

## LENA ONLINE™ TERMS OF USE AND ACCESS TO SERVICES

You agree to the terms contained in this Terms of Use Agreement (this "**Agreement**") with respect to your access to and use of the LENA™ cloud-based online platform (the "**LENA Online Platform**") operated by the LENA Foundation (the "**Foundation**") and all services provided through the LENA Online Platform ("**Services**"). All capitalized terms used in this Agreement, and not otherwise defined, will have the meaning set forth in Section 1 of this Agreement.

THE FOUNDATION IS WILLING TO GRANT YOU RIGHTS TO ESTABLISH AN ACCOUNT ON THE LENA ONLINE PLATFORM AND/OR ACCESS AND USE THE SERVICES ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. BY ACCESSING OR USING THE LENA ONLINE PLATFORM OR ANY SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. YOU MAY ALSO AGREE TO THE TERMS OF THIS AGREEMENT BY CLICKING THE "**I ACCEPT**" CHECK BOX BENEATH THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR ENTITY TO THIS AGREEMENT, THEN THE FOUNDATION IS UNWILLING TO GRANT YOU RIGHTS TO ACCESS OR USE THE LENA ONLINE PLATFORM OR ANY SERVICES.

THE LENA ONLINE PLATFORM, ALL SERVICES, AND ANY DATA AND CONTENT, ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT INTENDED TO PROVIDE OR TAKE THE PLACE OF PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING YOUR CHILD'S LINGUISTIC, PSYCHOLOGICAL, MENTAL, OR MEDICAL DEVELOPMENT. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON THE LENA ONLINE PLATFORM, THROUGH THE SERVICES, OR AS PART OF THE DATA OR CONTENT.

THIS AGREEMENT FORMS A LEGALLY BINDING CONTRACT BETWEEN YOU AND THE FOUNDATION. THE PARTIES TO THIS AGREEMENT ARE YOU AND THE FOUNDATION. IF YOU ARE NOT ACTING ON BEHALF OF YOURSELF AS AN INDIVIDUAL, THEN "YOU", "YOUR", AND "YOURSELF" MEANS YOUR COMPANY OR ORGANIZATION OR THE PERSON YOU ARE REPRESENTING. ALL REFERENCES TO "WE", "US" OR "OUR" SHALL BE CONSTRUED TO MEAN THE FOUNDATION.

### 1. **Definitions.**

"**Authorized Users**" means you and any other individuals who are authorized by you to access the Services.

"**Content**" means the text, graphics, images, videos, questionnaires, documentation, and other content and materials contained on the LENA Online Platform or otherwise provided in connection with the Services, other than the Data.

"**Data**" means the data and information collected through the LENA Online Platform and LENA Software, including spoken language recordings obtained through LENA Recorders, and the analyses of that data and information and all related reports provided through the LENA Online Platform and Services.

"**LENA Recorder**" means the LENA recorder or digital language processor used to make recordings of spoken language.

"**LENA Software**" means the LENA processing software that provides analysis of audio recordings uploaded from LENA Recorders.

"**Services**" means the services provided through the LENA Online Platform, as further described on the LENA Online Platform.

### 2. **Integration of Agreements.**

This Agreement and, if applicable, the terms of any separate written software license agreement or similar agreement between you and the Foundation pursuant to which the LENA Software is made available to you, govern your use of and access to the LENA Online Platform, LENA Software, and all Services and Data. If you have entered into a separate written agreement with the Foundation relating to the LENA Software, any conflicting or additional terms of that agreement supersede the terms of this Agreement as to the LENA Software. In addition, if the provider of the program through which you have gained access to the LENA Online Platform has entered into a separate written agreement with the Foundation, that agreement may include additional terms applicable to your use of the LENA Online Platform. Otherwise, this Agreement constitutes the entire and only agreement between you and the Foundation, and supersedes all other prior or contemporaneous agreements, representations, warranties and understandings with respect to the LENA Online Platform, Services, Data, or any other content accessible through the LENA Online Platform or Services, and the subject matter of this Agreement.

### 3. **Modification of This Agreement.**

This Agreement may be amended at any time by the Foundation from time to time without specific notice to you. The latest Agreement will be made available when you access the Services, and you should review this Agreement prior to using the Services. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED USE OF THE SERVICES FOLLOWING OUR POSTING OF AN AMENDED AGREEMENT OR PROVIDING YOU NOTICE OF A MODIFICATION WILL CONSTITUTE BINDING ACCEPTANCE.

### 4. **Access to Services.**

LENA will use reasonable efforts to make the Services available to Authorized Users during the Term (as defined below). You may use the Services only for the uses not prohibited hereunder and in strict compliance with the terms of this Agreement. We reserve the right to update and modify the Services from time to time. The LENA Online Platform may only be accessed and used

by you or any Authorized Users accessing the Services on your behalf. You will be responsible for your Authorized Users' compliance with the terms and conditions of this Agreement, and any breach of this Agreement by an Authorized User shall be deemed to be a breach by you. You agree to not make any commitments with respect to the availability of the Services, or the accuracy or validity of any Data to any third party, including Authorized Users.

**5. Passwords and Security of User Accounts.**

You will control the issuance of passwords and User IDs for access to the Services by any of your Authorized Users. You will be solely responsible for the confidentiality of all such passwords and for all liabilities incurred through use of any password assigned to you by the Foundation for access to any part of the LENA Online Platform. You are responsible for maintaining the confidentiality of your login ID, password, and any additional information that we may provide regarding access to your account. If you knowingly share your login ID and password with another person who is not authorized to use the Services, this Agreement is subject to termination for cause. You agree to promptly notify us of any unauthorized use of your login ID, password, or account or any other breach of security of which you become aware.

**6. Service Access Levels.**

You will be granted authorized login protocols for the Services, and you agree not to use the Services in excess of your authorized login protocols applicable to the Service levels to which you have subscribed. You agree not to access (or attempt to access) the Services or the LENA Online Platform by any means other than through the interface we provide, unless you have been specifically allowed to do so in a separate written agreement with the Foundation. You agree not to access (or attempt to access) the Services or the LENA Online Platform through any automated means (including use of scripts or web crawlers).

**7. Restrictions on Use.**

Your use of the Services and Data and your access to the LENA Online Platform is solely for your own non-commercial academic, educational, research or clinical use only. You may not use the Services for any other purpose whatsoever. You are strictly prohibited from using the Services to analyze or interpret any data except the Data in the form obtained exclusively from the Foundation. Without limiting the generality of the foregoing, except to the extent permitted by applicable law and solely for the purposes contemplated by such law, you shall not (a) provide services to or on behalf of a third party related to the LENA Online Platform or the Services for commercial use except in connection with academic, educational, research or clinical projects by or under supervision of a speech language professional, educator, medical doctor, audiologist or other similar professional, (b) operate as a service bureau, lease, lend, distribute, commercialize, assign, transfer, license or otherwise make available for consideration to any third party access to the LENA Online Platform or any Services or Data or any portion thereof, (c) attempt to develop for commercial purposes any scales, metrics, charts, or other measurement system using or based upon Services or Data to assess or measure the frequency and consistency of infant speech and parent/infant interaction, or (d) interfere in any manner with the operation or hosting of, or attempt to gain unauthorized access to, the LENA Online Platform or Services.

**8. Subscription Fees.**

Your use of the Services may be subject to applicable subscription fees, if any, within the corresponding usage limitations. If so, your continued access to the Services is subject to the timely payment of such fees and such fees are non-refundable, unless expressly provided otherwise in a separate written agreement with the Foundation.

**9. Intellectual Property.**

The LENA Online Platform, LENA Software, and all Data and Content, including all copies and any improvements, enhancements, modifications or derivative works thereof, and all worldwide intellectual property rights and other proprietary rights relating thereto or embodied therein (the "*Foundation Property*"), are and shall remain the exclusive property of the Foundation and its licensors and suppliers. The Foundation and its licensors and suppliers reserve all rights in and to the Foundation Property not expressly granted to you in this Agreement, and no other licenses or rights are granted to you, whether by implication, estoppel or otherwise. The Foundation claims no rights in any Data in connection with the authorized use of the Services, except as otherwise set forth in herein. No right, license or interest to any Foundation trademarks are granted hereunder, and you agree that no such right, license or interest shall be asserted by you with respect to such trademarks.

**10. Use of Data.**

You acknowledge that the Services collect, process, and generate Data and certain other information and content regarding use of the LENA Online Platform and LENA Recorders by you and your Authorized Users. You consent to the collection, processing, and use of that Data and Content as described in the Foundation's privacy policy available at <http://www.lena.org/privacy-policy/> ("*Privacy Policy*").

**11. Warranty Disclaimers.**

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE LENA ONLINE PLATFORM AND ALL SERVICES, DATA, AND CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND THE FOUNDATION, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THE FOUNDATION DOES NOT WARRANT THAT THE SERVICES OR THE LENA ONLINE PLATFORM WILL OPERATE WITH ALL VERSIONS OF THIRD PARTY BROWSERS, HARDWARE OR OPERATING SYSTEM SOFTWARE OR THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

**12. Indemnification.**

You agree to defend and hold the Foundation and our partners, employees, agents, advertisers, product and service providers, and affiliates (collectively, "*LENA Affiliated Parties*") harmless from any claim or cause of action brought against any of the LENA Affiliated Parties, and indemnify the Affiliated Parties from and against any resulting liability, loss or expense (including reasonable attorney's fees) arising from or related to your willful and material violation of this Agreement, your violation of applicable laws or regulations, or your gross negligence or willful misconduct, except to the extent such claim or cause of action arises from the Foundation's gross negligence or willful misconduct.

The Foundation agrees to defend and hold you and your employees and agents who are using the Services on your behalf (the "*User Parties*") harmless from any claim or cause of action brought against any of the User Parties, and indemnify the User Parties from and against any resulting liability, loss or expense (including reasonable attorney's fees) arising from or related to unauthorized access to the Data caused solely by the gross negligence or willful misconduct of the Foundation, except to the extent such claim or cause of action arises from the violation of applicable laws or regulations or the gross negligence or willful misconduct of any of the User Parties.

**13. LIMITATION OF REMEDIES AND DAMAGES.**

You assume responsibility for the selection of the Services to achieve its intended results, and the installation, use and results obtained from the Services and all Data and Content. The Foundation's cumulative liability to you or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, the LENA Online Platform and Services, and all Data and Content shall not exceed the fees (if any) paid by you to the Foundation for the use of the Services. THE FOUNDATION SHALL NOT BE LIABLE FOR: (A) ANY LOSS OF USE OF YOUR COMPUTER SYSTEMS OR LOSS OR CORRUPTION OF DATA OR THE COSTS OF SYSTEM OR DATA RECOVERY; (B) ANY THIRD PARTY CLAIMS; OR (C) FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY. THE LIMITATIONS AND NEGATION OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND THE FOUNDATION AND THE SERVICES WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS.

**14. Termination.**

The term of this Agreement ("**Term**") will begin on the date you first access or use the LENA Online Platform and will end upon termination of this Agreement under this Section. We may terminate this Agreement for any reason upon notice to you. We may also terminate this Agreement for cause without prior notice to you upon any material breach of this Agreement or, if applicable, any other agreement between you and the Foundation, including without limitation any failure to pay fees as they become due or any unauthorized use of the Services, Data, or Content. Any termination of this Agreement will terminate your account and access to the LENA Online Platform and removal of access to the Services, Data, and Content, and deletion of your login data, password, and all related information. Further, you agree that such termination shall be made in our sole discretion, and that we will not be liable to you or any third party for any termination of your account or access to the Services. If we elect to terminate this Agreement for cause, we may elect, in our sole discretion, not to refund any prepaid fees or other amounts to you. There are no refunds for any subscription fees paid.

**15. Site Security.**

The Foundation has employed and will continue to employ commercially reasonable security measures within the LENA Online Platform to prevent any unauthorized access to Data.

**16. Compliance with Laws; Monitoring.**

The Services shall only be used for lawful purposes and in compliance with this Agreement and all other applicable U.S. federal, state, local laws and any international laws in your jurisdiction. Although we assume no obligation to do so, we reserve the right to monitor your access and use of the Services without notification to you. We may prohibit any use of the Services that we reasonably believe may be in violation of the foregoing or any other provision of this Agreement.

**17. Notices.**

We may give notice to you by means of (a) a general notice in account information accessible through the Services, (b) by electronic mail to your e-mail address on record in your user profile or other subscription information provided to us ("*Registration Data*"), or (c) by written communication sent by first class mail or pre-paid post to your address on record in your Registration Data. Such notice shall be deemed to have been given upon the expiration of three (3) business days after mailing or posting (if sent by first class mail or pre-paid post) or one (1) business day after sending (if sent by email).

**18. Choice of Laws.**

The state and federal courts located in the city of Denver in the State of Colorado, USA shall be the exclusive jurisdiction and venue for all legal proceedings brought to enforce the terms of, or in connection with any dispute under, this Agreement. The laws of the State of Colorado, USA shall apply to all issues in dispute, excluding its rules regarding conflicts of law. You expressly submit to the exclusive jurisdiction of said courts and consents to extra-territorial service of process in connection therewith.

**19. Miscellaneous.**

Our relationship is that of independent contractors and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. This Agreement will be binding upon the successors and permitted assigns of each party. You may not assign or transfer this Agreement or any of your rights or obligations under this Agreement to any third party (by operation of law or otherwise) without our prior written consent. Any assignment or transfer in violation of the foregoing will be void. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either party. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision at any time. We will be excused from performance under this Agreement to the extent our performance is prevented, in whole or in part, by delays caused by you or by events beyond our reasonable control. References herein to “including” shall be construed inclusively to mean “including, without limitation.” Except as expressly set forth herein, there are no third party beneficiaries to this Agreement.