

ZERIGO HEALTH, INC.

TERMS OF USE

Thank You for visiting our website which is owned and operated by Zerigo Health, Inc., a Delaware corporation with a place of business in San Diego, CA, (collectively referred to herein as “Zerigo”, “We”, “Us”, or “Our”) Please read these Terms of Use (“Terms”) carefully before using the Services described herein. These Terms set forth the legally binding Terms for Your use of the “Services” which includes all of the following:

- Our websites and related sub-domains and subsites (together with any successor site, each a “**Zerigo Website**”);
- Our related mobile device application (the “**Zerigo Mobile App**”);
- Our products including the Zerigo Home Phototherapy Device (the “**Zerigo Device**”) and any other Zerigo offered products (the “**Zerigo Products**”);
- Our services including the services of the ZerigoCare Guides (the “**Zerigo Services**”); and
- Any offering combining Zerigo Devices, Zerigo Products and/or Zerigo Services (the “**Zerigo Solution**”).

These Terms of Use are entered into by and between Zerigo and any individual or entity, including each Zerigo customer (collectively referred to as “Customer”, “You”, and “Your”). If You use the Services on behalf of a company or other entity then “You” includes You and that entity, and You represent and warrant that (a) You are an authorized representative of the entity with the authority to bind the entity to these Terms of Use, and (b) You agree to these Terms of Use on the entity's behalf. To the extent You have been provided access to the Services by Your employer, Your family member's employer, or other sponsoring organization (collectively the “**Program Sponsor**”), You understand that Your use of the Services may be subject to additional terms as set forth in the agreement between Zerigo and the Program Sponsor.

BY USING THE SERVICES, YOU ACCEPT ALL OF THE PROVISIONS OF THESE TERMS OF USE AND REPRESENT TO US THAT YOU ARE LEGALLY COMPETENT TO ENTER INTO AND AGREE TO THESE TERMS OF USE. IF YOU DO NOT ACCEPT THESE TERMS OF USE, THEN YOU ARE NOT AUTHORIZED TO USE THE SERVICES.

PLEASE READ THESE TERMS OF USE CAREFULLY. YOU AND ANY DELEGATE OR INDIVIDUAL AUTHORIZED TO ACT ON YOUR BEHALF OR FOR AN ENTITY WITH WHICH YOU ARE AFFILIATED, ACKNOWLEDGE THAT EACH TIME YOU USE ANY OF THE ZERIGO SERVICES OR THIS WEBSITE OR CONTENT THAT:

- You have read and understand all of these terms and conditions;
- You agree to be bound by all of these terms of use;
- You understand that these terms of use are the legal equivalent of a signed, written contract between You and Zerigo; and
- You have full authority to bind Your entity to all of these terms of use. If You are not willing to be, or cannot be, bound by these Terms of Use, including without limitation the preceding agreement and acknowledgement, then do not use any Zerigo Services or access the Zerigo website or use any of its content.

These Terms of Use describe Your responsibilities, Zerigo's liability, and the liability of third parties related to the Services. All users of the Services must accept and comply with the terms and conditions set forth herein. Certain portions of the Services may be subject to additional terms and conditions specified by us from time to time (the “**Additional Terms**”); and Your use of the Services is subject to those Additional Terms. If You have any questions regarding these Terms of Use, please contact us via email at: support@zerigohealth.com.

THESE TERMS OF USE INCLUDE (1) AN ARBITRATION PROVISION; (2) A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST US; AND (3) A RELEASE BY YOU OF ALL CLAIMS FOR DAMAGE AGAINST US AND CERTAIN THIRD PARTIES THAT MAY ARISE OUT OF YOUR USE OF THE SERVICES. YOU HAVE THE RIGHT TO OPT-OUT OF THE ARBITRATION PROVISION AS FURTHER EXPLAINED IN SECTION 28 (ARBITRATION AND CLASS ACTION WAIVER). BY USING THE SERVICES, YOU AGREE TO THESE PROVISIONS.

YOU UNDERSTAND THAT YOU MAY VOICE GRIEVANCES / COMPLAINTS REGARDING THE SERVICES WITHOUT REPRISAL BY CONTACTING THE FOLLOWING:

Zerigo Phone Number: (877) 520-5697 or support@zerigohealth.com

ACHC Phone Number: (855) 973-2242 or customerservice@ACHC.org

CMS /Medical Service Center: (800) 633-4227 or www.medicare.gov

Calif. Dept. of Health Information: (916) 558-1784 (option 4) or www.cdph.ca.gov

1. REGISTRATION.

1.1 To register an account on the Services (“**User Account**”), You must be at least 18 years of age (or the age of legal majority in Your jurisdiction). If You are the parent or guardian of a person under the age of 18, and You decide to make the Services available to a minor under the age of majority in their jurisdiction, You may do so by establishing the User Account in Your name for the benefit of such minor.

You do not need to create a User Account to visit the public pages of the Services, however, You do need a User Account to use certain Services, including registering any Zerigo Product. You are responsible for providing and maintaining up-to-date and accurate contact information, including Your telephone number and email address, and other information on Your User Account. Telephone calls, SMS messages and email correspondence with Zerigo may be recorded or monitored.

You understand and acknowledge that a smart phone with either an Android or iOS operating system is required for use of the Zerigo Health Solution, and an onboarding call with a ZerigoCare Guide shall be completed prior to use of the Zerigo Home Phototherapy Device.

1.2 **You are the sole authorized user of Your User Account.** You are responsible for maintaining the confidentiality of any password, account number and other log-in information provided by You or Zerigo for accessing the Services. You are solely and fully responsible for all activities that occur under Your User Account. Zerigo does not have any control over the use of Your or any user’s User Accounts, and Zerigo expressly disclaims any liability derived therefrom. Should You suspect that any unauthorized party may be using Your (or another user’s) password or account, or You suspect any other breach of security, You will cease all use of such password or account and contact Zerigo immediately by emailing support@zerigohealth.com.

If (i) Your contact information changes or (ii) You wish to update Your preferences with respect to SMS messaging or other communications from us, You may correct, delete inaccuracies, or amend Your user information and preferences by making the change on Your User Account or by emailing us at support@zerigohealth.com.

2. USE OF HEALTH-RELATED AND OTHER PERSONAL INFORMATION / PRIVACY POLICY. Zerigo’s [Privacy Policy](#) and [Notice of Privacy Practices](#) (collectively, the “**Privacy Policy**”) explain how we collect, use, and disclose Your information in connection with the Services. By using the Services, You agree that Zerigo may collect, use, and disclose such information, including Your health-related information (collectively, “**Information**”), in accordance with the Privacy Policy. In addition, for the avoidance of doubt, You authorize Zerigo to use and disclose Your Information for the following purposes: (a) reviewing Information about You, and using and disclosing that Information to coordinate or arrange delivery of supplies related to the Services, including those not yet furnished to You by Zerigo and/or its agents; (b) create and communicate progress reports for Your healthcare provider or

insurer; (c) facilitate the issuance of a prescription for Your use of the Zerigo Health System (d) providing product updates, including regulatory notices relating to existing or future products; (e) create reports, articles and scientific presentations that are published or presented in a public forum with the understanding that such reports and publications will not disclose Your identity; and (f) providing information that promotes medical products and/or services that may be of interest to You.

3. CONSENT TO EMAIL AND TEXT MESSAGING

Email communication and text messaging, between Zerigo and patients or users of the Zerigo Services, through SMS/MMS text messaging, allows Zerigo Health to efficiently exchange information with patients using the Zerigo System. The Zerigo System includes the use of the Zerigo Mobile App and requires that users of the Zerigo System provide their consent to the use of email and text messaging as a permitted communication method including authorization to communicate PHI. Electronic communications such as through email and text messaging are not completely secure methods of communication.

You understand that communications, including those involving PHI, between You and Zerigo may be transmitted by electronic means, including, without limitation through SMS/MMS text messaging, email, and/or written, visual, or audio messages on the Services to the fullest extent permitted by applicable law. You may refuse to permit Zerigo to communicate with You through email or text messaging however, refusal to do so may result in an inability to utilize the full scope of the services offered by Zerigo including the full utility of the Zerigo Mobile App.

4. AGGREGATED / ANONYMOUS DATA. Zerigo may de-identify Your Information and/or aggregate Your Information with information from other users that does not include any direct identifiers that could identify You or anyone else ("**Aggregated Data**"). You understand and acknowledge that Zerigo may use such Aggregated Data in accordance with the terms of the Privacy Policy.

5. PROGRAM SPONSOR. To the extent You receive the Services through a Program Sponsor, You understand that Your participation in a third-party program through Your Program Sponsor will be subject to the terms of such third-party program, which may include providing Your Information to Your Program Sponsor, including information regarding whether, and to what extent You have participated in the Services.

6. PRESCRIPTION REQUIRED BEFORE SHIPMENT. A VALID PRESCRIPTION MUST BE OBTAINED FROM A LICENSED PHYSICIAN OR OTHER QUALIFIED LICENSED HEALTH CARE PROFESSIONAL IN ORDER FOR YOU, OR THE PERSON FOR WHOM YOU ARE ACTING, TO ACQUIRE AND USE THE ZERIGO DEVICE AND YOU UNDERSTAND THAT THE ZERIGO SERVICES MAY ONLY BE ACQUIRED AND USED IN THE UNITED STATES OF AMERICA. Within a reasonable period of time after receipt of a valid prescription, and payment in full for the Zerigo Device and other Zerigo Products and/or Services ordered, the Zerigo Device will be shipped to You. You understand and agree that the Zerigo Device may **only** be used: (i) pursuant to a valid prescription; (ii) by the person for whom the prescription was written; and (iii) within the United States of America. You agree to not resell, lease, lend, give, or otherwise transfer ownership or possession of the Zerigo Device to any other person due to the need for a valid prescription and the potential biohazard that may result from another person's use.

7. WARNING: THE ZERIGO DEVICE MAY BE PURCHASED ONLY FOR PERSONAL USE BY YOU, ON BEHALF OF YOUR MINOR CHILD OR THE PERSON FOR WHOM YOU ARE ACTING, AND PURSUANT TO A PRESCRIPTION FROM A LICENSED PHYSICIAN AND/OR OTHER HEALTHCARE PROVIDER. YOU ACKNOWLEDGE AND AGREE THAT YOU WILL NOT PERMIT ANY OTHER PERSON TO USE THE ZERIGO DEVICE THAT YOU PURCHASE UNLESS IT IS PURCHASED AS A GIFT, THE RECIPIENT HAS A VALID PRESCRIPTION, AND THE RECIPIENT AGREES TO THESE TERMS OF USE, AND TO THE PRIVACY POLICY. ZERIGO DOES NOT AUTHORIZE YOU TO RESELL, LEASE, LEND, GIFT AND/OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF THE ZERIGO DEVICE TO ANY OTHER PERSON AS USE OF THE DEVICE BY ANOTHER PERSON WITHOUT A PRESCRIPTION IS UNLAWFUL. EVEN WITH A PRESCRIPTION, USE OF YOUR ZERIGO DEVICE BY ANOTHER PERSON POSES THE RISK OF EXPOSING THAT PERSON TO BIOHAZARDS INCLUDING CONTAGIOUS DISEASES, BACTERIA, FUNGI AND VIRUSES.

8. **READING AND COMPLYING WITH THE INFORMATION IN THE ZERIGO DEVICE PATIENT GUIDE.** After You obtain a prescription for, and when You receive, the Zerigo Device, You will receive and/or have access to the Zerigo Device Patient Guide (the “Patient Guide”). You agree to read the Patient Guide in its entirety and comply with all of the instructions that are contained within it. If there is anything in the Patient Guide that You do not understand, You may contact a ZerigoCare Guide (as described more fully below) by phone or through the messaging feature on the Zerigo Mobile App.

9. **Contraindications.** As explained in the Patient Guide, contraindications to the use of the Zerigo Device may include history of photosensitive disorder, history of skin cancer, or current skin cancer. It is also important for You to talk to Your physician if You have very fair skin or a history of atypical moles. Be sure to discuss with Your physician any past history of excessive exposure to natural sunlight or phototherapy, immune lowering medications or conditions and current use of any medications that may make You more sensitive to light.

10. **Progress Checks and Photos When Using the Zerigo Device.** As more fully explained in the Patient Guide, use of the Zerigo System and the Zerigo Device requires periodic Progress Checks, including Your feedback, and photos, and these Progress Checks are important for Your healing progress and for maintaining control of Your condition. Your progress, including photos, is recorded, and can be viewed by You, Your physician, and Your ZerigoCare Guides.

11. **Sunburn-Like Reactions.** As more fully explained in the Patient Guide, use of the Zerigo Device may result in redness, increased itchiness and tenderness that may be signs of a sunburn-like reaction and/or tanning of the skin. The Patient Guide contains instructions for reducing the likelihood of any sunburn-like reaction and/or tanning. Some medications and dietary supplements when combined with light therapy can increase Your risk of sunburn. Please notify Your physician if You are unsure about the impact Your medication(s) may have on Your reaction to the Zerigo Device. **ALWAYS CONSULT WITH YOUR PHYSICIAN AND/OR OTHER HEALTH CARE PROVIDER IF YOU HAVE A BURN REACTION OF ANY TYPE OR SEVERITY.**

12. **ZERIGO DEVICE WARNINGS AND CAUTIONS.**

- **WARNING: USE OF THE ZERIGO DEVICE, OTHER THAN AS INSTRUCTED, MAY RESULT IN HAZARDOUS UV LIGHT EXPOSURE. USE OF THE ZERIGO DEVICE MAY CAUSE THE SKIN TO BURN IF IT IS OVEREXPOSED. IF AFTER USE, BLISTERS ARE VISIBLE, IT MAY BE A SIGN OF A SECOND-DEGREE BURN AND YOU MUST REPORT IT TO YOUR PHYSICIAN AND/OR OTHER HEALTH CARE PROVIDER IMMEDIATELY.**
- **WARNING: ALTHOUGH AN INCREASED INCIDENCE OF SKIN CANCER AS A RESULT OF NB-UVB HAS NOT YET BEEN ESTABLISHED, YOU SHOULD CONSULT WITH YOUR PHYSICIAN IF YOU HAVE A HISTORY OF SKIN CANCER TO MAKE SURE THIS IS THE RIGHT TREATMENT FOR YOU.**
- **WARNING: UV HAZARD – AVOID LOOKING DIRECTLY AT LIGHT. REFER TO INSTRUCTIONS FOR PROPER USE.**
- **WARNING: BIOHAZARD – THE ZERIGO DEVICE IS TO ONLY BE USED BY THE INDIVIDUAL FOR WHOM IT HAS BEEN PRESCRIBED.**
- **CAUTION: FEDERAL LAW RESTRICTS THE ZERIGO DEVICE TO SALE BY OR ON THE ORDER OF A PHYSICIAN OR OTHER QUALIFIED LICENSED HEALTHCARE PROFESSIONAL. FOLLOW THE PRESCRIBING INSTRUCTIONS OF YOUR PHYSICIAN’S OR OTHER QUALIFIED LICENSED HEALTHCARE PROFESSIONAL.**
- **DO NOT OPERATE THE ZERIGO DEVICE WHILE OPERATING A MOTOR VEHICLE OR ENGAGING IN ANY ACTIVITY THAT MAY REQUIRE CONCENTRATED EFFORT.**
- **DO NOT USE THE ZERIGO DEVICE IF IT LOOKS PHYSICALLY DAMAGED OR MALFUNCTIONS.**

- DO NOT OPEN OR TAMPER WITH THE ZERIGO DEVICE. THERE ARE NO USER-SERVICEABLE PARTS.
- DO NOT GET THE ZERIGO DEVICE WET.
- AVOID BLOCKING THE ZERIGO DEVICE’S VENTS FOR EXTENDED PERIODS OF TIME.
- ALWAYS USE THE WRIST LANYARD DURING TREATMENTS TO AVOID DROPPING AND DAMAGING YOUR ZERIGO DEVICE.
- KEEP YOUR ZERIGO DEVICE AWAY FROM EXTREME TEMPERATURES.

13. **CONSENT TO USE OF ZERIGOCARE GUIDES.** A “ZerigoCare Guide” is a member of Zerigo who trains and educates Zerigo Device users on (i) home phototherapy with the Zerigo System, (ii) the use of the Zerigo Device, (iii) the use of the Zerigo Mobile App, and (iv) the operation of the Zerigo System. ZerigoCare Guides are available by telephone and through electronic means to provide technical support in connection with Your use of the Zerigo Device and/or the Zerigo Mobile App. In addition, ZerigoCare Guides encourage You to comply with the treatment plan prescribed by Your physician or other health care provider. ZerigoCare Guides (a) have access to Your Health Information collected and stored by Zerigo, (b) may collect and store Your Health Information You provide, and (c) may communicate with, collect, and store such information You provide and/or disclose such information to Your physician and/or other healthcare provider as more fully described in the [Privacy Policy](#) and [Notice of Privacy Practices](#). You may contact a ZerigoCare Guide to discuss any questions or concerns in connection with the matters described above by way of the toll-free telephone number posted on the Zerigo Website and/or the Zerigo Mobile App or through messaging that may be available on the Zerigo Mobile App and/or the Zerigo Website.

You consent to ZerigoCare Guides initiating contact with You at any time, including, without limitation, after You express interest in purchasing, and/or after You purchase or receive, the Zerigo Device and/or install the Zerigo Mobile App. You also consent to all of the functions of ZerigoCare Guides as described in this section, on the Zerigo Mobile App, on the Zerigo Website, and/or as otherwise expressed in a communication from ZERIGO to You. YOU UNDERSTAND AND ACKNOWLEDGE THAT ZERIGOCARE GUIDES DO NOT, CANNOT AND WILL NOT PROVIDE ANY MEDICAL ADVICE OR MEDICAL TREATMENT AND YOU MUST ALWAYS CONSULT WITH YOUR PHYSICIAN OR OTHER HEALTHCARE PROVIDER.

14. **THE SERVICES DO NOT PROVIDE MEDICAL ADVICE.** The Services, and all content available therein, are for informational purposes only. The content is not intended to be a substitute for professional medical advice, diagnosis, or treatment. Always seek the advice of Your physician or other qualified healthcare provider with any questions You may have regarding a medical condition. Never disregard professional medical advice or delay in seeking treatment because of content or anything You have read on or about the Services.

You represent and warrant that before using any Zerigo Product, and before subscribing to and/or using the Services, You will consult with a licensed physician or other licensed health care provider who is authorized to prescribe the medical device for Your use and to discuss whether the Zerigo Products are appropriate for You.

If You think You may have a medical emergency, call Your doctor or 911 immediately. Zerigo does not endorse any specific physicians, opinions, or other information that may be mentioned on the Services. Zerigo is not a health or wellness provider and cannot recommend or refer You to any specific health or wellness provider. Reliance on any information provided by Zerigo or its employees is solely at Your own risk.

15. **INTELLECTUAL PROPERTY RIGHTS.**

15.1 All copyrightable content and other materials contained within or on, or used in connection with, the Services, including, but not limited to, all intellectual property and technology of the Zerigo Devices and the text, graphics, logos, the “look and feel” of the Services, button icons, pictures, images, audio recordings and files, video 40-0178, Rev A

recordings and files, software, data, routines, documentation, literary works, and compilations are owned by, or licensed by third parties to, Zerigo and are protected by copyright, trademark and other intellectual property laws. All patent rights, copyrights, trademark rights, trade dress rights, trade secret rights and other intellectual property and other rights applicable to the Services and any Zerigo Products are owned by Zerigo and/or its licensors, and as between You and Zerigo, Zerigo retains ownership of all such rights.

15.2 The word marks and logos used to identify Zerigo as a source of the Services and the Zerigo Products are trademarks and service marks owned exclusively by Zerigo. Any and all aspects of the Services and the Zerigo Products (including, but not limited to product design) that qualify as trade dress are owned exclusively by Zerigo. Zerigo's trademarks, service marks and/or trade dress are protected by trademark laws of the United States and other countries throughout the world. You are not permitted to use in any way any of Zerigo's trademarks, service marks or trade dress.

16. **LIMITED LICENSE.** Subject to the terms and conditions of these Terms of Use, Zerigo grants You a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, limited license to access and use the software provided to You as part of the Services and to download a single copy of the Zerigo Mobile App for the express permitted purposes provided by these Terms of Use as described below and for no other purposes. This license is revocable at any time without notice for any reason, with or without cause, in Zerigo's sole discretion.

17. **USING THE SERVICES**

17.1 **PERMITTED PURPOSES AND ACTIVITIES.** In addition to the restrictions and conditions of use regarding the use of the Zerigo Services, You acknowledge and agree that You will use the Services only for the purposes expressly permitted by these Terms of Use as described in this Section, and that all other purposes are expressly prohibited. The purposes expressly permitted for accessing, visiting and/or using the Services are:

- (a) to obtain information about the Zerigo Services;
- (b) to communicate to Zerigo an interest in purchasing and/or using any such Zerigo Service;
- (c) to order and complete a purchase transaction to purchase a Zerigo Service;
- (d) to obtain information about Zerigo;
- (d) to sign up for Zerigo's newsletters and/or other communications, and/or to receive product and/or service updates;
- (e) to communicate questions, and give feedback, to Zerigo; and/or
- (f) to review any other information contained on or in the Services for any personal or legitimate business purpose (i) that does not involve engaging in any conduct that would violate any criminal or civil law and/or give rise to any civil cause of action or claim by Zerigo and/or any other users of the Services who are in compliance with these Terms of Use, and (ii) that is not included within, or that constituted a violation of, the description of prohibited purposes and activities set forth in the following Section

(all of the foregoing purposes are hereinafter referred to as "**Permitted Purposes and Activities**").

17.2 **PROHIBITED PURPOSES AND ACTIVITIES.** You acknowledge and agree that, other than the Permitted Purposes and Activities described in the previous Section, Your use of the Services for any other purpose(s) is strictly prohibited and constitutes a material breach of these Terms of Use on the part of You and any person or entity for whom You are acting. By way of example only, and without limitation, You are expressly prohibited from using the Services for any or the following purposes and/or activities ("**Prohibited Purposes and/or Activities**"):

- (a) using software robots, crawlers, spiders, data mining or any other data gathering or extraction tools or methods for any purpose;
- (b) obtaining (directly or indirectly) or attempting to obtain contact information, account information, personal information, personally identifiable information, health care information, protected health information and/or any other information or data about any user of the Services, and/or any actual or prospective Zerigo customer;
- (c) impersonating another person or entity's identity or conveying or posting any incomplete, false, or misleading information about You or Your affiliation with any person or entity;
- (d) disclosing any personal information, personally identifiable information, health-related information, protected health information and/or any other information about any other person or entity without their express consent;
- (e) conveying or posting anything that Zerigo determines, in its sole discretion, to be abusive, harassing, obscene or objectionable content in any way;
- (f) using the Services or using any Zerigo Product for any unlawful purposes or to engage in any unlawful conduct;
- (g) using the Zerigo Products without a valid prescription or in any way other than as directed by Your healthcare provider and/or as instructed by Zerigo pursuant to Zerigo's written or oral instructions or directions;
- (h) purchasing and/or using any of the Services or Zerigo Products from, or in, a jurisdiction where it is unlawful or unauthorized;
- (i) obtaining any trade secrets, confidential, or proprietary information from or regarding Zerigo;
- (j) introducing any viruses, trojan horses, worms, logic bombs or other content or computer code that are or seek to be malicious or technologically harmful into Zerigo systems;
- (k) access or use the Services in any manner that could disable, overburden, damage, disrupt or impair the Services or interfere with any other party's access to or use of the Services or use of any device, software, computer code or routine that causes the same result;
- (l) framing or utilizing framing techniques to enclose the Services or any portion thereof;
- (m) modifying, downloading, or indexing any of the Services (except caching or as necessary for viewing);
- (n) copying, distributing, modifying, adapting, translating, or creating any derivative works based upon all, or any portion, of the Services;
- (o) using any metadata, meta tags, or any other hidden text utilizing Zerigo's name, trade names, trademarks, service marks and/or trade dress;
- (p) decompiling, disassembling, reverse engineering, or otherwise attempting to derive any source code from the Services or any Zerigo Product;
- (q) engaging in direct, indirect, contributory, and/or joint infringement of, and/or inducing a third party to infringe upon, any patents owned by, and/or exclusively licensed to, Zerigo;
- (r) interfering with, engaging in theft of, and/or gaining unauthorized access to the Services and/or any other devices, technologies, hardware, or software used in connection with the Services;
- (s) acquiring any information pertaining to other users of the Services;
- (t) removing, defacing, obscuring, or altering any copyright, patent, trademark, or other intellectual property rights notices affixed to, or provided in connection with, the Services or any Zerigo Product;
- (u) creating or attempting to create a substitute or similar service or product offering through the use of, or access to the Services;
- (v) compromising the safety and essential performance of the Services and/or any other devices, technologies, hardware and/or software used in connection with the Services;
- (w) rendering the Services and/or data, systems, servers, and other applications inaccessible to authorized users; and/or
- (x) anything other than Permitted Purposes and Activities as described in the preceding Section.

YOU REPRESENT AND WARRANT THAT YOU WILL NOT ENGAGE IN ANY PROHIBITED PURPOSES AND/OR ACTIVITIES INCLUDING, WITHOUT LIMITATION, THOSE LISTED ABOVE WHILE USING THE SERVICES.

17.3 **User Content License Grant.** In connection with Your use of the Services, You may be able to post, upload or submit content to be made available through the Services ("Your Content"). You hereby grant to Zerigo a nonexclusive, perpetual, irrevocable, royalty-free, worldwide, transferable, sublicensable license to access, use, reproduce, transmit, display, publish and distribute Your Content for use in connection with the Services. As part of the foregoing license grant You agree that (a) the other users of the Services shall have the right to comment on and/or tag Your Content and/or to use, publish, display, modify or include a copy of Your Content as part of their own use of the Services, and (b) we have the right to make any of Your Content available to third parties, so that those third parties can distribute, make derivative works of, comment on and/or analyse Your Content on other media and services, either alone or as part of a collective work. By posting or submitting Your Content through the Services, You represent and warrant (a) that Your Content is accurate and not misleading; and (b) that the use of Your Content does not violate these Terms of Service or the Privacy Policy and will not cause injury, including any privacy or security risk, to any person or entity. We take no responsibility and assume no liability for any content or materials submitted or uploaded to the Services by You or any third party.

18. **TERRITORIAL AND GOVERNMENTAL RESTRICTIONS.** If You intend to purchase and/or use any Zerigo Product or Services, You represent and warrant that You are a resident of the United States of America, and that You will use Zerigo Products or Services only within the United States of America or in a country in which Your use does not violate any applicable law.

19. **THIRD-PARTY MATERIALS.** The Services may display, include, or make available websites, content, applications, information, or other materials owned and operated by third-party vendors, affiliates, partners, licensees or licensors of Zerigo (collectively, "Third-Party Materials"). Zerigo is not responsible for any Third-Party Content and such Third-Party Content may not be deemed to be endorsed or recommended by Zerigo. Your use of any Third-Party Materials is at Your own risk. You acknowledge and agree that Zerigo is not responsible for examining or evaluating, does not warrant the offerings of, and does not assume any responsibility or liability for the actions, content, products, or services of, contained on or provided by Third-Party Materials, including, without limitation, the applicable third party's privacy policies, compliance with HIPAA or other laws and regulations and/or terms of use. You should carefully review the privacy policy and terms of use applicable to all Third-Party Materials and other websites that You may visit.

20. **USER SUBMISSIONS.** It is the policy of Zerigo to decline unsolicited suggestions and ideas. Notwithstanding this policy, with regard to unsolicited suggestions and ideas, inclusive of any inquiries, feedback, suggestions, ideas or other information or content that You provide to Zerigo through the Services or otherwise by e-mail, messaging or other written communication, or transmitted or delivered orally and/or in writing by any other means (hereinafter referred to as "User Submission(s)"), will be treated as non-proprietary and non-confidential. You represent and warrant that (i) Your User Submissions are non-proprietary and non-confidential, (ii) You own the User Submissions communicated by You to Zerigo or otherwise have the right to grant a license to use the same to Zerigo with respect to all or part of any such User Submissions as set forth herein, (iii) Your communication of any User Submissions to Zerigo does not violate any copyrights, patent rights, trademark rights, trade secret rights, other intellectual property rights, confidentiality obligations, contractual rights, publicity rights (e.g. use of name and likeness) or any other rights of any person or entity, (iv) Your communication of any User Submissions to Zerigo does not result in a breach of any contract with any other person or entity, and (v) none of Your User Submissions constitute or contain software viruses, malicious computer code, commercial solicitations, chain letters, mass mailings, or any form of "spam." By communicating, transmitting or posting any User Submissions to Zerigo, through or on the Services or by any other means, You hereby grant Zerigo a non-exclusive, royalty-free, perpetual, assignable, transferable, irrevocable, and fully sub-licensable right to use, reproduce, modify, adapt, publish, sell, assign, translate, create derivative works from, make, use, offer to sell, sell, distribute and display any User Submissions (including the contents thereof) in any form, media, or technology, whether now known or hereafter developed, alone or as part of other works. You also acknowledge and agree that Your User Submissions may not be returned and Zerigo may use Your User Submissions, and any inventions, ideas, concepts or know how contained therein, for any purpose including, without limitation, developing, manufacturing, distributing, and marketing products. You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead Zerigo as to the origin of any of Your User Submissions. You

agree to indemnify Zerigo and its subsidiaries, affiliates, officers, agents, employees, partners, and licensors for all claims arising from or in connection with any claims to any rights in any of Your User Submissions.

21. COPYRIGHT INFRINGEMENT CLAIMS: NOTICE AND TAKEDOWN PROCEDURES. The Digital Millennium Copyright Act of 1998 (the “DMCA”) provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If You believe in good faith that materials available on the Services infringe Your rights under U.S. copyright law, You (or Your agent) may send to Zerigo a written notice by e-mail requesting that Zerigo remove such material or block access to it. If You believe in good faith that someone has wrongly filed a notice of copyright infringement against You, the DMCA permits You to send to Zerigo a counter-notice. Notices and counter-notices must be sent in writing and meet the then-current statutory requirements imposed by the DMCA (see <http://www.copyright.gov> for details), which, with respect to notices of infringement, currently include, among other requirements, the following:

- (a) Sufficient information identifying the copyrighted work(s) believed to be infringed.
- (b) Sufficient information identifying the allegedly infringing material(s) and the location of such material(s) in order to permit Zerigo to locate such material(s);
- (c) A statement from the owner (or the owner’s authorized representative) of the copyrighted work(s) believed to be infringed that such owner or authorized representative has a good faith belief that the allegedly infringing materials are used in a manner not authorized by the copyright owner, its agent, or the law;
- (d) Contact information for the complaining party, including a mailing address, a telephone number and, if available, an email address;
- (e) A statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on the copyright owner’s behalf; and
- (f) A signature or the electronic equivalent from the owner (or the owner’s authorized representative) of the copyrighted work(s) believed to be infringed. Notices and counter-notices must be sent in writing via email to Zerigo’s DMCA agent at support@zerigohealth.com, Attn: DMCA Agent.

22. USE OF THE ZERIGO MOBILE APP.

22.1 In order to use a Zerigo Product, You must register the Zerigo Product through the Zerigo Mobile App. You agree to use the Zerigo Mobile App: (i) only as directed by Your physician or other healthcare provider in accordance with a valid prescription, and (ii) in accordance with the directions and/or instructions for use provided to You by Zerigo orally by ZerigoCare Guides (as described below) or other Zerigo employees and/or independent contractors, or in writing in hard copy and/or electronic form by way of the Zerigo Mobile App, Zerigo Websites, the Patient Guide (as described below), email, text or other instant messaging and/or other means of transmission, as well as through audiovisual tutorials. You agree to permit the Zerigo Mobile App to access other software, functions and features of Your smart phone or other authorized device necessary and/or desirable for the operation of the applicable Zerigo Product, including, without limitation, camera, microphone, calendar, messaging, email, audio, video, other mobile applications and/or any other software, function, or feature. Zerigo supports the most current version of the Zerigo Mobile App as well as the two (2) immediately preceding versions. All versions of the Zerigo Mobile App older than the foregoing, will not be supported by Zerigo and users should immediately download the newest version of the Zerigo Mobile App to ensure proper operation of the App.

22.2 You are responsible for providing the mobile device, wireless service plan, software, Internet connections and/or other equipment or services that You need to download, install, and use the Zerigo Mobile App. We do not guarantee that the Zerigo Mobile App can be accessed and used on any particular device or with any particular service plan. We do not guarantee that the Zerigo Mobile App will be available in any particular geographic location. As part of the Services, and to update You regarding the status of deliveries of Zerigo Products, You may receive push notifications, local client notifications, text (SMS/MMS) and picture messages, alerts, emails, or other types of messages directly sent to You in connection with the Zerigo Mobile App (“Push Messages”). You acknowledge that, when You use the Zerigo Mobile App, Your wireless service provider may charge You fees for data, text messaging

and/or other wireless access, including in connection with Push Messages. You have control over the Push Messages settings and can opt in or out of these Push Messages through the Services or through Your mobile device's operating system (with the possible exception of infrequent, important service announcements and administrative messages). Please check with Your wireless service provider to determine what fees apply to Your access to and use of the Zerigo Mobile App, including Your receipt of Push Messages from us. You are solely responsible for any fee, cost, or expense that You incur to download, install and/or use the Zerigo Mobile App on Your mobile device, as well as for Your receipt of push messages from us.

22.3 The following terms and conditions apply to You only if You are using the Zerigo Mobile App from the Apple App Store. To the extent the other terms and conditions of these Terms are less restrictive than, or otherwise conflict with, the terms and conditions of this paragraph, the more restrictive or conflicting terms and conditions in this paragraph apply, but solely with respect to the Zerigo Mobile App from the Apple App Store. You acknowledge and agree that these Terms are solely between You and Zerigo, not Apple, and that Apple has no responsibility for the Zerigo Mobile App or content thereof. Your use of the Zerigo Mobile App must comply with the App Store's applicable terms of use. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Zerigo Mobile App. In the event of any failure of the Zerigo Mobile App to conform to any applicable warranty, You may notify Apple, and Apple will refund the purchase price, if any, for the App to You. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Zerigo Mobile App, and any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty will be solely governed by these Terms of Use. You and Zerigo acknowledge that Apple is not responsible for addressing any claims of Yours or any third party relating to the Zerigo Mobile App or Your possession and/or use of the Zerigo Mobile App, including, but not limited to: (a) product liability claims, (b) any claim that the App fails to conform to any applicable legal or regulatory requirement, and (c) claims arising under consumer protection or similar legislation. You and Zerigo acknowledge that, in the event of any third-party claim that the Zerigo Mobile App, or Your possession and use of the Zerigo Mobile App, infringes upon any third party's intellectual property rights, Zerigo, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms of Use. You must comply with applicable third-party terms of agreement when using the Zerigo Mobile App. You and Zerigo acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms of Use as they relate to Your use of the Zerigo Mobile App, and that, upon Your acceptance of these Terms of Use, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against You as a third-party beneficiary thereof.

23. Indemnification. You agree to defend, indemnify and hold Zerigo, its subsidiaries and affiliates, and their directors, members, managers, officers, employees, agents, independent contractors, attorneys, partners, licensors and licensees, harmless for, from and against any loss, damages or costs, including reasonable attorneys' fees, resulting from any third party claim, action, or demand arising from and/or related to (i) Your use of the Services, (ii) Your breach of any duty or obligation that You have under these Terms of Use and/or any Applicable Terms, (iii) Your violation of any applicable laws, and/or (iv) Your negligence or willful misconduct.

24. LIMITED WARRANTY; DISCLAIMER. YOU EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT (A) ZERIGO'S PRODUCTS, INCLUDING THE ZERIGO DEVICE AND ITS ACCESSORIES, ARE SUBJECT TO A LIMITED WARRANTY IN FAVOR OF THE ORIGINAL BUYER OF THE ZERIGO DEVICE ("BUYER") ONLY TO BE FREE FROM MANUFACTURING DEFECTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF SHIPMENT, AND (B) THE SOLE AND EXCLUSIVE REMEDY SHALL BE FOR ZERIGO TO REPAIR OR REPLACE THE DEFECTIVE ZERIGO DEVICE AND/OR OTHER ZERIGO PRODUCT OR COMPONENT THEREOF PURCHASED BY BUYER, PROVIDED THAT BUYER GIVES WRITTEN NOTICE TO ZERIGO OF BUYER'S CLAIM OF DEFECT AND BUYER COMPLIES WITH ZERIGO'S INSTRUCTIONS FOR RETURNING THE DEFECTIVE PRODUCT TO ZERIGO OR ZERIGO'S AUTHORIZED AGENT. ZERIGO MAY OFFER BUYER THE OPPORTUNITY TO EXTEND THE EXPIRATION DATE OF THIS LIMITED REPAIR OR REPLACEMENT WARRANTY FOR AN ADDITIONAL FEE AS PUBLISHED ON ZERIGO'S WEBSITE OR AS OTHERWISE COMMUNICATED IN WRITING TO BUYER. ZERIGO'S DETERMINATION AS TO WHETHER A MANUFACTURING DEFECT EXISTS AND IS COVERED BY THIS LIMITED WARRANTY SHALL BE FINAL AND BINDING. IF THE FAILURE OF OPERATION IS DEEMED BY ZERIGO TO BE OUTSIDE

OF WARRANTY COVERAGE, ZERIGO WILL CHARGE BUYER FOR REPAIR OR REPLACEMENT. EXCEPT AS SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND ZERIGO MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESSED, OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR TREATMENT OUTCOME, WITH RESPECT TO SERVICES, EXCEPT TO THE EXTENT THAT APPLICABLE LAW PRECLUDES DISCLAIMER OF ANY SUCH IMPLIED WARRANTIES. ZERIGO HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AND GUARANTIES TO THE FULLEST EXTENT NOT PROHIBITED BY ANY APPLICABLE LAW. WE MAKE NO WARRANTY OR REPRESENTATION AND DISCLAIM ALL RESPONSIBILITY AND LIABILITY FOR: (A) THE COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, SECURITY OR RELIABILITY OF THE SERVICES; (B) ANY HARM TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM YOUR ACCESS TO OR USE OF THE SERVICES; (C) THE OPERATION OR COMPATIBILITY WITH ANY OTHER APPLICATION OR ANY PARTICULAR SYSTEM OR DEVICE; (D) WHETHER THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE OR ERROR-FREE BASIS; AND (E) THE DELETION OF, OR THE FAILURE TO STORE OR TRANSMIT, YOUR CONTENT AND OTHER COMMUNICATIONS MAINTAINED BY THE SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US OR THROUGH THE SERVICES, WILL CREATE ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY MADE HEREIN

25. LIMITATION OF LIABILITY. YOU EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE ON BEHALF OF YOURSELF, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY FOR WHOM YOU ARE ACTING THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ZERIGO, ITS SUBSIDIARIES, AND AFFILIATES, AND THEIR DIRECTORS, MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, ATTORNEYS, PARTNERS, LICENSORS AND LICENSEES WILL NOT BE RESPONSIBLE OR LIABLE TO YOU, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY (WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY), UNDER ANY CIRCUMSTANCES, FOR PERSONAL INJURY, DEATH, AND/OR DAMAGES OF ANY TYPE INCURRED BY YOU, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY BY REASON OF THE OPERATION AND/OR USE OF THE ZERIGO DEVICE (AND/OR ANY ACCESSORIES), THE ZERIGO MOBILE APP, THE ZERIGOCARE GUIDE SUPPORT, AND/OR ANY OTHER ZERIGO PRODUCTS OR SERVICES, AND/OR ANY ACTS OR OMISSIONS OF ZERIGO'S EMPLOYEES, AGENTS AND/OR INDEPENDENT CONTRACTORS IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY LAW, ZERIGO, ITS SUBSIDIARIES, AND AFFILIATES, AND THEIR DIRECTORS, MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, ATTORNEYS, PARTNERS, LICENSORS AND LICENSEES WILL NOT BE LIABLE TO ANY USERS OF THE SERVICES FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF ZERIGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ALSO AGREE THAT ZERIGO IS NOT RESPONSIBLE FOR ANY DAMAGES OR OTHER HARM YOU, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY SUFFERS AS A RESULT OF (1) ANY ACTS, OMISSIONS AND/OR HEALTH CARE DECISIONS OF ANY PHYSICIAN OR OTHER HEALTH CARE PROVIDER, AND/OR (2) THE PURCHASE OR USE OF THE ZERIGO DEVICE (AND/OR ANY OF ITS ACCESSORIES), THE ZERIGO MOBILE APP, THE SERVICES OF ZERIGOCARE GUIDE, ANY OTHER ZERIGO PRODUCTS AND/OR SERVICES, INCLUDING ANY NEGATIVE TREATMENT OUTCOME, SIDE EFFECTS, ILLNESSES, PERSONAL INJURIES AND/OR DEATH. FURTHER, YOU ACKNOWLEDGE AND AGREE THAT THERE ARE RISKS INHERENT TO THE TRANSMISSION OF PERSONAL INFORMATION AND/OR HEALTH CARE INFORMATION ELECTRONICALLY OVER THE INTERNET AND STORED ON ANY COMPUTER, SERVER, OR OTHER ELECTRONIC MEMORY DEVICE, AND THAT ZERIGO IS NOT RESPONSIBLE FOR ANY LOSSES, CORRUPTION, DAMAGE, OR HARM TO YOU, YOUR INFORMATION, AND/OR YOUR CONFIDENTIALITY OR PRIVACY RESULTING FROM ANY UNAUTHORIZED DATA BREACH. YOU ACKNOWLEDGE ON BEHALF OF YOURSELF, YOUR MINOR CHILD AND/OR ANY PERSON OR ENTITY FOR WHOM YOU ARE ACTING THAT IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF ZERIGO TO YOU, YOUR MINOR CHILD, ANY PERSON FOR WHOM YOU ARE ACTING, AND ANY OTHER PERSON OR ENTITY FOR ANY CLAIM OR CLAIMS IN THE AGGREGATE EXCEED ONE THOUSAND DOLLARS (\$1,000.00) OR THE AMOUNT PAID BY YOU TO ZERIGO FOR THE SERVICES (INCLUDING THE ZERIGO DEVICE), WHICHEVER IS GREATER.

26. TERMINATION. Zerigo reserves the right to terminate (i) Your access to the Services, and/or (ii) Your User Account and/or relationship with Zerigo, with or without cause in Zerigo's sole discretion. You will be given written

e-mail notice of such termination; sent to the last known e-mail address that You have provided to Zerigo. Zerigo also reserves the right to refuse to provide any product or service to You without cause in Zerigo's sole discretion. You may terminate Your User Account and/or relationship with Zerigo only in accordance with the procedures on the Services. Upon termination of (i) Your access to the Services, and/or (ii) Your User Account and/or relationship with Zerigo, You shall immediately cease accessing and using the Services. Upon such termination, all provisions of these Terms of Use shall remain in full force and effect, excluding the provisions in which Zerigo has granted You any licenses or access to the Services, which shall thereafter be terminated, and You will no longer be permitted to access and use the Services in any capacity under any circumstances.

27. ARBITRATION AND CLASS ACTION WAIVER

THIS SECTION INCLUDES AN ARBITRATION AGREEMENT AND AN AGREEMENT THAT ALL CLAIMS WILL BE BROUGHT ONLY IN AN INDIVIDUAL CAPACITY (AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE PROCEEDING).

PLEASE READ IT CAREFULLY. YOU MAY OPT OUT OF THE ARBITRATION AGREEMENT BY FOLLOWING THE OPT OUT PROCEDURE DESCRIBED BELOW.

27.1 Informal Process First. You agree that in the event of any dispute between You and Zerigo, You will first contact Zerigo and make a good faith, sustained effort to resolve the dispute before resorting to more formal means of resolution including, without limitation, any court action.

27.2 Arbitration Agreement. After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, "**Claim**") relating in any way to Your use of the Services, will be finally resolved by binding arbitration. This mandatory arbitration agreement applies equally to You and to Zerigo. However, this arbitration agreement does not (a) govern any Claim by Zerigo for infringement of its intellectual property or access to the Services that is unauthorized or exceeds authorization granted in these Terms of Use or (b) bar You from making use of applicable small claims court procedures in appropriate cases.

Arbitration is more informal than a lawsuit filed in civil court. There is no judge or jury in an arbitration. Instead, the dispute is heard and resolved by a neutral arbitrator. Court review of an arbitration award is limited. Except to the extent the parties agree otherwise, arbitrators can award the same damages and relief that a court can award. You agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that You and Zerigo are each waiving the right to a trial by jury or to participate in a class action lawsuit. This arbitration provision will survive any termination of these Terms of Use.

If You wish to begin an arbitration proceeding, after following the informal dispute resolution procedure, You must send a letter requesting arbitration and describing Your claim to Zerigo at: 10201 Wateridge Circle, Suite 200, San Diego, CA 92121. The arbitration will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures.

The number of arbitrators assigned to hear your concerns will be one. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where You live or at another mutually agreed location. The arbitration will be conducted in the English language (interpreter available upon request), in San Diego, California. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Payment of all filing, administrative and arbitrator fees will be governed by the JAMS rules. If You are an individual, and have not accessed or used the Services on behalf of an entity, we will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous, and we will not seek attorneys' fees and costs in arbitration unless the arbitrator determines that the claims are frivolous.

The arbitrator, and not any federal, state, or local court, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability, or formation of this arbitration agreement, including any claim that all or any part of this arbitration agreement is void or voidable. However, the preceding sentence will not apply to the "Class Action Waiver" section below.

Opt-out: If You are an individual, You may opt out of this arbitration agreement, within thirty (30) days of the first date You access or use the Services, by sending an email to: support@zerigohealth.com.

Class Action Waiver Any Claim must be brought in the respective party's individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiffs, or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. If the Claim is subject to arbitration, the arbitrator will not have authority to combine or aggregate similar claims, conduct any Class Action proceeding, nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. The parties understand that any right to litigate a claim, case, or grievance in court, to have a judge or jury decide their case, or to be a party to a class or representative action, is waived and that any claims must be decided individually, through arbitration.

If this class action waiver is found to be unenforceable, then the entirety of the Arbitration Agreement, if otherwise effective, will be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If, for any reason, a claim proceeds in court rather than in arbitration, You and Zerigo each waive any right to a jury trial.

28. ELECTRONIC COMMUNICATIONS AND ELECTRONIC SIGNATURES. You agree on behalf of Yourself, Your minor child, and/or any other person for whom You are acting that communications between You and Zerigo may be transmitted by electronic means, including, without limitation SMS/MMS text messaging, email, and/or through written, visual, or audio messages on the Services to the fullest extent permitted by applicable law. You understand that electronic communications such as email and text messaging are not completely secure methods of communication and that You are not required to authorize Zerigo to communicate with You using SMS/MMS text communication. You also authorize Zerigo to communicate with You, including the disclosure of Your Protected Health Information (PHI) as required, using email and/or text messaging. (See Below) In addition, You agree on behalf of Yourself, Your minor child, and/or any other person for whom You are acting, that Your electronic signature (including the electronic expression of Your agreement on the Services) shall have the full force and effect of Your actual signature to the fullest extent permitted by applicable law.

29. GENERAL PROVISIONS.

29.1 Entire Agreement. These Terms of Use, together with any Additional Terms, constitute the complete agreement between You and Zerigo and supersede all prior or contemporaneous discussions, representations, and proposals, written or oral, with respect to the subject matter discussed herein.

29.2 Export Laws. You agree that You will not export or re-export, directly or indirectly the Products or Services and/or other information or materials provided by Zerigo hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export of such device, software, or data without first obtaining such license, approval or other applicable license exemption or exception. In particular, but without limitation, the Services may not be exported or re-exported (a) into any U.S. embargoed countries or any country that has been designated by the U.S. Government as a "terrorist supporting" country, or (b) to anyone listed on any U.S. Government list of prohibited or restricted parties, including the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Services, You represent and warrant that You are not located in any such country or

included on any such list. You also agree that You will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missiles, or chemical or biological weapons. You are responsible for and hereby agree to comply, at Your sole expense, with all applicable United States export laws and regulations.

29.3 **Injunctive Relief.** You agree that a breach of these Terms of Use will cause irreparable injury to Zerigo for which monetary damages would not be an adequate remedy and Zerigo shall be entitled to seek equitable relief in addition to any remedies it may have hereunder or at law without posting a bond, other security, or proof of damages.

29.4 **Miscellaneous.** These Terms of Use will inure to the benefit of, and will be binding upon, each party's successors and assigns. These Terms of Use and the licenses granted hereunder may be assigned by Zerigo, but may not be assigned by You, without the prior express written consent of Zerigo. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof will be affected thereby, and the remaining provisions will continue with the same effect as if such unenforceable or invalid provisions will not have been inserted herein; provided that the ability of either party to obtain substantially the bargained-for performance of the other will not have thereby been impaired. It is expressly understood that in the event either party on any occasion fails to perform any term hereof, and the other party does not enforce that term, the failure to enforce on any occasion will not constitute a waiver of any term and will not prevent enforcement on any other occasion. Nothing contained in these Terms of Use will be deemed to constitute a designation of either party as the agent or representative of the other party or both parties as joint venturers or partners for any purpose. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under these Terms of Use due to any cause beyond the reasonable control of the party invoking this provision, the affected party's performance will be extended for the period of delay or inability to perform due to such occurrence. The headings and captions contained herein will not be considered to be part of the Terms of Use but are for convenience only. You and Zerigo agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or construction of these Terms of Use. The laws of the State of California, without regard to its conflicts of law rules, govern these Terms of Use and Your use of the Services. Your use of the Services may also be subject to other local, state, national, or international laws.

Under California Civil Code Section 1789.3, California users of the Services receive the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

29.5 **Force Majeure.** Zerigo shall not be liable for any alleged nonperformance of any alleged duty or obligation it may have either expressly or impliedly under these Terms of Use (including any alleged implied covenant of good faith and fair dealing), in whole or in part, as a result of any event or series of events caused by or resulting from any of the following: (i) weather conditions or elements of nature; (ii) acts of God; (iii) acts of war, terrorism, insurrection, riots, rebellion and/or civil disorders; (iv) pandemics or quarantines; (v) embargoes; (vi) labor strikes; (vii) telecommunications, network, computer, server, storage device, hardware, software and/or Internet disruptions, failures or downtimes; (viii) unauthorized access to the Services and/or any telecommunications, network, computer, server, storage device, hardware, software and/or Internet systems operated by or on behalf of Zerigo; and/or (ix) any other event or occurrence beyond the reasonable control of Zerigo.

30. MODIFICATIONS. We may modify these Terms of Use at any time. Modifications become effective with respect to You immediately upon Your first interaction with or use of the Services after the "Last Revised" date at the top of these Terms of Use, an up-to-date version of which may be found at www.zerigohealth.com. If we make changes that are material, we may use reasonable efforts to attempt to notify You, including by email or placing a prominent notice on the first page of the Website and the Zerigo Mobile App. However, it is Your sole responsibility to review the Terms of Use from time to time to view any such changes. Your continued access or use of the Services after the modifications have become effective will be deemed Your conclusive acceptance of the modified Terms of

Use. If You do not agree with the modifications to the Terms of Use, then please do not continue to access or use the Services.

30.1 Contact Us. You may contact us regarding the Services or these Terms of Use, including if You require information that is not available on the Services, by emailing us at support@zerigohealth.com, calling us at +1 (877) 520-5697 or sending mail to us at the following address:

ZERIGO HEALTH, INC.
10201 Wateridge Circle, Suite 200
San Diego, CA 92121