is committed to providing technical support to help resolve problems with the App at no cost, but you are obligated, and hereby agree, to take all reasonable precautions from malicious software or other technical threat to the App. By accepting this Agreement, you agree to use reasonable efforts to secure your smart mobile devices. Please contact your Starkey support team for technical support.

### **Disclaimer of Express and Implied Warranties**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE APP IS AT YOUR SOLE RISK. STARKEY PROVIDES THE APP STRICTLY ON AN “AS-IS” BASIS, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO VALUE, EITHER EXPRESS OR IMPLIED, IS GUARANTEED OR WARRANTED WITH RESPECT TO ANY CONTENT. NOTWITHSTANDING INTELLECTUAL PROPERTY RIGHTS OR ANY EXPENDITURE ON YOUR PART, STARKEY AND USER EXPRESSLY DISCLAIM ANY COMPENSABLE VALUE RELATING TO OR ATTRIBUTABLE TO ANY DATA RELATED TO YOUR USAGE OF THE APP. USER ASSUMES ALL RISK OF LOSS FROM USING THE APP ON THIS BASIS. STARKEY DOES NOT GUARANTEE OR ENSURE CONTINUOUS, ERROR-FREE, SECURE, OR VIRUS-FREE OPERATION OF THE APP, AND YOU UNDERSTAND THAT YOU SHALL NOT BE ENTITLED TO REFUNDS OR OTHER COMPENSATION BASED ON STARKEY’S FAILURE TO PROVIDE ANY OF THE FOREGOING OTHER THAN AS EXPLICITLY PROVIDED IN THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, AND TO THAT EXTENT, THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU.

### **Limitation of Liability**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL STARKEY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, SUBSIDIARIES, AFFILIATES, AGENTS, OR LICENSORS BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APP, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE). SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL STARKEY’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES EXCEED THE AMOUNT OF FIFTY U.S. DOLLARS (\$50.00). THE FOREGOING

LIMITATIONS WILL APPLY EVEN IF THE ABOVE-STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### **Trade Compliance**

In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a United States company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the App in the region in which it is being used. You represent and warrant that you and your financial institutions, or any party that owns or controls you or your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including, but not limited to, the lists maintained by the United Nations Security Council, the United States Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the United States Department of Treasury, and the Entity List of the United States Department of Commerce), the European Union or its member states, or other applicable government authority.

### **Assignment of Agreement**

You may not assign this Agreement or transfer or sublicense any rights granted by Starkey in this Agreement without Starkey's prior written consent. Starkey may assign this Agreement, in whole or in part, and all related rights, licenses, benefits, and obligations, without restriction, including the right to sublicense any rights and licenses under this Agreement.

### **Termination**

This Agreement is effective until it is terminated. You may terminate this Agreement at any time by deleting all copies of the App in your possession or under your control. Your rights under this Agreement terminate automatically, without notice from Starkey, if you fail to comply with the terms of this Agreement. Starkey may terminate this Agreement for any reason. Upon termination, you agree to delete all copies of the App and to certify in writing that all known copies, including backup copies, have been destroyed. All provisions relating to confidentiality and proprietary rights shall survive the termination of this Agreement.

### **Governing Law and Dispute Resolution**

This Agreement shall be construed, interpreted, and governed by the laws of the State of Minnesota, in the United States of America, without regard to conflicts of law provisions thereof. Any disputes arising from or relating to this Agreement will be decided by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with such rules. The language of the arbitration will be English. The place of arbitration will be Minneapolis, Minnesota, United States of America.

### **Language**

All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**Waiver and Severability**

The failure by Starkey to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit Starkey's right to enforce such provision at a later time. All waivers by Starkey must be in writing to be effective. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be interpreted to reasonably affect the intention of the parties.

**Entire Agreement**

This Agreement shall constitute the sole and entire agreement between the User and Starkey related to the App. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral.

**Indemnification**

You agree to defend, indemnify, and hold harmless Starkey, its affiliates and licensors, and each of their respective employees, officers, directors, shareholders, and representatives from and against any and all third-party claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) that such parties may incur as a result of or arising from any information you submit, post or transmit through the App or related Starkey technology, your use of the App, your violation of this Agreement, or your violation of any third-party rights. You will reimburse Starkey for reasonable attorneys' fees, as well as employees' and contractors' time and materials, at the then-current hourly rates, spent responding to any third-party subpoena or other compulsory legal order or process associated with any third-party claims as described in this section.

**Notices; Contact Us**

Starkey will provide notices related to this Agreement via email, to the email address you provided. You will provide any notice to Starkey under this Agreement, as well as any questions or comments, via email to [Data\\_Privacy@starkey.com](mailto:Data_Privacy@starkey.com). Please note that email communications are not secure, so please do not include any financial or other sensitive information. You may also contact us by U.S. Mail or delivery to:

Starkey Hearing Technologies  
Attn: Legal Dept  
9505 Hamilton Road  
Eden Prairie, MN 55344

1-800-627-5762