

## MED-EL Corporation Equipment Loan Agreement

This Equipment Loan Agreement is entered into between MED-EL Corporation ("MED-EL") and Customer/Institution identified below for the loan by MED-EL of Equipment as described below for the exclusive use by Customer/Institution in connection with Products sold by MED-EL to Customer/Institution.

Agreement Date 2/26/2019 Study Code (if applicable) Click here to enter text.  
 Requested Delivery Date asap  
 Customer/Institution Name Aient Management Company LLC  
 Address Line 1 3333 Old Milton Pkwy Suite 520  
 Address Line 2 Click here to enter text.  
 City Alpharet State GA Zip 30005  
 Contact Name Ranjana Sinha Title Manager  
 Phone 4042571589 Fax 4043031950 Email practiceadmin@drsinha.com

WHEREAS, Customer/Institution desires to obtain possession and use of the of MED-EL Loaner Equipment for use in connection with providing services to Customer/Institution's patients with hearing implants sold or manufactured by MED-EL and/or conducting research outlined in the research study referenced herein.

WHEREAS, MED-EL has agreed to loan and allow Customer/Institution to use the Equipment solely for the purpose of providing demonstration to potential MED-EL patients, programming, customizing and testing MED-EL's Products (hereinafter defined) for Customer/Institution's patients, and research.

WHEREAS, MED-EL is willing to loan such Equipment to Customer/Institution under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and of the mutual promises set forth herein, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following definitions shall apply:
  - (a) "Equipment" shall mean individually and collectively and may include proprietary (and in some cases non-proprietary) programming hardware and programming software, Direct Drive Stimulator Unit, Audio Processors (for troubleshooting purposes), and computers.
  - (b) "Products" shall mean those hearing devices presently or hereinafter manufactured and sold by MED-EL to Customer/Institution.
  - (d) "Documentation" shall mean the documentation for the Software imprinted or in electronic form.
  - (e) "Software" shall mean the computer programs and related documentation presently or hereinafter installed and/or imbedded in the Computer Equipment listed above, whether proprietary to MED-EL or to any third parties, and any updates, upgrades, modifications or substitution thereof.
2. Term of Loan Agreement. MED-EL has agreed to loan without charge the Equipment to Customer/Institution for its use strictly in accordance with this Agreement. The term of this Agreement shall commence upon the delivery of the Equipment to the Customer/Institution on or about the Requested Delivery Date and shall continue for a period of one (1) calendar year (hereinafter "Term") and will be automatically renewed for additional one (1) year terms unless earlier terminated as provided herein.

3. Title.
  - (a) Title in and all rights to the Equipment shall remain solely in MED-EL, and the Customer/Institution shall only have the right to use the Equipment solely for the purpose of providing demonstration to potential MED-EL patients, programming, customizing and testing MED-EL's Products for Customer/Institution's patients, and research at the location stated above, or such other use agreed to in writing and signed by MED-EL.
  - (b) Title in and to the Documentation, and all proprietary rights therein, shall remain solely in MED-EL, and Customer/Institution shall only obtain a non-exclusive, revocable license to use the Documentation in connection with Customer/Institution's operation and use of the Equipment in strict accordance with the provisions of this Agreement.
  - (c) Title in and to the Software, and all proprietary rights therein, shall remain solely in MED-EL, and Customer/Institution shall only obtain a non-exclusive, revocable license to use the Software in strict accordance with the provisions of this Agreement.
  - (d) Customer/Institution shall not sublease, sell, mortgage, grant security interests to, or otherwise encumber the Equipment.
  - (e) Upon any expiration or termination of this Agreement for any reason, the Customer/Institution agrees at its expense to assemble and immediately return Equipment and any additions thereto to MED-EL, in accordance with MED-EL's direction, in the same condition as originally delivered to the Customer/Institution, normal wear and tear excepted.
4. Delivery and Risk of Loss.
  - (a) MED-EL shall bear the risk of loss up to the point of receipt by the Customer/Institution.
  - (b) Customer/Institution shall bear all risk of loss or damage of the Equipment during the term this Agreement at the point of receipt forward, until returned equipment is received by MED-EL.
  - (c) Customer/Institution shall insure the equipment at Customer/Institution's own expense for all loss, at full value, with loss benefits payable directly to MED-EL. At MED-EL's request, Customer/Institution shall provide MED-EL with reasonable documentation of such insurance. If not insured, Customer/Institution agrees to be responsible for replacement value to MED-EL in the event of loss or damage.
5. Restricted Use. Customer/Institution agrees to use the Equipment solely for the purpose of providing demonstration to potential MED-EL patients, programming, customizing and testing MED-EL's Products for Customer/Institution's patients, research and for no other purpose.
6. Inspection. Customer/Institution shall respond to MED-EL's reasonable requests for documentation and to inspect equipment and shall permit MED-EL access to Customer/Institution's premises and to the equipment located there during Customer/Institution's normal business hours with reasonable notice.
7. Charges and Taxes.
  - (a) The loan of the equipment shall be on a no-charge basis, but Customer/Institution shall be responsible for all damage in excess of reasonable wear and tear, applicable shipping charges, special charges and taxes. All charges and taxes payable to MED-EL shall be due within five (5) days of Customer/Institution's receipt of an invoice therefore.
  - (b) Customer/Institution shall be responsible for registering the equipment with any local, state, and federal personal tax authorities as may be required for tax assessments thereon and shall pay directly to such tax authorities all taxes based on or in any way measured by this Agreement, the equipment, or any portion thereof, including any personal property taxes.
  - (c) Customer/Institution shall be responsible for all costs associated with any additional or private hardware, software, communications connections or services and other systems and technology not provided by MED-EL which are used in connection with the equipment or otherwise, including without limitation all costs associated with the installation and operation of the equipment.



8. Limited Warranty.

- (a) Customer/Institution shall at all times provide MED-EL and its agents or representatives with access to all portions of the equipment in order to provide, in its sole discretion, maintenance and support. If the Equipment fails to perform in accordance with its specifications, MED-EL shall provide normal repair and maintenance of the loaner equipment.
- (b) Customer/Institution will maintain proper care and storage of the equipment, and protect the equipment against loss and damage, maintaining security for the equipment. Customer/Institution will not loan or use equipment for any purpose except that outlined under this agreement without written permission from MED-EL.
- (c) EXCEPT AS AND TO THE EXTENT EXPRESSLY PROVIDED IN THIS PARAGRAPH 8 AND IN LIEU OF ALL OTHER WARRANTIES, THE EQUIPMENT IS PROVIDED TO THE CUSTOMER/INSTITUTION ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

9. Additions and Attachments. Customer/Institution shall not incorporate or attach any additions or attachments to or modify the equipment in any way without MED-EL's prior written consent. If MED-EL approves in writing any addition, attachment or modification, Customer/Institution shall, at no cost to MED-EL, remove the same and restore the equipment to its original condition prior to its return to MED-EL as provided herein. *MED-EL Software to program MED-EL devices can be used either be on a stand-alone computer or one that is connected to the Center's network, if desired, to store (back-up) and protect patient data. It is at the discretion of the hospital or clinic as to which is preferred. Connection to center network connection is not required. MED-EL software and equipment are not intended to directly interface with center systems but are provided solely for the purpose of programming patients implanted with a MED-EL hearing implant.*

10. Proprietary Rights Indemnity.

- (a) MED-EL shall defend or settle, at its own expense, any cause of action or proceeding brought against Customer/Institution that is based on any claim that the loaner equipment or any portion thereof infringes any patent, copyright, trade secret or other proprietary right. MED-EL shall indemnify and hold Customer/Institution harmless against all costs, expenses and judgments as a result of the foregoing, including any award of attorneys' fees, provided that Customer/Institution shall give MED-EL prior written notice of such cause of action or proceeding, an opportunity to defend the same, and provide MED-EL with all reasonable cooperation and information.
- (b) If a claim is made that the loaner equipment or any portion thereof infringes any patent, copyright, trade secret or other proprietary right or if MED-EL believes that a likelihood of such a claim exists, MED-EL shall procure for Customer/Institution the right to continue using the equipment, modify the equipment or infringing portion to make it non-infringing without affecting the performance or capability thereof, or replace the equipment or infringing portion with non-infringing equipment of equal or greater capability.
- (c) MED-EL shall have no liability to Customer/Institution for infringement pursuant to this Paragraph 10, if such claim is based upon:
  - (1) Combination of the loaner equipment or any portion thereof with any other equipment, software or devices not approved by MED-EL;
  - (2) Modifications made to the loaner equipment or any portion thereof by someone other than MED-EL; or
  - (3) Modifications made to the loaner equipment or any portion thereof by MED-EL to meet Customer/Institution's requirements.
- (d) The foregoing sets forth the entire liability of MED-EL to Customer/Institution for the infringement of any proprietary rights by the loaner equipment or any portion thereof.

11. Customer/Institution's Indemnity. Except as provided to the contrary in Paragraph 10 above, Customer/Institution shall defend, indemnify and hold MED-EL harmless from any and all claims based on or related to the use of the loaner equipment or any portion thereof, or to this Agreement, including, but not limited to, liability for property damage and claims of third parties.
12. Termination.
  - (a) This Agreement may be terminated or cancelled by either party for any reason.
  - (b) This Agreement may be immediately terminated or cancelled by MED-EL upon the occurrence of any of the following:
    - (1) Customer/Institution is in default of any provision of this Agreement, and such default is not cured within thirty (30) days of notice thereof by MED-EL;
    - (2) Customer/Institution becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy law;
    - (3) MED-EL gives notice of termination without cause after thirty (30) days' prior notice; or
    - (4) Customer/Institution ceases to sell the Products supplied by MED-EL.
  - (c) Upon any expiration or termination of this Agreement for any reason, the Customer/Institution agrees to assemble and immediately return all portions of the Equipment in accordance with MED-EL's direction, in the same condition as originally delivered to the Customer/Institution, normal wear and tear excepted. If Customer/Institution fails to return equipment to MED-EL within thirty (30) days of termination of this agreement, MED-EL will bill Provider for replacement value of the equipment.
  - (d) The Customer/Institution's obligations under this Agreement shall continue and survive any termination of this Agreement
13. Limitation of Liability. IN NO EVENT SHALL MED-EL BE LIABLE TO CUSTOMER/INSTITUTION FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS LOAN AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF THE MED-EL HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL MED-EL BE LIABLE TO CUSTOMER/INSTITUTION FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OR DELAY OF MED-EL IN THE DELIVERY OF THE LOANER EQUIPMENT OR IN THE PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT.
14. Software. Software, including other programs, provided by MED-EL to Customer/Institution shall be subject to the terms and conditions of this Agreement and any license agreements entered into by MED-EL which is furnished to Customer/Institution under this Agreement.
15. Confidentiality and HIPAA Compliance. The parties shall comply with the requirements of the Health Insurance Portability and Accountability act of 1996 and regulations promulgated therein. In addition, the Customer/Institution shall keep and maintain the confidentiality of this Agreement and the proprietary information of MED-EL, including all portions of the Programming System Loaner Equipment.
16. General.
  - (a) This Agreement shall be deemed effective upon execution by Customer/Institution and after acceptance by an authorized representative of MED-EL.
  - (b) These terms apply to all loaner equipment received by the center.
  - (c) Any cause of action arising out of or related to this Agreement must be brought no later than one (1) year after the cause of action has accrued.
  - (d) This Agreement is the sole agreement between the parties relating to the subject matter hereof, and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. This Agreement may be amended only by a writing executed by the authorized representatives of both parties.



- (e) This Agreement and the rights and duties of Customer/Institution hereunder, or under any portion thereof, may not be assigned by Customer/Institution. Any attempted assignment shall be null and void.
- (f) This Agreement shall be interpreted in accordance with the substantive laws of the State of North Carolina without regard to any choice of law rules which would require the application of the laws of another jurisdiction.
- (g) MED-EL's rights and remedies under this Agreement are cumulative, and if legal action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its attorneys' fees, court costs, and expenses.
- (h) Customer/Institution agrees to comply with all applicable laws relating to its use of the loaner equipment and shall not export or import any portions of the loaner equipment, directly or indirectly, into any foreign country in violation of applicable law.
- (i) In the event any provision of this Agreement is finally adjudged by a court to be unenforceable, such provision will be severed from this Agreement, and the remaining provisions will remain in full force and effect.
- (j) This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous agreement, promises or representations.
- (k) The terms of this Agreement control any additional or conflicting provisions of any purchase orders, order forms or other document submitted to MED-EL by Customer/Institution.

WITNESS OUR HANDS AND SEALS AS PROVIDED BELOW;

**"Customer/Institution"**

Print Name Pradeep Sinha.

Signature 

Title Manager.

Date 2/27/2019.

Address 5670 Peachtree Dunwoody Rd.  
# 1280  
Atlanta GA 30342.

**Accepted on behalf of MED-EL Corporation ("MED-EL")**

Print Name \_\_\_\_\_

Signature 

Title \_\_\_\_\_

Date \_\_\_\_\_

Address 2645 Meridian Parkway, Suite 100,  
Durham, NC 27713

Digitally signed by  
 Leslie S. Tarbutton  
 DN: cn=Leslie S.  
 Tarbutton, o=MED-EL  
 Corporation, ou,  
 email=leslie.tarbutton  
 @medel.com, c=US  
 Date: 2019.03.05  
 09:49:16 -05'00'

**FOR INTERNAL USE ONLY:**

**Software needed (check all that apply):**

☐ Maestro ☐ CI Studio ☐ Connexx/SymFit ☐ ADHEAR ☐ Bonebridge

**Hardware needed (check all that apply):**

☒ ADHEAR Professional Kit (troubleshooting) ☐ MAX (CI programing)  
☒ HIPRO (VSB/Bonebridge ONLY) ☐ Programming laptop

To be completed by MED-EL IT Department:

Computer Model/Type : \_\_\_\_\_

Exp Svc Code : \_\_\_\_\_ Svc Tag: \_\_\_\_\_

Serial Number(s): \_\_\_\_\_