

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

**App Version:** \_\_\_\_\_

**Last Updated:** \_\_\_\_\_

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 Care 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.

**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 App” means Starkey’s Thrive hearing control mobile device software application used with Starkey hearing aids.

“Thrive Share” means the App data service that allows a Thrive user to designate third-party recipients to receive certain types of the Thrive user’s information. The designated recipients must download the Thrive Care App and create 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 a Thrive App user who has chosen to use the Thrive Share function.

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

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

“Sharer Data” means any data transmitted by a Thrive Sharer using the Thrive Share function.

“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 in conjunction with a third-party user of Starkey’s Thrive 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.

## **Starkey’s Use of Your Information**

Your use of the App will involve sending your Personal Information to Starkey in order to provide access to services provided by the App. We will use the information as described in our privacy policy, accessible via the App.

## **App Functionality is Not Medical Advice**

You understand that the App is merely a conduit that you and the Thrive Sharer may utilize, and that Starkey is not involved in the decisions of whether to use, or how you and a Thrive Sharer use, the App. You understand and agree that Starkey is not, by reason of supplying the App, providing healthcare services, or acting as a 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.

### **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 and a Thrive Sharer in monitoring a Thrive Sharer's wellness. 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 to you or to the Thrive Sharer. 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 Thrive 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® or cellular connectivity, hearing aid power problems, or mobile device power problems.

### **Accuracy of Geolocation Data**

Geolocation and mapping functionality and information shared from the Thrive App or by third-party apps that communicate with the Thrive 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.

### **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 a Thrive Sharer who has elected to share Sharer Data with you. Any information learned through inadvertent or unauthorized access to other App or Thrive App user information 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 you and Starkey related to the App. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral.

### **Indemnification**

User agrees 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 damages or costs arising out of or relating to any third-party claim related to User's use of the App in violation of this Agreement. User 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

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