

hearScope™ Terms of Service
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hearScope™ is a trademark of hearX IP (Pty) Ltd with Registration Number 2018/033837/07.

Intended audience: App user (when he or she creates account)

Intended appearance: Upon first sign in a textbox should be accepted that shows a hyperlink of the terms of service and in the Settings menu the same hyperlink should be available. Should an account be created on the web portal the acceptance of the terms of service remains outstanding until accepted when accessing the application for the first time.

Intended format: Links to browser from hearScope™ application. Permission will need to be granted to 'leave' the app. Addresses how users are allowed to use the app, what the app is intended for and the grounds on which we can terminate their use of the app.

Definitions and legal references

Personal Data (or Data)

Any information regarding a natural person, a legal person, an institution or an association, which is, or can be identified, even indirectly, by reference to any other information, including test results, images, videos, text notes, or voice notes appended to an image .

App user

The individual using the mobile application or the desktop application with (minimal) healthcare training. The app user must coincide with, or be authorized by, the Data Subject, to whom the Personal Data refers in order to capture images or videos of their tympanic membranes or ear canals by the software.

Data Subject (or Patient)

The legal or natural person to whom the Personal Data refers.

Data Processor (or Data Supervisor)

The natural person, legal person, public administration or any other body, association or organization authorized by the Data Owner to process the Personal Data in compliance with this Privacy Policy.

Data Owner

The organization (hearX SA (Pty) Ltd), and any of its subsidiaries, has the right to make decisions regarding the purposes, and the methods of processing of Personal Data and the means used, including the security measures concerning the operation and use of this application.

Terms

The terms and conditions set out in the document of hearScope™ mobile and desktop application, pertained to the access and use of the information, products, services, application(s) and functions provided via www.hearxgroup.com ("Website").

The Application(s) (App)

The hearScope™ software application(s) (mobile app and desktop app), where images and videos of the ear canal and tympanic membrane are captured, as well as text notes and voice notes are attached to the image. Patient information (if applicable) is captured, as well as the category information from classifying the ear via the AI image classification feature (if applicable).

The Service

The application that allows the user to view or record images or video of the tympanic membrane, as well as the ear canal through the use of the hearScope™ hardware. The user can review and edit images, add text notes, or voice notes. Service also refers to the AI image classification feature (if applicable).

The Service Provider

hearX SA (Pty) Ltd (Registration number: 2015/193076/07) is the Service Provider of hearScope™ (Provisional Patent 2018/04408 "Diagnostic device").

Legal information

This privacy policy relates solely to this Application. hearScope™ is intended as a video otoscope application to view the ear canal and tympanic membrane, as well as capture images, videos, append text notes, or voice notes, and be able to provide an AI image classification result (if applicable).

Beta user(s)

The users of the Beta service(s).

Beta Service(s)

The Beta-release of the hearScope™ AI image classification feature.

Usage Data

Information collected automatically from this Application (or third party services employed in this Application), which can include: the IP addresses or domain names of the computers utilized by the Users who use this Application, the URI addresses (Uniform Resource Identifier), the time of the request, the method utilized to submit a request to the server, the size of the file received in response, the numerical code indicating the status of the server's answer (successful outcome, error, etc.), the country of origin, the features of the browser and the operating system utilized by the User, the various time details per visit (e.g., the time spent on each page within the Application) and the details about the path followed within the Application with special reference to the sequence of pages visited, and other parameters about the device operating system and/or the User's IT environment.

hearScope™ TERMS OF SERVICE (“TERMS”)

hearScope™ is a smartphone video otoscope, designed to view the ear canal and the tympanic membrane.

Please read these Terms of Service (“Terms”, “Terms of Service”) carefully before using the hearScope™ application (the “Service”) operated by hearX SA (Pty) Ltd (“us”, “we”, or “our”). Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service. By accessing or using the Service, you agree to be bound by these Terms. If you disagree with any part of the Terms then you may not access the Service.

1. About us:

We are a mHealth Solutions company, within the smart technology space, which provides technology and solutions for a subset of health care services. Our headquarters are situated in Pretoria, South Africa.

2. Use of Site

- 2.1 “Site” refers to any of our hearX portals, website, as well as application(s) (including the hearScope™ mobile app and desktop app). You may only use our websites to browse the content and make legitimate purchases. The application(s) should only be used for the purpose it was designed for. You shall not use the site and application(s) for any other purposes, including without limitation, to make any speculative, false or fraudulent purchases. This site and the content provided in this site may not be copied, reproduced, republished, uploaded, posted, transmitted or distributed. ‘Deep-linking’, ‘embedding’ or using analogous technology is strictly prohibited. Unauthorized use of this site and/or the materials contained on this site may violate applicable copyright, trademark or other intellectual property laws or other laws.
- 2.2 If you do not agree with the Terms of this site, you must refrain accessing the site and/or using the product and/or service.
- 2.3 If you are under the age of 18, you must obtain your parents’ or legal guardians’ advanced authorization, permission and consent to be bound by these Terms before purchasing any products or services or interacting with the site.
- 2.4 We reserve the right to:
 - 4.1 Modify or withdraw, temporarily or permanently, the service, or website (or any part of) with or without notice to you and you confirm that we shall not be liable to you or any third party for any modification to or withdrawal of the website; and/or
 - 4.2 Change these Conditions from time to time, and your continued use of the service or website (or any part of) following such change shall be deemed to be your acceptance of such change. It is your responsibility to check regularly to determine whether the Conditions have been changed. If you do not agree to any change to the Conditions then you must immediately stop using the service and website.

4.3 We will use our reasonable endeavors to maintain the Service and website. Both are subject to change from time to time. You will not be eligible for any compensation because you cannot use any part of the Service or website or because of a failure, suspension or withdrawal of all or part of the Service or website due to circumstances beyond our control.

3. Required Updates

We reserve the right to necessitate software updates. In such a case we reserve the right to discontinue support of previous versions of the software. Failure to upgrade to a new version when such upgrades are required will remove your ability to access the Service

4. Content of Application(s)

4.1 The content of the site (including the mobile and desktop app) is provided "as is" without warranty of any kind, either expressed or implied, including but not limited to the warranty of merchantability, fitness for a purpose and non-infringement. The Service Provider, assumes no responsibility for errors or omissions in this content.

4.2 The Service Provider shall not be liable for any direct, indirect, general, special, incidental or consequential damages (including -without limitation- data loss, lost revenues and lost profit) which may result from the inability to use or the correct or incorrect use, abuse, or misuse of these contents, even if the Service Provider has been informed of the possibilities of such damages. The Service Provider cannot assume any obligation or responsibility.

4.3 The Service Provider reserves the right to make improvements, to change or to discontinue, without notice, any aspects, content or features in the application(s).

4.4 The Service Provider may use the services of third parties to provide information or add features to the application(s). The Service Provider has no control over this information and makes no representation or warranties of any nature as to its accuracy, appropriateness or correctness. The user agrees that such information is provided "as is" and that Service Provider and its online partners (if applicable) shall not be liable for any losses or damages that may arise from the user's reliance on it, however these may arise.

4.5 The Service Provider makes no representation or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content in the application(s), including without limitation:

4.5.1 The Service Provider does not guarantee that the download of the application(s) shall be error-free or that they shall meet any particular criteria of performance or quality. Service Provider expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fitness for particular purpose, non-infringement, compatibility, security and accuracy;

4.5.2 Whilst the Service Provider has taken reasonable measures to ensure the integrity of the application(s), it is given that any files, or downloads are free from viruses, or any other data or code which has the ability to corrupt, damage or affect the operations of the user's system.

4.6 The use of these contents is forbidden in those places where the law does not allow this disclaimer to take full effect.

5. Linked third party websites and licenses

5.1 The Service Provider may provide links to third party websites and licenses in the application(s) (if available). These links are provided to the user for convenience purposes in the 'About Us' section in the application(s). The Service Provider does not endorse, nor does the inclusion of any link imply Service Provider's endorsement of, such websites, their owners, licensees or administrators or such websites' content or security practices and operations.

5.2 Although the Service Provider provides links to third party websites, licenses and content, the Service Provider does not accept any responsibility or liability for the information provided by the third parties.

6. Usage restrictions

The user hereby agrees that it shall not itself, nor through a third party:

6.1 copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, license, sub-license, encumber or in any other way deal with any part of the application(s) for any other reason in any manner, unless it is consistent with the intent and purpose of these Terms;

6.2 decompile, disassemble or reverse engineer any portion of the application(s);

6.3 write and/or develop any other software based on the hearScope™ application(s);

6.4 modify or enhance the application(s). In the event of the user effecting any modifications or enhancements to the application(s) in breach of this clause, such modifications and enhancements shall be the property of the Service Provider;

6.5 remove any identification, trademark, copyright or other notices from the application(s); and

6.6 notwithstanding anything contained to the contrary in these Terms.

7. Security

7.1 In order to ensure the security and operational reliability of the services to all Service Provider's users, the Service Provider hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network and back-office applications.

7.2 You may not utilise the application(s) in any manner which may compromise the security of the Service Provider's networks or tamper with the application(s) in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorised access to the application(s), or delivering or attempting to deliver any unauthorised, damaging or malicious code to the application(s), all of which is expressly prohibited. Any person or entity, which does so, or attempts to do so, shall

be held criminally liable. Further, should Service Provider suffer any damage or loss, civil damage shall be claimed by Service Provider against the user.

7.3 Any user who commits any of the offences in Chapter 14 of the Electronic Communication and Transactions Act 25 of 2002 ("ECTA") shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Service Provider and its affiliates, agents and/or partners.

8. Privacy Policy

8.1 We are committed to maintaining the privacy of your protected health information (PHI) and we will adhere to the applicable legal requirements. All information gathered on the website or via application(s) will not be used for anything other than which is stated in the Terms for this service. None of the information will be sold or made available to any third party.

8.2 To enable us to provide you with the service(s) may need to create records regarding the services we provide to you. Among the types of Personal Data that the application(s) collect is: first name, last name, and email address. The Personal Data is freely provided by the user, or collected automatically when using the application(s). Failure to provide certain Personal Data may make it impossible for the application(s) to provide its services.

8.3 Users are responsible for any Personal Data of third parties obtained, published or shared through the application(s) and confirm that they have the third party's consent to provide the data to the owner. Additional usage data is collected from research users in this application and includes: Patient information (where applicable), which contains the date of birth, gender, fever, ear pain, ear discharge, and reported hearing loss; images and videos; text notes; and voice notes.

8.4 The Service Provider processes the anonymised data using the appropriate security measures to prevent unauthorized access, disclosure, modification, or unauthorized destruction of the data. The data processing is carried out using computers and/or IT enabled tools, following organizational procedures and modes strictly related to the purposes indicated. In addition to the Data Owner, in some cases, the data may be accessible to certain types of persons in charge, involved with the operation of the site (administration, sales, marketing, legal, system administration) or external parties (such as third party technical Service Provider, mail carriers, hosting providers, IT companies, communications agencies) appointed, if necessary, as Data Processors by the owner. The updated list of these parties may be requested from the Service Provider at any time.

8.5 Usage data is anonymised and stored separately from Personal Data of users. Anonymised data may also be used for research or other types of analysis or

processing by the owner or an approved third party.. We will incorporate all necessary controls to ensure the safeguarding, confidentiality, integrity and availability of your electronic PHI. Our cloud service provider will implement all the required safeguards to secure data transmitted to the cloud, for secure data storage and to provide a system that allows data access to be carefully controlled.

8.6 The data is processed at the office of the Service Provider and in any other place where the parties involved with the processing are located.

8.7 The data is kept for the time necessary to provide the service requested by the user, or stated by the purposes outlined in this document (including the retention of anonymised testing data for research purposes). The user can request that the data owner suspend or remove any identifiable or unprocessed data.

8.8 The data concerning the user is collected to allow the owner to provide its services, and for the following purposes: Access to third party services' accounts, AI model, contacting the user, hosting and backend infrastructure, infrastructure monitoring, managing support and contact requests, registration and authentication, social features, anonymised data processing, analysis and research, as well as user database management.

8.9 Personal Data is collected for the following purposes and using the following services:

- Providing the application(s) to honour the Terms
- Access to third party services' accounts
- Contacting the user on request from the user
- Hosting and back-end infrastructure
- Managing support and contact requests
- Analytics
- Infrastructure monitoring
- Registration and authentication
- User database management
- Research purposes with anonymised data, if consent has been provided.

8.10 The user's personal data may be used for legal purposes by the Service Provider, in court or in the stages leading to possible legal action arising from improper use of the application(s) or the related services. The user declares to be aware that the service provider may be required to reveal personal data upon request of public authorities.

8.11 In addition to the information contained in this privacy policy, the application(s) may provide the user with additional and contextual information concerning particular services or the collection and processing of data, upon request.

8.12 For operation and maintenance purposes, the application(s) and any third-party services may collect files that record interaction with the application(s) or use for this purpose for other data, such as IP Address.

8.13 Service Provider reserves the right to use images captured for an AI image classification result (paid subscriptions or while in Beta testing), anonymously for research purposes and the improvement of the AI model. More details concerning the collection or processing of personal data may be requested from the Service Provider at any time.

8.14 Users have the right, at any time, to know whether their data has been stored and can consult the service provider to learn about their contents and origin, to verify their accuracy or to ask them to be supplemented, cancelled, updated or corrected, or for their transformation into anonymous format or to block any data held in violation of the law, as well as to oppose their treatment for any and all legitimate reasons. Requests should be sent directly to the Service Provider.

8.15 The Service Provider reserves the right to make changes to this privacy policy at any time by giving notice to the users on this page. It is strongly recommended to check this page often, referring to the date of the last modification listed at the bottom. If a user objects to any of the changes to the policy, the user must cease using the application(s).

8.16 By using or accessing hearScope™ application you agree that we can collect and use your information in accordance with the Privacy Policy.

9. Data Protection

9.1 We use several security procedures to protect your personal information and data from unauthorized access or disclosure and to ensure compliance with data protection standards. All sensitive data transferred from you to us is encrypted by HTTPS. Account passwords are stored using one-way encryption and therefore cannot be retrieved or decrypted. All systems, both web servers and database servers, are located behind a firewall, restricted to only necessary ports for running the application. All sensitive areas of the website and application(s) (login and account sections) run over industry standard secure SSL-encrypted protocols to prevent interception and unwanted access to accounts.

9.2 By using the Beta-version of the hearScope™ AI image classification feature, the user automatically gives consent that images can be used anonymously by hearX SA (Pty) Ltd for research purposes and the improvement of the AI classification feature.

10. Confidentiality

10.1 By subscribing as a user, you agree that you shall hold in the strictest confidence and not disclose to any third party information acquired in connection with any

aspect of the products and/or services offered by the Service Provider. You shall notify the Service Provider should you discover any loss or unauthorised disclosure of the information.

10.2 Any information or material sent to the Service Provider will be deemed not to be confidential, unless otherwise agreed in writing by the user and Service Provider.

11. Intended Use

The Service is intended to visually inspect the outer ear canal and tympanic membrane under magnification. Imaging of the outer ear canal and tympanic membrane is viewed on the smartphone or laptop/PC, using the hearScope™ application.

Please note that the AI image classification feature is not intended to be used to diagnose a disease, nor does it replace the diagnosis of a health practitioner.

12. Necessary equipment for, and the use of hearScope™

You can only connect hearScope™ to a hearX account or receive an AI image classification result (if applicable), by subscribing for the Service and by using hearScope™ patented technology to ensure accurate use of the service.

13. Necessary subscriptions for the use of hearScope™

13.1 If the user would like to receive instantaneous AI image classification results, he/she needs to obtain an Artificial Intelligent (AI) subscription and pay a monthly or annual subscription fee.

13.2 All hearScope™ users will receive a free trial period to test the AI image classification feature. If the users would like to continue using the AI image classification feature, they need to purchase an AI software subscription. The users are not under any obligation to purchase an AI software subscription after the free trial has expired.

13.3 While the application is in Beta-testing, users will receive a free trial to use the AI image classification feature for the period the software is undergoing certification. The users are not under any obligation to purchase the AI software subscription after the free Beta-testing trial period has expired.

14. Use of hearScope™ at own risk

14.1 The accuracy of the Service is dependent on the correct usage of the hearScope™ otoscope. All the necessary steps have been taken to ensure the correct setup process is followed and the hearScope™ conforms to quality standards, which includes a sealed package when receiving the hearScope™. Correct use of the Service, accompanying hearScope™ device and are required for the accurate imaging of the ear canal and the tympanic membrane. Our goal is to provide helpful and accurate AI image classification results related to imaging, but we make no

representation, or warranty of any kind about any accuracy, results, information, or services. The accuracy of the data collected and presented through the Service is not intended to match that of medical devices or scientific measurement devices. We are not responsible for the accuracy, reliability, availability, effectiveness, or correct use of information you receive through the Service.

14.2 Use of the Service should not replace your good judgment, common sense or healthcare experience. It is in your best health interest to use the Service in conjunction with medical advice obtained from a qualified healthcare professional, preferably one specialising in diagnosing diseases of the ear. The information and services supplied by the Service Provider are not a substitute for a visit to a healthcare professional, and you are advised that you should consult a physician or healthcare professional before making any medical decisions.

15. Accounts and Profiles

15.1 When you create a hearX account, you must provide information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of your account on the Service. The person who creates the account (Account Owner) has access and control over the account used for the hearScope™ application to access the Service and is responsible for any activity that occurs through the account. To maintain control over the account and to prevent anyone from accessing the account (which would include images or videos of the ear canal and tympanic membrane, as well as AI image classification results- if applicable). If you subscribe to the AI image classification feature, the Account Owner should maintain control over the sign in information to access the Service and not reveal the password associated with the account to anyone.

15.2 The Account Owner used must notify us immediately upon becoming aware of any breach of security or unauthorized use of their account.

16. Notifications and Warnings

As part of your use of the Service, you may receive notifications, text messages, alerts, emails, and other electronic communications. You agree to the receipt of these communications. You can control most communications from the Service by using the settings in the Service. We may need to provide you with certain communications, such as service announcements and administrative messages. You are responsible for any messaging or data fees you may be charged by your wireless carrier. Any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that the communication be in writing.

17. Intellectual Property

17.1 This Service including the original content, features and functionality, is the property of the hearX SA (Pty) Ltd a company duly registered with the laws of the Republic of South Africa, with Registration Number: 2015/193076/07, including any and all of its subsidiaries. The Service is protected by copyright, patents, trademark, and other laws of both South Africa and foreign countries. Our trademarks and trade dress may not be used in connection with any product or service without our prior written consent.

17.2 Copyright subsists in this work and it is copyright protected under the Berne Convention. No part of this work may be reproduced, published, performed, broadcast, adapted or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without permission in writing from the copyright owner.

17.3 You may not in any form or by any means:

17.3.1 adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of the Service; or

17.3.2 commercialise any information, products or services obtained from any part of the Service, without our written permission.

17.3.3 Re-engineer or attempt to reverse engineer the whole, or parts of, the application or technology.

18. Termination

18.1 We reserve the right to terminate or suspend your account immediately, without prior notice or liability, for any reason whatsoever, including without limitation, if you breach these Terms.

18.2 You may terminate your account by giving us seven (7) days' written notice thereof.

18.3 Upon termination of your account (by either Party):

18.3.1 your right to use the Service will immediately cease;

18.3.2 you will not be entitled to any refund whatsoever;

18.3.3 your images or videos (if applicable) may be retained by hearX for research purposes.

19. Limitation Of Liability

In no event shall hearX, nor its directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Service; (ii) any conduct or content of any third party on the Service; (iii) any content obtained from the Service; and (iv) unauthorized access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we

have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

20. Disclaimer

Your use of the Service is at your sole risk. The Service is provided on an "AS IS" and "AS AVAILABLE" basis. The Service is provided without warranties of any kind, whether expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance.

hearX, its subsidiaries, affiliates, and its licensors do not warrant that a) the Service will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Service is free of viruses or other harmful components; or d) the results of using the Service will meet your requirements.

21. Indemnification

You agree to defend, indemnify and hold harmless hearScope™ and its affiliates from and against any and all claims, damages, costs and expenses, including attorneys' fees, arising from or related to your use of the Site or any breach by you of these Terms of Use.

22. Governing Law

22.1 These Terms shall be governed and construed in accordance with the laws of South Africa, without regard to its conflict of law provisions.

22.2 Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between the user and us regarding our Service, and supersede and replace any prior agreements we might have between the parties regarding the Service.

23. Changes

23.1 We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will try within reasonable limits to provide at least 30 (thirty) days' notice prior to any new Terms taking effect. What constitutes a material change will be determined at our sole discretion.

23.2 By continuing to access or use the Service after those revisions become effective, you agree to be bound by the revised Terms. If you do not agree to the new Terms, please stop using the Service.

24. Beta-release (when applicable)

24.1 Scope of Agreement: Beta user is being granted rights under this Agreement for the purpose of testing and providing input and other feedback to Service Provider regarding the application(s). This Agreement covers all Beta Service(s) made

available to Beta users as being in "Beta" or any similar stage of development. While Beta users are not required to utilize or enable any Beta Service(s), if the Beta user elects to do so, then the use of and access to any such Beta Service(s) shall be subject to the terms of this Agreement.

24.2 Payment fees: Initial use of the Beta Service will be free of charge; however the Service Provider reserves the right to institute fees for the use of the Beta Service, at any time with (or without) prior notice.

24.3 Limited Use Rights: For the term of the Agreement, Service Provider grants the Beta user a limited, non-transferable, non-exclusive, revocable right to access and use the Beta Service(s) to test its functionality. The Service Provider hosts and retains control over the Beta Service(s). Nothing in this Agreement obligates the Service Provider to deliver or make available any copies of computer programs or code from the Beta Service(s) to Customer, whether in object code or source code form. The Service Provider reserves the right, in its sole discretion, to revoke access and use of the Beta Service(s) at any time. Further, Service Provider reserves the right to use images captured in Beta anonymously for research purposes.

24.4 Use Restrictions: The Beta user may not rent, lease, distribute, or resell the Beta Service(s), or use the Beta Service(s) as the basis for developing a competitive solution (or contract with a third party to do so), or remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Beta Product(s).

24.5 Should you download and use the application(s), but disagree with the Terms, you must refrain from accessing the application(s).

25. Contact Us

If you have any questions about these Terms, please contact us at info@hearxgroup.com.