

[IMPORTANT NOTICE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS AS DETAILED BELOW IN THE DISPUTE TERMS.](#)

## Terms of Use

PLEASE READ THESE TERMS OF USE (“AGREEMENT”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY HEATHCO LLC (“HC”, “WE,” “US,” “OUR”). BY VISITING HC’S WEBSITE OR USING A DEVICE OR SERVICE IN ANY MANNER, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY AND ARE A PARTY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU HAVE NO RIGHT TO USE THE WEBSITE, A DEVICE, OR A SERVICE. USE OF HEATHCO LLC’S WEBSITE, A DEVICE, OR A SERVICE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, TO THE EXCLUSION OF ALL OTHER TERMS. **TO REJECT THESE TERMS, YOU MUST IMMEDIATELY DELETE THE MOBILE APP FROM YOUR MOBILE DEVICE, DISCONTINUE USE OF YOUR DEVICE, AND REFRAIN FROM VISITING OUR WEBSITE.**

If you have any questions or concerns about the terms of this Agreement, please contact customerservicesupport@heathcollc.com.

### 1. Definitions

**Applicable Laws** means all local, state, federal, and international laws and regulations promulgated by governmental authorities or regulatory bodies, in whatever way they may apply to the User, including both civil and criminal laws, as all laws may be amended from time to time.

**Content** means text, images, photos, audio, video, graphics, illustrations, and all other forms of data or communication.

**Device** means an electronic doorbell manufactured or sold by HC with a camera capable of video and audio recording upon installation, or which otherwise sends an alert or notification to a smart phone or another device.

**Disputes**—See Paragraph 26.

**Firmware** means the software stored on the Device’s read only memory.

**IP** means copyrights, trademarks, service marks, trade names, and other intellectual and proprietary rights throughout the world owned by us.

**Mobile App** means the mobile application which is created, owned and operated by us and is intended to be used in conjunction with our Device or Services.

**Premium Service** means any Service which is selected by you, and provided in consideration for an additional fee.

**Recorded Information** means information captured by your Device. This information includes video images.

**Service** includes, without limitation, services described on our Website, Content provided through our Mobile App, and/or additional services selected by you.

**Third Party Products and Services** means any product or service sold, distributed, marketed, or offered by a third party vendor. Third Party Products and Services may include but are not limited to television set top boxes, smart-home devices, and mobile device applications.

**User** means someone who accesses, browses, crawls, scrapes, or in any way uses our Website, uses our Services, or our Mobile App. The terms "you" and "your" refer to you, as a User of the Device, Services, Mobile App, or our Website.

**User Submissions**--See Paragraph 6.

**Warranty Period** means one year from the date of purchase of your Device, as evidenced by your sales receipt.

**Website** means Heath-Zenith.com/Notifi and all of the Content contained therein.

## 2. Changes to Terms of Use

We reserve the right, in our sole discretion, to modify this Agreement at any time by posting a notice on the Website, by sending you a notice via email or postal mail, or by some other appropriate means. Material changes will be prominently displayed. The most current version of the Terms of Use will supersede all previous versions.

You shall be responsible for reviewing and becoming familiar with any such modifications. If you don't agree to be bound by the new Agreement, you are free to reject it; however, if you do reject the new Agreement, you must immediately delete our Mobile App from your mobile device, discontinue use of your Device, and refrain from visiting our Website. Your use of the Mobile App, your Device, or our Website following such notification constitutes your acceptance of the terms and conditions of this Agreement as modified.

## 3. Return Policy

### (a) Device Purchased Directly From HC (US and Canada Orders)

Orders placed through our online store can be canceled for a full refund *until* the order has been processed for fulfillment. In some cases, processing may be immediate. Once your order has been processed, cancelled orders will be subject to our return policy.

In order to be eligible to receive a refund, you must do the following:

- 1) Contact our customer service team at customerservicesupport@Heathcollc.com or 1-800-858-8501
- 2) Provide our customer service team with proof of purchase
  
- 3) Return your Device to us in its original condition. We strongly recommend that you ship your Device in a manner that provides for

tracking and delivery verification. We are not responsible for Devices that are lost in transit.

**Compliance with this Section makes you eligible to receive a refund, but does not obligate us to provide one. All refunds are provided at our sole discretion.**

*Orders Cancelled by Us*

We have the right to cancel any order at any time. If we cancel your order, we will provide you with a full refund within 10 days.

(b) Devices Purchased From an Authorized Third Party Dealer

The return of a Device purchased from an authorized third party shall be governed by the third party's return policy. We are not obligated to accept the return of any Device purchased from a third party dealer.

(c) Devices Purchased From an Un-Authorized Third Party Reseller

*We will not accept returns or exchanges from an un-authorized third party reseller under any circumstances.*

**4. No Life Safety or Critical Uses of the Services**

HC'S DEVICES AND SERVICES ARE NOT CERTIFIED FOR EMERGENCY RESPONSE. YOU ACKNOWLEDGE THAT HC'S DEVICES AND SERVICES ARE NOT A THIRD PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM AND THAT HC DOES NOT MONITOR EMERGENCY NOTIFICATIONS AND WILL NOT DISPATCH EMERGENCY AUTHORITIES TO YOUR HOME IN THE EVENT OF AN EMERGENCY.

All life threatening and/or emergency events should be directed to the appropriate governmental response services.

**5. Recorded Information**

All Recorded Information is provided "as is" and "as available." We cannot guarantee that it is correct or up to date. In cases where it is critical, accessing Recorded Information through the Services is not a substitute for assessing the information from the property on which the Device is located.

*Recorded Information is stored on our server for a limited time. Recorded Information from a User of our Premium Services may be stored for up to 30 days on our server, while Recorded Information from other Users may be stored for up to 24 hours. Although we take great precautions to ensure the security of your data, we cannot and do not guarantee that any of the Recorded Information stored on our server is secure. HC shall not be responsible nor liable for any loss or destruction of Recorded Information.*

**6. Use of Our Website and Our Services and Your Compliance with Applicable Laws**

The Website, the Services, and their contents are intended solely for User's personal use and may only be used in accordance with the terms of this Agreement. All displayed Content is protected by copyright. You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant that you have all rights necessary to do so, in the manner in which you contribute it. You acknowledge that the use of the Device and our Services may involve capturing and recording audio and/or video footage of other people and properties. As such, you are responsible for complying with all Applicable Laws, and particularly those concerning the privacy rights of others and the scope of digital surveillance, in connection with your use of the Services. You acknowledge that you have a continuing obligation to investigate and comply with privacy laws in your jurisdiction. This may include the posting of a sign on your property to provide notice to others that they may be recorded.

In addition, you shall abide by all copyright notices, trademark rules, information, and restrictions contained in any Content accessed through the Services, and shall not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purposes whatsoever any Content or third party submissions or other proprietary rights not owned by you: (i) without the express prior written consent of the respective owners, (ii) in any way that violates any third party right, or (iii) that violates any Applicable Laws. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

The Website and the Services are protected by copyright as collective works and/or compilations, pursuant to U.S. copyright laws, international conventions, and other copyright laws. You may not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, distribute, perform, display, or in any way exploit, any of the Content, software, materials, or Services in whole or in part. Although the Services may allow you to copy or download certain Content, the restrictions set forth herein apply.

Other than your User Submissions (as defined below), you may download or copy the Content (and other items displayed on the Website or Services for download) for personal use only, provided that you maintain all copyright and other notices contained in such Content. You shall not store any significant portion of any Content (other than your User Submissions) in any form. Copying or storing of any Content other than for personal use is expressly prohibited without prior written permission from HC or from the copyright holder identified in such Content's copyright notice. If you link to the Website, we may revoke your right to so link at any time, at our sole discretion. We reserve the right to require prior written consent before linking to the Website.

In the course of using the Services, you and other Users may provide us with information, which we may use in connection with the Services and which may be visible to certain other Users. For example, the Service allows you to upload or post video content, and may permit you to post feedback, comments, questions, or other information on the Website or otherwise provide Content, materials or information to HC or in connection with the Services (collectively, "User Submissions"). User Submissions include submissions by third parties from the User's account, with or without authorization, and without regard to whether the submission was intentional or unintentional.

You hereby grant us with a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable and transferable right to exploit such User Submissions (including all related intellectual property rights) solely in connection with providing you the Services and as directed by

you. You also hereby do and shall grant each User of the Services a non-exclusive license to access and use your User Submissions through the Services and as permitted through the functionality of the Services and under this Agreement. Furthermore, you understand that we retain the right to reformat, modify, create derivative works of, excerpt, and translate any User Submissions submitted by you. For clarity, the foregoing license grant to HC does not affect your ownership of or right to grant additional licenses to the material in your User Submissions, unless otherwise agreed in writing. You acknowledge and agree that HC may disclose your User Submissions, or any other information you provide to us, to law enforcement authorities if legally required to do so, or if HC determines, in good faith, that disclosure is reasonably necessary under the circumstances to investigate potential violations of, or to comply with, any Applicable Laws. These circumstances shall include the enforcement of these Terms of Use or our Privacy Policy, prevention of security breaches and/or fraud, and protection of the rights of HC, its User, or members of the public. We will only share your personally identifiable information in accordance with our Privacy Policy, the terms of which are incorporated into these Terms of Use. Please view our Privacy Policy on the Website, located at [www.Heath-Zenith.com/Notifi](http://www.Heath-Zenith.com/Notifi).

You understand that all information publicly posted or privately transmitted through the Services is the sole responsibility of the person from which such content originated and that HC will not be liable for any errors or omissions in any Content. You understand that HC cannot guarantee the identity of any other User with whom you may interact in the course of using the Services. Additionally, we cannot guarantee the authenticity of any data that User or merchants may provide about themselves. You acknowledge that all Content accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services.

Under no circumstances will HC be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred in connection with use of or exposure to any Content posted, emailed, accessed, transmitted, or otherwise made available via the Device or Services.

We may, for any reason and in our sole discretion, change, suspend, or discontinue the Services and/or Premium Services at any time, including the availability of any feature, database, or Content. We may also impose limits on, or restrict your access to, certain Services without notice to you or liability if we determine that you have breached any of either the Terms of Use or our Privacy Policy.

You may only use the Service in a matter that complies with Applicable Laws. You may only use the Device in connection with the Services, and for no other use.

## **7. Information Provided to Us**

We do not knowingly collect or solicit personal information from anyone under the age of 18 or knowingly allow such persons to register for the Services. If you are under 18, please do not attempt to register for our Services or send any information about yourself to us, including your name, address, telephone number, or email address. No one under age 18 may provide any personal

information to HC. If we learn that we have collected personal information from a child under the age of 18 without verification of parental consent, we will delete that information. If you believe that we might have any information from or about a child under the age of 18, please contact us in the manner specified at [www.Heath-Zenith.com/Notifi/Support](http://www.Heath-Zenith.com/Notifi/Support).

You therefore represent and warrant to us that: (i) you are of legal age to form a binding contract; (ii) all registration information you submit is accurate and truthful; and (iii) you will maintain the accuracy of such information. You also certify that you are legally permitted to use and access the Services and take full responsibility for the selection, use of, and access to the Services. This Agreement is void where prohibited by law, and the right to access the Services is revoked in such jurisdictions.

## **8. Restrictions**

You warrant, represent and agree that you will not contribute any Content or otherwise use the Services in a manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any Applicable Laws; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, contains explicit content or graphic descriptions of sexual acts, encourages conduct that would give rise to criminal or civil liability, or is otherwise objectionable; (iv) impersonates any person or entity, including without limitation any employee or representative of HC; (v) contains a virus, Trojan Horse, worm, time bomb, or other harmful computer code, file, or program that limits the functionality of any data software, hardware, or electronic communications; (vi) jeopardizes the security of your HC account or anyone else's (such as allowing someone else to log in to the Services as you); (vii) attempts to obtain the password, account, or other security information from any other User; (viii) violates the security of any computer network or cracks any passwords or security encryption codes; (ix) runs Mail list, Listserv, or any form of auto-responder or "spam" on the Services, or any processes that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure); (x) copies or stores any significant portion of the Content; or (xi) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services. A violation of any of the foregoing is grounds for termination of your right to use or access your Device and/or Services.

HC reserves the right to remove any Content from the Services or from the Website at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have breached the immediately preceding sentence). You, not HC, remain solely responsible for all Content that you create, upload, post, email, transmit, or otherwise disseminate using, or in connection with, the Services. You will be responsible for withholding, filing, and reporting all taxes, duties and other governmental assessments associated with your activity in connection with the Services.

You may not use the features and/or functionality of Third Party Products and Services to circumvent or otherwise avoid paying for Premium Service. Even if our Device works in conjunction with Third Party Products and Services, you are still required to pay for Premium Service where applicable, in order to receive the features associated with the Premium Service.

If we discover that you are receiving Premium Service features without paying for them, we have the right to terminate your Device, and/or restrict your access to our live customer service help center, and/or bill you in arrears for any fees, taxes, or penalties, which we are rightfully owed,

and/or take any reasonable action required to prevent ongoing circumvention of our Premium Service.

## **9. Privacy Policies**

HC's Privacy Policy can be found at [www.Heath-Zenith.com/Notifi](http://www.Heath-Zenith.com/Notifi). Please review the Privacy Policy to understand how we use information that you submit to us, and information that we collect from our Website, Devices, and Services.

## **10. Registration and Security**

As a condition to using the Devices or the Services, you will be required to register with HC and select a password and User name ("HC User ID"). You shall provide us with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of this Agreement, which may result in immediate termination of your account. You may not (i) select or use as a HC User ID the name of another person with the intent to impersonate that person; or (ii) use as a HC User ID the name subject to any rights of a person other than you without appropriate authorization. We reserve the right to refuse registration of or cancel a HC User ID in our sole discretion. Although we take reasonable precautions and use encryption and data security software to protect your account information, we cannot guarantee nor warrant that information stored on our servers is secure. You shall be responsible for maintaining the confidentiality of your password and other account information.

## **11. Removing a Device from an Account**

In order to deter theft, each Device can only be associated with one customer account at any given time. Therefore, if a third party were to take your Device and attempt to sync your Device with another account, the Device activation would fail, and the Device would be unusable to that third party. This is just one of several security measures that we have implemented to protect your information. Though ultimately we are not responsible for your actions or omissions relating to your use of the Device and/or the Services, please be advised that you can and should remove and unregister your Device from your account through the Mobile App in the event it is lost, stolen, or replaced.

## **12. Fees and Payment**

Certain aspects of the Services may be provided for a fee. We refer to these as our Premium Services. You shall pay all applicable fees, as described on the Website in connection with such Services selected by you. HC reserves the right to change its price list and to establish new charges at any time, upon notice to you, which may be sent by email or posted on the Website. Your use of the Premium Services following such notification constitutes your acceptance of any new or increased charges. Any fees paid hereunder for Premium Services are non-refundable.

If we miss one or more billing cycles, or otherwise fail to bill you for Premium Services that you have used, we have the right to bill you in arrears for up to six (6) months of past Services.

## **13. Trademarks and Service marks**

Notifi is a trademark and service mark of HeathCo LLC. The Notifi logo and [www.Heath-Zenith.com/Notifi](http://www.Heath-Zenith.com/Notifi) are trademarks and service marks of HC. Other trademarks and service marks that appear on the Website and Mobile App include, but not limited to, graphics, logos, page headers, button icons, scripts and service names, constitute trade dress of HC. The trademarks, service marks, and trade dress of HC may not be used or reproduced without prior written approval from us and may not be used in connection with any product or service that is not affiliated with us in any manner that is likely to cause confusion among customers, in any manner that dilutes the rights of HC or in any manner that disparages or discredits HC. Other trademarks or service marks that appear on the Website or the Mobile App are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by HC. Any images of persons or personalities contained on the Website are not an indication or endorsement of HC or any particular product or our service unless otherwise indicated.

#### **14. Use of Submitted Information**

We do not accept unsolicited materials or ideas for use or publication, and we are not responsible for the similarity of any of its content or programming in any media to materials or ideas transmitted to HC.

HC is free to use any Content submitted to us or obtained through postings to the Website, without further compensation, acknowledgement or payment to you for any purpose whatsoever, including but not limited to, developing, manufacturing or marketing products, or creating, modifying, or improving a Device, our Website, and/or the Mobile App. You hereby waive any claim against HC regarding the use of such materials and ideas, even if material or an idea is used that is substantially similar to the idea you sent. If applicable, you also grant us a perpetual, non-exclusive, royalty-free irrevocable license and right to display, use, reproduce, create derivative works of, excerpt, translate or generally modify the Content submitted in any media, software or technology of any kind now existing or developed in the future.

#### **15. Electronic Communications**

You acknowledge that, from time to time, HC may communicate with you electronically or otherwise, using the information associated with your account. By creating an account, you have consented to receiving electronic communications from us. These communications will include notices about your account (e.g., shipping and receiving e-mails and other transactional information) and information concerning or related to our service, such as featured services or information or offerings. You agree that any notice, agreements, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

#### **16. Firmware and App Updates**

From time to time, and at our discretion, we may update the Firmware and/or the Mobile App. Your continued use of the Services, Device, and/or Firmware constitutes your consent to receiving updates to your Device and/or your Mobile App via “push” technology, without any requirement on our part to provide you with notice thereof.

#### **17. Your Conduct on Our Website and With Our Customer Service Team**

By using our Website, you agree to conduct yourself in accordance with all Applicable Laws. In addition, you agree not to upload, post, e-mail or otherwise send or transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the Website. You also agree not to interfere with the servers or networks connected to the Website or to violate any of the procedures, policies or regulations of networks connected to the Website. You also agree not to impersonate any other person while using the Website, conduct yourself in a vulgar or offensive manner, encourage others to do any of the aforementioned activities, or use the Website for any unlawful purpose. See also Paragraph 8.

Failure to comply with this provision of the Agreement shall entitle us to pursue federal and/or state legal action and seek recovery for any injury suffered.

*You agree to conduct yourself in a courteous and professional manner at all times when interacting with our customer service team. Vulgar and abusive behavior will not be tolerated. Failure to comply with this provision entitles us to restrict your ability to interact with our customer service team.*

## **18. Third Party Websites**

The Services may contain links to third party websites or services (“Third Party Websites”) that are neither owned nor controlled by HC. When you access Third Party Websites, you do so at your own risk. You hereby represent and warrant that you have read, and agree to be bound by, all applicable policies of any Third Party Websites relating to your use of the Services. You also agree that you will act in accordance with those policies, in addition to your obligations under this Agreement. We have no control over, and assume no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any Third Party Websites. In addition, we will not and cannot monitor, verify, censor or edit the content of any Third Party Website.

By using the Services, you expressly relieve and hold harmless HC from any and all liability arising from your use of any Third Party Website. Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel is necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that HC shall not be responsible nor liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a Dispute between participants on this site, or between User and any third party, you understand and agree that HC is under no obligation to become involved.

In the event that you have a Dispute with one or more other User, you hereby release HC, its officers, employees, agents, and successors in rights from claims, demands, and damages (actual and consequential) of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such Disputes. If you are a California resident, you shall and hereby do waive any rights you may have pursuant to California Civil Code Section 1542, which reads, in relevant part: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor.”

## **19. Ownership**

We own the Mobile App, the hardware design, the Firmware, and the Website, including but not limited to the Content contained therein (not owned by a third party). We also own the IP rights associated with the Mobile App, the Firmware, the hardware, and the Website, which are protected by copyright, trade dress, patent, trademark laws and all other applicable intellectual and proprietary rights and laws. As such, you may not modify, reproduce, distribute, create derivative works or adaptations of, publicly display or in any way exploit any of the Mobile App, Firmware or hardware, in whole or in part, except as expressly authorized by us. Except as expressly and unambiguously provided herein, we do not grant you any express or implied rights, and HC reserves all rights in and to the Mobile App, Firmware and the hardware.

## **20. Unauthorized Access**

We reserve the right to exercise whatever lawful means we deem necessary to prevent unauthorized access to or use of the Website, including, but not limited to, technological barriers, IP mapping, and contacting your Internet Service Provider (ISP) regarding such unauthorized use.

## **21. Service Restriction**

We reserve the right to refuse service to anyone for any reason.

## **22. Export Law Assurances**

By using or downloading the Mobile App, you agree that you are solely responsible for complying with all United States export control regulations, including the Export Administration Regulations ("EAR"), and sanctions programs, including those administered by the United States Treasury Department's Office of Foreign Assets Controls ("OFAC"), and all other applicable international trade regulations. You agree that you will not download or use the Mobile App without all required approvals in any proscribed destination (including Cuba, Iran, North Korea, Sudan, and Syria), on behalf of any proscribed entity or person, for any proscribed end use, or in any other manner contrary to these export regulations and sanctions programs. By downloading or using the Mobile App, you represent, warrant and certify that you are not a proscribed User or utilizing this software for a proscribed end use under these regulations. This assurance shall survive the expiration or termination of this Agreement.

## **23. Government User**

The Firmware and related documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government User (a) only as Commercial Items and (b) with only those rights as are granted to all other Users pursuant to this Agreement. Unpublished-rights are reserved under the copyright laws of the United States.

## **24. Termination of This Agreement**

This Agreement remains effective until terminated. Your rights under this Agreement are terminable by us, with or without cause, at any time without notice. If you breach this Agreement, we may seek legal recourse and our termination of this Agreement shall not limit our remedies. We also reserve the right to seek damages in law or equity. You acknowledge that if you misappropriate any of our IP, damages are inestimable and we shall be entitled to (at a minimum) immediate injunctive relief.

## 25. **Geographic Limitations**

Devices returned from outside the US may not be able to be returned due to an act of God, war, embargo or other act by one or more sovereign nations limiting commerce between the US and another country or some other action or event outside HC's control.

*Return devices from outside the US and Canada at your own risk.*

## 26. **Disputes**

### **i. Dispute Resolution and Arbitration; Class Action Waiver.**

*Please read this carefully. It affects your legal rights and remedies.*

WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

AS DISCUSSED BELOW, WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL ACTION. BY ENTERING INTO THIS AGREEMENT, AND CHOOSING NOT TO OPT OUT OF THIS PROCEDURE (DETAILED BELOW), YOU AND WE ARE EACH WAIVING OUR RIGHT TO A JURY TRIAL.

For the purpose of this provision, "HC" means HC and its parents, subsidiary, and affiliate companies, and each of their respective officers, directors, employees, and agents.

The term "Dispute" means any dispute, claim, or controversy between you and HC regarding any aspect of your relationship with HC, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable theory, and includes the validity, enforceability, or scope of this provision (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced, and shall include any claims against other parties relating to services or products provided or billed to you (such as HC's licensors, suppliers, dealers, or third party vendors) whenever you also assert claims against us in the same proceeding.

**Contact us first.** If a Dispute arises between you and HC, our goal is to learn about and address your concerns. You agree that you will notify HC about any dispute you have with HC regarding these Terms or our Devices or Services by contacting HC. Most customer concerns can be resolved quickly and to a customer's satisfaction by contacting us at [www.customerservicesupport@heathcollc.com](mailto:www.customerservicesupport@heathcollc.com).

This provision facilitates the prompt and efficient resolution of any Disputes that may arise between you and HC. Arbitration is a form of private dispute resolution in which persons with a Dispute waive their rights to file a lawsuit, to proceed in court, and to a jury trial, and instead submit their Disputes to a neutral third person (or arbitrator) for a binding decision. You have the right to opt out of this provision (as explained below); which means you would retain your right to litigate your Disputes in a court, either before a judge or jury.

All Disputes between you and HC shall be resolved by binding arbitration. Arbitration replaces the right to go to court. In the absence of this arbitration Agreement, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Except as otherwise provided, entering into this Agreement constitutes a waiver of your right to litigate claims and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this Agreement and can award the same damages and relief as a court (including attorney's fees).

## **ii. Pre-Arbitration Claim Resolution**

For all Disputes, whether pursued in court or arbitration, you must first give HC an opportunity to resolve the Dispute. You must commence this process by mailing written notification of your Dispute to HC. That written notification must include (1) your name, (2) your address, (3) a written description of your claim, and (4) a description of the specific relief you seek. If HC does not resolve the Dispute within 60 days after it receives your written notification, you may pursue your Dispute in arbitration. You may pursue your Dispute in a court only under the circumstances described below.

## **iii. Exclusions from Arbitration/Right to Opt Out**

Notwithstanding the above, you or HC may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, in which case it may be initiated in small claims court; or (b) **YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS OF THE DATE THAT YOU FIRST CONSENT TO THIS AGREEMENT (the "Opt-Out Deadline")**. You may opt out of this provision by mailing written notification to HC. Your written notification must include (1) your name, (2) your address, and (3) a clear statement that you do not wish to resolve Disputes with HC through arbitration. Your decision to opt out of this Arbitration provision will have no adverse effect on your relationship with HC. **Any opt-out request received after the Opt-Out Deadline will not be valid and you must pursue your Dispute in arbitration, or in small claims court.**

#### **iv. Arbitration**

If this provision applies and the Dispute is not resolved as provided above (Pre-Arbitration Claim Resolution), either you or HC may initiate arbitration proceedings. The American Arbitration Association ("AAA"), or JAMS, Inc. ("JAMS"), will arbitrate all Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as class arbitration. All issues shall be for the arbitrator to decide, including the scope of this provision.

For arbitration before the AAA for Disputes of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA's Commercial Arbitration Rules will apply. In either instance, the AAA's Optional Rules for Emergency Measures of Protection shall apply. The AAA rules are available at <http://www.adr.org> or may be obtained by calling 1-800-778-7879. For arbitration before JAMS of less than \$75,000, JAMS's Streamlined Arbitration Procedures in accordance with the Consumer Arbitration Minimum Standards will apply; for Disputes involving \$75,000 or more, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols for Domestic, Commercial Cases will apply. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com) or may be obtained by calling 1-800-352-5267. Under no circumstances will class action procedures or rules apply to the arbitration. This provision governs in the event it conflicts with the applicable arbitration rules.

Because the Services and these Terms concern interstate commerce, the Federal Arbitration Act ("FAA") governs all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

**Arbitration Award** – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

**Location of Arbitration** - You or HC may initiate arbitration in either Los Angeles County, California or the federal judicial district that includes your billing address. In the event that you select the federal judicial district that includes your billing address, HC may then transfer the arbitration to Los Angeles County, California if it agrees to pay any additional fees or costs incurred as a result of the transfer, as determined by the arbitrator.

**Payment of Arbitration Fees and Costs** – HC will pay all arbitration filing fees and arbitrator's costs and expenses upon your written request given prior to the commencement of the arbitration. You are responsible for all additional fees and costs that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law. In addition to any rights to recover fees and costs under applicable law, if you provide

notice and negotiate in good faith with HC as provided in the Section above titled "Pre-Arbitration Claim Resolution" and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

**v. Class Action Waiver**

Except as otherwise provided in this provision, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action, or private attorney general action, collectively, "Class Action Waiver") unless both you and HC specifically agree to do so following initiation of the arbitration. If you choose to pursue your Dispute in court by opting out of the Arbitration provision, as specified above, this Class Action Waiver will not apply to you. Neither you, nor any other User of the Site can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

**vi. Jury Waiver**

You understand and agree that by entering into this Agreement you and HC are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this provision, you and HC might otherwise have had a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited or may also be waived.

**vii. Severability**

If any clause within this provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this provision, and the remainder of this provision will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire provision will be unenforceable and the Dispute will be decided by a court in Los Angeles County, California.

**viii. Continuation**

This provision shall survive the termination of your Service with HC or its affiliates. Notwithstanding any provision in this Agreement to the contrary, we agree that if HC makes any change to this Paragraph 26, as in effect when you accepted this Agreement (other than a change to the notice address), you may reject any such change and require HC to adhere to the language in this provision if a Dispute between us arises.

**ix. Waiver of Rights**

The failure of HC to exercise any of its rights under this Agreement shall not be deemed a waiver, nor shall such failure in any way prevent HC from subsequently asserting or exercising such rights.

**x. Time Limit to Bring Claims**

No suit or action may be brought against HC more than one year after the date of the incident that resulted in the loss, injury, or damage, or the shortest duration permitted under applicable law if greater than one year.

**27. Copyright Dispute Policy**

HC has adopted the following general policy toward copyright infringement in accordance with the Digital Millennium Copyright Act or DMCA. The address of HC's designated agent to receive notification of claimed infringement ("Designated Agent") is listed at the end of this Section.

It is HC's policy to (1) block access to or remove material that it believes in good faith to be copyrighted material that has been illegally copied and distributed by any of our advertisers, affiliates, Content providers, members or Users; and (2) remove and discontinue service to repeat offenders.

Procedure for Reporting Copyright Infringements: If you believe that material or Content residing on or accessible through the Services infringes a copyright, please send a notice of copyright infringement containing all of the following information to the Designated Agent listed below:

- A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
- Identification of works or materials being infringed;
- Identification of the material that is claimed to be infringing including information regarding the location of the infringing materials that the copyright owner seeks to have removed, with sufficient detail so that HC is capable of finding and verifying its existence;
- Identification of the person or entity allegedly infringing, contact information about the Device used to infringe, including address, telephone number and, if available, email address;
- A statement that the person reporting the material identified as infringing has a good faith belief that the material identified in (1) is not authorized by the copyright owner, its agent, or the law; and
- A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

Once proper bona fide infringement notification is received by the Designated Agent, it is HC's policy:

- To remove or disable access to the infringing material;
- To notify the Content provider, member or User that it has removed or disabled access to the material; and
- That repeat offenders will have the infringing material removed from the system and that HC will terminate such Content providers, member's or user's access to the Services.

Procedure to Supply a Counter-Notice to the Designated Agent:

If the Content provider, member or User believes that the material that was removed (or to which access was disabled) is not infringing, or the Content provider, member or User believes that it has the right to post and use such material from the copyright owner, the copyright owner's agent, or, pursuant to the law, the Content provider, member, or User, may send a counter-notice containing the following information to the Designated Agent listed below:

- A physical or electronic signature of the Content provider, member or User.
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or disabled.
- A statement that the Content provider, member or User has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.
- Content provider's, member's or User's name, address, telephone number, and, if available, email address, and a statement that such person or entity consents to the jurisdiction of the Federal Court for the judicial district in which the Content providers, member's or user's address is located, or, if the Content providers, member's or user's address is located outside the United States, for any judicial district in which HC is located, and that such person or entity will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Designated Agent, HC may send a copy of the counter-notice to the original complaining party informing that person that HC may replace the removed material or cease disabling it in 10 to 14 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or User, the removed material may be replaced or access to it restored in 10 to 14 business days or more after receipt of the counter-notice, at HC's discretion.

HC's Designated Agent is Larry Russ and may be contacted by mail (Larry Russ, Russ August & Kabat, 12424 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, CA 90025) or email (copyright@raklaw.com).

## **28. Miscellaneous**

The failure of HC to exercise, in any respect, any of its rights provided herein shall not be deemed a waiver of any further rights hereunder. HC shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond HC's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference). If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub licensable by you except with our prior written consent. HC may transfer, assign or delegate this Agreement and its rights and obligations without consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind HC in any respect whatsoever.

**29. Headings**

Headings for each section have been included above for your convenience, but such headings do not have any legal meaning, and may not accurately reflect the content of the provisions they precede.

Effective as of 5/7/18

Below are trademarks of HeathCo LLC.

***HeathZenith***,,notifi.