

TERMS OF USE AGREEMENT

My Acapella App for Acapella™ Respiratory Therapy System

Last Updated Date: May 29, 2024

VisionHealth GmbH and our subsidiaries and affiliates ("**VisionHealth**," "**Company**", "**we**", "**us**" or "**our**") provide a therapeutic app and related services, for ICU Medical, Inc. ("ICU Medical") and to be distributed by ICU Medical, to support patients using ICU Medical's Acapella Respiratory Therapy System ("Treatment Device"). This Terms of Use Agreement ("**Terms of Use**") along with any applicable supplemental terms that may be presented to you for your review and acceptance in connection with the My Acapella App (defined below) (collectively, the "**Agreement**") describes the terms and conditions that apply to your use of the My Acapella App for Acapella Respiratory Therapy System and related services (collectively the "My Acapella App" or the "App"). (The App is designed to provide you with support in the usage of the Acapella Respiratory Therapy System that has been prescribed for your usage by your doctor or other medical professional (a "**Treatment Device**").

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS THE USE OF THE MY ACAPELLA APP AND APPLIES TO ALL USERS VISITING OR ACCESSING THE APP. BY ACCESSING OR USING THE APP IN ANY WAY, ACCEPTING THIS AGREEMENT BY CLICKING ON THE "I ACCEPT" BUTTON, COMPLETING THE ACCOUNT REGISTRATION PROCESS, DOWNLOADING THE APP, YOU REPRESENT THAT:

- (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT,
- (2) YOU ARE USING THIS APP SOLELY IN CONNECTION WITH A VALID PRESCRIPTION TO THE ACAPELLA RESPIRATORY SYSTEM AND YOU HAVE BEEN GIVEN AN ACCESS CODE TO UNLOCK THE APP BY YOUR CLINICIAN,
- (3) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH COMPANY,
- (4) YOU ARE NOT BARRED FROM USING THE APP UNDER THE LAWS OF THE UNITED STATES, YOUR PLACE OF RESIDENCE OR ANY OTHER APPLICABLE JURISDICTION

AND

- (5) YOU AGREE TO THE TRANSFER OF YOUR INFORMATION TO COUNTRIES OUTSIDE OF YOUR COUNTRY OF RESIDENCE, WHERE DATA PROTECTION LAWS MAY DIFFER FROM THOSE IN YOUR COUNTRY.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE APP.

DISPUTE RESOLUTION: PLEASE BE AWARE THAT SECTION 13 (ARBITRATION AGREEMENT) CONTAINS PROVISIONS GOVERNING HOW TO RESOLVE DISPUTES BETWEEN YOU AND COMPANY. AMONG OTHER THINGS, SECTION 13 (ARBITRATION AGREEMENT) INCLUDES AN AGREEMENT TO ARBITRATE WHICH REQUIRES, WITH LIMITED EXCEPTIONS, THAT ALL DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING AND FINAL ARBITRATION. SECTION 13 ALSO CONTAINS A CLASS ACTION AND JURY TRIAL WAIVER. PLEASE READ SECTION 13 (ARBITRATION AGREEMENT) CAREFULLY.

UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT (AS DEFINED IN SECTION 13) WITHIN THIRTY (30) DAYS: (1) YOU WILL ONLY BE PERMITTED TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION; AND (2) YOU ARE WAIVING YOUR RIGHT TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL.

ANY DISPUTE, CLAIM OR REQUEST FOR RELIEF RELATING IN ANY WAY TO YOUR USE OF THE APP WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE COMMONWEALTH OF DELAWARE, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED FROM THIS AGREEMENT.

THE AGREEMENT IS SUBJECT TO CHANGE BY COMPANY IN ITS SOLE DISCRETION AT ANY TIME AS SET FORTH IN SECTION 14.6 (AGREEMENT UPDATES).

1. USE OF THE MY ACAPELLA APP. The App and the information and content available on the App are protected by applicable intellectual property (including copyright) laws. Unless subject to a separate license agreement between you and Company, your right to access and use the App, in whole or in part, is subject to this Agreement.

1.1 Application License. Subject to your compliance with this Agreement, Company grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the App on a single Device (as defined below) that you own or control and to run such copy of the App solely for your own personal purposes and solely in connection with your use of the Acapella respiratory therapy system.

1.2 Updates. You understand that the App is evolving. As a result, Company may require you to install updates to the App that you have installed on the device through which you access or use the App (“**Device**”). You acknowledge and agree that Company may update the App with or without notifying you. You may need to update third-party software from time to time in order to continue to use the App. Any future release, update or other addition to the App shall be subject to this Agreement.

2. REGISTRATION.

2.1 Registering Your Account. In order to access certain features of the My Acapella App, you may be required to register an account on the App (“**Account**”) or have an account with the app store from which you downloaded the App.

2.2 Registration Data. In registering an account on the App, you shall (i) provide true, accurate, current, and complete information about yourself as prompted by the registration form (the “**Registration Data**”), and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current, and complete.

2.3 Your Account. You are responsible for all activities that occur under your Account. You shall monitor your Account to restrict use by any non-authorized persons. You may not share your Account or password with anyone, and you agree to notify Company immediately of any unauthorized use of your password or any other breach of security. If you provide any information that is untrue, inaccurate,

incomplete or not current, or Company has reasonable grounds to suspect that any information you provide is untrue, inaccurate, incomplete or not current, Company has the right to suspend or terminate your Account and refuse any and all current or future use of the App (or any portion thereof). You shall not have more than one Account at any given time. Company reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party's rights. You agree not to create an Account or use the App if you have been previously removed by Company, or if you have been previously banned from the App.

2.4 Necessary Equipment and Software. You must provide all Devices, Treatment Devices and other equipment or software necessary to access or use the App. You are solely responsible for any fees, including internet connection or mobile fees, that you incur when accessing the App.

3. RESPONSIBILITY FOR CONTENT.

3.1 Types of Content. You acknowledge that any information, data, text, sound, photographs, graphics, video, messages, tags and/or other materials accessible through the App (collectively, "**Content**"), is the sole responsibility of the party from whom such Content originated. This means that you, and not Company, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available through the App ("**Your Content**").

3.2 Access to and Storage of Content. Certain features and functionality of the App may enable you to specify the level at which the App restricts access to Your Content. In such cases, you are solely responsible for applying the appropriate level of access to Your Content. If you do not choose a level of access, the system may default to its most permissive setting. You agree that Company retains the right to create reasonable limits on Company's use and storage of Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described on the App and as otherwise determined by Company in its sole discretion.

4. OWNERSHIP.

4.1 The My Acapella App. Except with respect to Your Content, you agree that Company and its suppliers or licensors own all rights, title and interest in the App (including but not limited to, any computer code, themes, objects, characters, character names, stories, dialogue, concepts, artwork, animations, sounds, musical compositions, audiovisual effects, methods of operation, moral rights, documentation, and Company software). You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any the App.

4.2 Trademarks. Company's name and all related stylizations, graphics, logos, service marks and trade names used on or with the App are the trademarks of Company and may not be used without permission in connection with your, or any third-party's, products or services. Acapella is a trademark owned by ICU Medical or its subsidiaries. Other trademarks, service marks and trade names that may appear on or in the App are the property of their respective owners.

4.3 Your Content. Company does not claim ownership of Your Content. However, when you upload, post, email, transmit or otherwise make available any Content on or to the App, you represent that you own and/or have sufficient rights to Your Content to grant the license set forth in Section 4.4 (License to Your Content).

4.4 License to Your Content. Subject to any applicable Account settings that you select, you grant Company a non-exclusive, worldwide, fully-paid, royalty-free, right and license to use, copy, reproduce, modify, adapt, prepare derivative works from, Your Content (in whole or in part) for the purposes of operating and providing the App to you.

4.5 Feedback. You agree that submission of any ideas, suggestions, documents, and/or proposals to Company through its suggestion, feedback, forum, or similar pages ("**Feedback**") is at your own risk and that Company has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the App and/or Company's business.

5. USER CONDUCT AND CERTAIN RESTRICTIONS. As a condition of use, you agree not to use the App for any purpose that is prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third party) to: (i) license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the App or any portion of the App; (ii) frame or utilize framing techniques to enclose any trademark or logo located on the App or any other portion of the App (including images, text, page layout or form); (iii) use any metatags or other "hidden text" using Company's name or trademarks; (iv) modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the App except to the extent the foregoing restrictions are expressly prohibited by applicable law; (v) use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools, or the like) to "scrape" or download data from any web pages contained in the App; (vi) remove or destroy any copyright notices or other proprietary markings contained on or in the App; (vii) impersonate any person or entity, including any employee or representative of Company; (viii) interfere with or attempts to interfere with the proper functioning of the App or use the App in any way not expressly permitted by this Agreement, including but not limited to violating or attempting to violate any security features of the App, introducing viruses, worms, or similar harmful code into the App, or interfering or attempting to interfere with use of the Apps by any other user, host, or network, including by means of overloading, "flooding," "spamming," "mail bombing," or "crashing" the App; or (ix) take any action or make available any Content on or through the App that: (A) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (B) constitutes unauthorized or unsolicited advertising, junk or bulk email; or (C) involves commercial activities and/or sales, such as contests, sweepstakes, barter, advertising, or pyramid schemes without Company's prior written consent. Furthermore, Your Content in your profile may not contain nudity, violence, sexually explicit, or offensive subject matter as determined by Company in its sole discretion. You may not post or make available a photograph of another person without that person's permission. The rights granted to you in this Agreement are subject to your compliance with the restrictions set forth in this section. Any unauthorized use of the App terminates the licenses granted by Company pursuant to this Agreement.

6. INVESTIGATIONS, MONITORING, & NO OBLIGATION TO PRE-SCREEN CONTENT. Company may, but is not obligated to, investigate, monitor, pre-screen, remove, refuse, or review the App and/or Content, including Your Content and User Content, at any time. You hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy

concerning the transmission of Your Content, including without limitation chat, text, or voice communications.

Without limiting the foregoing, Company reserves the right to: (a) remove or refuse to post any of Your Content for any or no reason in our sole discretion; (b) take any action with respect to any of Your Content that we deem necessary or appropriate in our sole discretion, including if we believe that such Content violates this Agreement, infringes, misappropriates or otherwise violates any intellectual property right, right of publicity, right of privacy or other right of any person or entity, threatens the personal safety of users of the App or the public, or could create liability for Company; (c) disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy; (d) take appropriate legal action, including without limitation, referral to and cooperation with law enforcement and/or other applicable legal authorities, for any illegal or unauthorized use of the App or if Company otherwise believes that criminal activity has occurred; and/or (e) terminate or suspend your access to all or part of the App for any or no reason, including without limitation, any violation of this Agreement. Upon determination of any possible violations by you of any provision of this Agreement, Company, may, at its sole discretion immediately terminate your license to use the App, or change, alter or remove Your Content, in whole or in part, without prior notice to you.

If Company believes that criminal activity has occurred, Company reserves the right to, except to the extent prohibited by applicable law, disclose any information or materials on or in the App, including Your Content, in Company's possession in connection with your use of the App, to (i) comply with applicable laws, legal process or governmental request, (ii) enforce this Agreement, (iii) respond to any claims that Your Content violates the rights of third parties, (iv) respond to your requests for customer service, or (v) protect the rights, property, or personal safety of Company, its users or the public, and all enforcement or other government officials, as Company in its sole discretion believes to be necessary or appropriate.

7. THIRD-PARTY SERVICE.

7.1 Third-Party Websites, Applications and Ads. The Service may contain links to third-party websites ("**Third-Party Websites**"), applications ("**Third-Party Applications**") and advertisements for third parties ("**Third-Party Ads**") (collectively, the "**Third-Party Services**"). When you click on a link to a Third-Party Service, we will not warn you that you have left the Service and you become subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Services are not under the control of Company. Company is not responsible for any Third-Party Services. Company provides these Third-Party Services only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Services, or any product or service provided in connection therewith. You use all links in Third-Party Services at your own risk. When you leave our Service, this Agreement and our policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Services, and make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

(a) Sharing Your Content and Information Through Third-Party Services. Company may provide tools through the Service that enable you to export information, including Your Content, to Third-Party Services. By using one of these tools, you agree that Company may transfer that information to the applicable Third-Party Service. Company is not responsible for any Third-Party Service's use of your exported information.

7.2 Third-Party Application Access. With respect to any Application accessed through or downloaded from the Apple App Store (an **“App Store Sourced Application”**), you shall only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system) and (ii) as permitted by the “Usage Rules” set forth in the Apple Media Terms of Service, except that such App Store Sourced Application may be accessed, acquired, and used by other accounts associated with the purchaser via Apple’s Family Sharing function, volume purchasing, or Legacy Contacts function. Notwithstanding the first sentence in this section, with respect to any Application accessed through or downloaded from the Google Play store (a **“Google Play Sourced Application”**), you may have additional license rights with respect to use of the Application on a shared basis within your designated family group.

8. INDEMNIFICATION. As a condition of your use of the App, you agree to indemnify and hold Company, ICU Medical, and their respective parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a **“Company Party”** and collectively, the **“Company Parties”**) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of any and all of the following: (i) Your Content; (ii) your use of the App in violation of this Agreement; (iii) your violation of any rights of another party, including any user; or (iv) your violation of any applicable laws, rules or regulations. Company reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Company in asserting any available defenses. This provision does not require you to indemnify any of the Company Parties for any unconscionable commercial practice by such party or for such party’s fraud, deception, false promise, misrepresentation or concealment, or suppression or omission of any material fact in connection with the Service provided hereunder. You agree that the provisions in this section will survive any termination of your Account, this Agreement and/or your access to the App.

9. DISCLAIMER OF WARRANTIES.

9.1 As Is. YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK, AND THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. THE COMPANY PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE SERVICE.

(a) THE COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICE WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (3) THE ADVICE, RESULTS, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE.

(b) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

(c) FROM TIME TO TIME, COMPANY MAY OFFER NEW “BETA” FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT COMPANY’S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

9.2 No Liability for Conduct of Third Parties. YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH THIRD PARTIES ON THE APP. YOU ACKNOWLEDGE AND AGREE THAT THE COMPANY PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE COMPANY PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU. COMPANY MAKES NO WARRANTY THAT THE GOODS OR SERVICE PROVIDED BY THIRD PARTIES, INCLUDING ANY TREATMENT DEVICE, WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS.

9.3 MEDICAL DISCLAIMERS.

(a) COMPANY DOES NOT OFFER MEDICAL ADVICE AND DOES NOT REPLACE MEDICAL CARE NOR IS INTENDED TO DIAGNOSE OR TREAT ANY ILLNESS, DISEASE OR MEDICAL CONDITION. ANY CONTENT ACCESSED THROUGH THE SERVICE IS FOR INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY AND IS NOT INTENDED TO COVER ALL POSSIBLE USES, DIRECTIONS, PRECAUTIONS, DRUG INTERACTIONS OR ADVERSE EFFECTS. PLEASE CONSULT YOUR DOCTOR OR OTHER QUALIFIED HEALTH CARE PROVIDER IF YOU HAVE ANY QUESTIONS ABOUT A MEDICAL CONDITION, OR BEFORE TAKING ANY DRUG, CHANGING YOUR DIET, OR COMMENCING OR DISCONTINUING ANY COURSE OF TREATMENT. NEVER DISREGARD THE ADVICE OF YOUR DOCTOR OR OTHER QUALIFIED HEALTH CARE PROVIDER, AND DO NOT IGNORE OR DELAY OBTAINING PROFESSIONAL MEDICAL ADVICE BECAUSE OF INFORMATION ACCESSED THROUGH THE SERVICE. THE CONTENT SHOULD NOT BE USED DURING A MEDICAL EMERGENCY OR FOR THE DIAGNOSIS OR TREATMENT OF ANY MEDICAL CONDITION. CALL 911 OR YOUR DOCTOR FOR ALL MEDICAL EMERGENCIES.

(b) THE COMPANY IS NOT A PROVIDER OF YOUR TREATMENT DEVICE. WITHOUT LIMITING SECTION 9.2, YOU ACKNOWLEDGE AND AGREE THAT, AS BETWEEN THE COMPANY AND THE THIRD-PARTY PROVIDER OF YOUR TREATMENT DEVICE (THE “**DEVICE PROVIDER**”), THE DEVICE PROVIDER (AND NOT THE COMPANY) IS SOLELY RESPONSIBLE AND LIABLE FOR THE TREATMENT DEVICE.

10. LIMITATION OF LIABILITY.

10.1 Disclaimer of Certain Damages. YOU UNDERSTAND AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT SHALL THE COMPANY PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT ANY COMPANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICE, YOUR TREATMENT DEVICE, OR ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICE OR THIRD PARTIES, ON ANY THEORY OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A COMPANY PARTY’S NEGLIGENCE; OR FOR (A) ANY INJURY CAUSED BY A COMPANY PARTY’S FRAUD OR FRAUDULENT MISREPRESENTATION.

10.2 Cap on Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY PARTIES SHALL NOT BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (i) THE TOTAL AMOUNT PAID TO COMPANY BY YOU DURING THE THREE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY; (ii) \$100; OR (iii) IF APPLICABLE, THE STATUTORY REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES. THE FOREGOING CAP ON LIABILITY DOES

NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A COMPANY PARTY'S NEGLIGENCE; OR (B) ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

10.3 User Content. COMPANY ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

10.4 Exclusion of Damages. CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

10.5 Basis of the Bargain. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

11. TERM AND TERMINATION.

11.1 Term. The term of this Agreement commences on the date when you accept this Agreement (as described in the preamble above), and continues in full force and effect while you use the Service, unless terminated earlier in accordance with this Agreement.

11.2 Termination of Service by Company. If you have materially breached any provision of this Agreement, or if Company is required to do so by law (e.g., where the provision of the Service is, or becomes, unlawful), Company has the right to, immediately and without notice, suspend or terminate any Service provided to you. Company reserves the right to terminate this Agreement or your access to the Service at any time without cause upon notice to you. You agree that all terminations for cause are made in Company's sole discretion and that Company shall not be liable to you or any third party for any termination of your Account.

11.3 Termination by You. If you want to terminate this Agreement, you may do so by (i) notifying Company at any time and (ii) closing your Account for the Service. Your notice should be sent, in writing, to Company's address set forth below. ANY SUCH TERMINATION WILL BE EFFECTIVE AT THE END OF THE THEN-CURRENT TERM OF ANY AND ALL OF THE SUBSCRIPTIONS.

11.4 Effect of Termination. Upon termination of the Service or the applicable feature or functionality thereof, your right to use the Service or the applicable feature or functionality thereof will automatically terminate, and we may delete Your Content associated therewith from our live databases. If we terminate your Account for cause, we may also bar your further use or access to the Service. Company will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of this Agreement which by their nature should survive, will survive termination of Service, including without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

11.5 No Subsequent Registration. If this Agreement is terminated for cause by Company or if your Account or ability to access the Service is discontinued by Company due to your violation of any portion of this Agreement or for conduct otherwise deemed inappropriate, then you agree that you shall not attempt to re-register with or access the Service through use of a different member name or otherwise.

12. UNITED STATES USE ONLY. The App is currently approved for use only in the United States.

13. ARBITRATION AGREEMENT. Please read this section (the “Arbitration Agreement”) carefully. It is part of your contract with Company and affects your rights. It contains procedures for **MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

13.1 Applicability of Arbitration Agreement. Subject to the terms of this Arbitration Agreement, you and Company agree that any disagreement, controversy or claim arising out of or relating in any way to your access to or use of the Service, any communications you receive, any products sold or distributed through the Service or this Agreement and prior versions of this Agreement (each, a “Dispute”) will be resolved by binding arbitration, rather than in court, except that: (i) you and Company may assert claims or seek relief in small claims court if such claims qualify and remain in small claims court; and (ii) you or Company may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). For purposes of this Arbitration Agreement, “Dispute” will also include disputes that arose or involve facts occurring before the existence of this or any prior versions of this Agreement as well as claims that may arise after the termination of this Agreement.

13.2 Informal Dispute Resolution. There might be instances when a Dispute arises between you and Company. If that occurs, Company is committed to working with you to reach a prompt, low cost and mutually beneficial resolution. You and Company agree to participate in good faith informal efforts to resolve Disputes before starting an arbitration or initiating an action in small claims court (“**Informal Dispute Resolution**”). You and Company agree that as part of these efforts, either party has the option to ask the other to meet and confer telephonically or via videoconference, in a good faith effort to resolve informally any Dispute covered by this Arbitration Agreement (“**Informal Dispute Resolution Conference**”). If you are represented by counsel, your counsel may participate in the conference, but you must also personally participate.

To initiate Informal Dispute Resolution, a party must give notice to the other party in writing of its intent to initiate an Informal Dispute Resolution Conference (“**Notice**”), which shall occur within forty-five (45) days after the other party receives such Notice, unless an extension is mutually agreed upon by the parties. Notice to Company that you intend to initiate an Informal Dispute Resolution Conference should be sent by email to usersupport@kata-inhalation.com. The Notice must include: (1) your name, telephone number, mailing address, e-mail address associated with your Account (if you have one); (2) the name, telephone number, mailing address and e-mail address of your counsel, if any; and (3) a description of your Dispute. Company will send Notice and a description of the Dispute to your email address or regular address on file with the Company.

The Informal Dispute Resolution Conference shall be individualized such that a separate conference must be held each time either party initiates a Dispute, even if the same law firm or group of law firms represents multiple users in similar cases, unless all parties agree; multiple individuals initiating a Dispute cannot participate in the same Informal Dispute Resolution Conference unless all parties agree. In the time between a party receiving the Notice and the Informal Dispute Resolution Conference, nothing in this Arbitration Agreement shall prohibit the parties from engaging in informal communications to resolve the initiating party’s Dispute. Engaging in the Informal Dispute Resolution Conference is a condition precedent and requirement that must be fulfilled before commencing arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the Informal Dispute Resolution Conference process required by this section.

13.3 Waiver of Jury Trial. YOU AND COMPANY HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Company are instead electing that all Disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 13.1 (Applicability of Arbitration Agreement). There is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

13.4 Waiver of Class and Other Non-Individualized Relief. EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS, AND THE PARTIES HEREBY WAIVE ALL RIGHTS TO HAVE ANY DISPUTE BE BROUGHT, HEARD, ADMINISTERED, RESOLVED, OR ARBITRATED ON A CLASS, COLLECTIVE, REPRESENTATIVE, OR MASS ACTION BASIS. ONLY INDIVIDUAL RELIEF IS AVAILABLE. Subject to this Arbitration Agreement, 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 the party's individual claim. Nothing in this paragraph is intended to, nor shall it, affect the terms and conditions under Section 13.9 (Batch Arbitration). Notwithstanding anything to the contrary in this Arbitration Agreement, if a final decision, not subject to any further appeal or recourse, determines that the limitations of this section are invalid or unenforceable as to a particular claim or request for relief (such as a request for public injunctive relief), you and Company agree that that particular claim or request for relief (and only that particular claim or request for relief) shall be severed from the arbitration and may be litigated in the state or federal courts located in the Commonwealth of Massachusetts. All other Disputes shall be arbitrated or litigated in small claims court. This section does not prevent you or Company from participating in a class-wide settlement of claims.

13.5 Rules and Forum. This Agreement evidences a transaction involving interstate commerce; and notwithstanding any other provision herein with respect to the applicable substantive law, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, will govern the interpretation and enforcement of this Arbitration Agreement and any arbitration proceedings. If the Informal Dispute Resolution does not resolve satisfactorily within sixty (60) days after receipt of your Notice, you and Company agree that either party shall have the right to finally resolve the Dispute through binding arbitration. The arbitration will be administered by the National Arbitration & Mediation ("**NAM**"), accordance with the NAM Comprehensive Dispute Resolution Rules and Procedure (the "**NAM Rules**") in effect at the time of arbitration, except as supplemented, where applicable, by the NAM Mass Filing Supplemental Dispute Resolution Rules and Procedures (the "**NAM Mass Filing Rules**"), and as modified by this Arbitration Agreement. The NAM Rules are currently available at <https://www.namadr.com/resources/rules-fees-forms/>.

A party who wishes to initiate arbitration must provide the other party with a request for arbitration (the "**Request**"). The Request must include: (1) the name, telephone number, mailing address, e-mail address of the party seeking arbitration and the account username (if applicable) as well as the email address associated with any applicable Account; (2) a statement of the legal claims being asserted and the factual bases of those claims; (3) a description of the remedy sought and an accurate, good-faith calculation of the amount in controversy in United States dollars; (4) a statement certifying completion of the Informal Dispute Resolution process as described above; and (5) evidence that the requesting party has paid any necessary filing fees in connection with such arbitration.

If the party requesting arbitration is represented by counsel, the Request shall also include counsel's name, telephone number, mailing address, and email address. Such counsel must also sign the Request. By signing the Request, counsel certifies to the best of counsel's knowledge, information, and belief,

formed after an inquiry reasonable under the circumstances, that: (1) the Request is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (3) the factual and damages contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Unless you and Company otherwise agree, or the Batch Arbitration process discussed in Section 13.9 (Batch Arbitration) is triggered, the arbitration will be conducted in the county where you reside. Subject to the NAM Rules, the arbitrator may direct a limited and reasonable exchange of information between the parties, consistent with the expedited nature of the arbitration. If NAM is not available to arbitrate, the parties will select an alternative arbitral forum. Your responsibility to pay any NAM fees and costs will be solely set forth in the applicable NAM Rules.

You and Company agree that all materials and documents exchanged during the arbitration proceedings shall be kept confidential and shall not be shared with anyone except the parties' attorneys, accountants, or business advisors, and shall be subject to the condition that they agree to keep all materials and documents exchanged during the arbitration proceedings confidential.

You and Company agree that at least fourteen (14) days before the date set for an arbitration hearing, any party may serve an offer in writing upon the other party to allow judgment on specified terms. If the offer made by one party is not accepted by the other party, and the other party fails to obtain a more favorable award, the other party shall not recover any post offer costs to which they otherwise would be entitled and shall pay the offering party's costs from the time of the offer.

13.6 Arbitrator. The arbitrator will be either a retired judge or an attorney licensed to practice law in the Commonwealth of Delaware and will be selected by the parties from NAM's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within thirty-five (35) days of delivery of the Request, then NAM will appoint the arbitrator in accordance with the NAM Rules, provided that if the Batch Arbitration process under Section 13.9 (Batch Arbitration) is triggered, NAM will appoint the arbitrator for each batch.

13.7 Authority of Arbitrator. The arbitrator shall have exclusive authority to resolve any Dispute, including, without limitation, disputes regarding the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement, except that all Disputes regarding Section 13.413.4 (Waiver of Class and Other Non-Individualized Relief), including any claim that all or part of Section 13.4 (Waiver of Class and Other Non-Individualized Relief) is unenforceable, illegal, void or voidable, or that such Section 13.4 (Waiver of Class and Other Non-Individualized Relief) has been breached, shall be decided by a court of competent jurisdiction and not by an arbitrator. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties, except as expressly provided in Section 13.9 (Batch Arbitration). The arbitrator shall have the authority to grant motions dispositive of all or part of any Dispute. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The award of the arbitrator is final and binding upon you and us. Judgment on the arbitration award may be entered in any court having jurisdiction.

13.8 Attorneys' Fees and Costs. The parties shall bear their own attorneys' fees and costs in arbitration unless the arbitrator finds that either the substance of the Dispute or the relief sought in the Request was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). If you or Company need to invoke the authority of a court of competent jurisdiction to compel arbitration, then the party that obtains an order compelling arbitration in such action shall have the right to collect from the other party its reasonable costs, necessary disbursements, and reasonable attorneys' fees incurred in securing an order compelling arbitration.

13.9 Batch Arbitration. To increase the efficiency of administration and resolution of arbitrations, you and Company agree that in the event that there are twenty-five (25) or more individual Requests of a substantially similar nature filed against Company by or with the assistance of the same law firm, group of law firms, or organizations, within a ninety (90) day period (or as soon as possible thereafter), NAM shall (1) administer the arbitration demands in batches of 100 Requests per batch (or, if between twenty-five (25) and ninety-nine (99) individual Requests are filed, a single batch of all those Requests, and, to the extent there are less than 100 Requests remaining after the batching described above, a final batch consisting of the remaining Requests); (2) appoint one arbitrator for each batch; and (3) provide for the resolution of each batch as a single consolidated arbitration with one set of filing and administrative fees due per side per batch, one procedural calendar, one hearing (if any) in a place to be determined by the arbitrator, and one final award ("**Batch Arbitration**").

All parties agree that Requests are of a "substantially similar nature" if they arise out of or relate to the same event or factual scenario and raise the same or similar legal issues and seek the same or similar relief. To the extent the parties disagree on the application of the Batch Arbitration process, the disagreeing party shall advise NAM, and NAM shall appoint a sole standing arbitrator to determine the applicability of the Batch Arbitration process ("**Administrative Arbitrator**"). In an effort to expedite resolution of any such dispute by the Administrative Arbitrator, the parties agree the Administrative Arbitrator may set forth such procedures as are necessary to resolve any disputes promptly. The Administrative Arbitrator's fees shall be paid by Company.

You and Company agree to cooperate in good faith with NAM to implement the Batch Arbitration process including the payment of single filing and administrative fees for batches of Requests, as well as any steps to minimize the time and costs of arbitration, which may include: (1) the appointment of a discovery special master to assist the arbitrator in the resolution of discovery disputes; and (2) the adoption of an expedited calendar of the arbitration proceedings.

This Batch Arbitration provision shall in no way be interpreted as authorizing a class, collective and/or mass arbitration or action of any kind, except as expressly set forth in this provision.

13.10 30-Day Right to Opt Out. You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: usersupport@kata-inhalation.com, within thirty (30) days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, the email address associated with your Account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

13.11 Invalidity, Expiration. Except as provided in Section 13.4 (Waiver of Class or Other Non-Individualized Relief), if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect. You further agree that any Dispute that you have with Company as detailed in this Arbitration Agreement must be initiated via arbitration within the applicable statute of limitation for that claim or controversy, or it will be forever time barred. Likewise, you agree that all applicable statutes of limitation will apply to such arbitration in the same manner as those statutes of limitation would apply in the applicable court of competent jurisdiction.

13.12 Modification. You and we agree that Company retains the right to modify this Arbitration Agreement in the future. Notwithstanding any provision in this Agreement to the contrary, we agree that if Company makes any future material change to this Arbitration Agreement, we will notify you. Unless you reject the change within thirty (30) days of such change become effective by writing to Company at the address set forth in Section 13.10, your continued use of the Service, including the acceptance of products and services offered on the Service following the posting of changes to this Arbitration Agreement constitutes your acceptance of any such changes. Changes to this Arbitration Agreement do not provide you with a new opportunity to opt out of the Arbitration Agreement if you have previously agreed to a version of this Agreement and did not validly opt out of arbitration. If you reject any change or update to this Arbitration Agreement, and you were bound by an existing agreement to arbitrate Disputes arising out of or relating in any way to your access to or use of the Service, any communications you receive, any products sold or distributed through the Service or this Agreement, the provisions of this Arbitration Agreement as of the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement) remain in full force and effect. Company will continue to honor any valid opt outs of the Arbitration Agreement that you made to a prior version of this Agreement.

14. GENERAL PROVISIONS.

14.1 Electronic Communications. The communications between you and Company may take place via electronic means, whether you visit the App or send Company emails, or whether Company posts notices on the App or communicates with you via email. For contractual purposes, you (i) consent to receive communications from Company in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company electronically provides to you satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights, including but not limited to the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. (“E-Sign”).

14.2 Assignment. The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Company’s prior written consent. Company may, without your consent, freely assign and transfer this Agreement, including any of its rights, obligations, or licenses granted under this Agreement. Any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

14.3 Force Majeure. Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, pandemics, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

14.4 Questions, Complaints, Claims. If you have any questions, complaints or claims with respect to the App, please contact us at myacapella@icumed.com. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

14.5 Agreement Updates. When changes are made, Company will make a new copy of this Terms of Use and/or Supplemental Terms, as applicable, available on the App, and we will also update the “Last Updated” date at the top of this Agreement. If we make any material changes and you have registered an Account with us, we will also send an email with an updated copy of this Agreement to you at the email address associated with your Account. Unless otherwise stated in such update, any changes to this Agreement will be effective immediately for users without an Account and thirty (30) days after posting for users with an Account. Company may require you to provide consent to the updated Agreement in a specified manner before further use of the App is permitted. IF YOU DO NOT AGREE TO ANY CHANGE(S) AFTER RECEIVING A NOTICE OF SUCH CHANGE(S), YOU SHALL STOP USING THE APP.

14.6 Exclusive Venue. To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Company agree that all claims and disputes arising out of or relating to this Agreement will be litigated exclusively in the state or federal courts located in the State of Delaware.

14.7 Governing Law. THIS AGREEMENT AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE COMMONWEALTH OF DELAWARE, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE AGREEMENT.

14.8 Notice. Where Company requires that you provide an email address, you are responsible for providing Company with a valid and current email address. In the event that the email address you provide to Company is not valid, or for any reason is not capable of delivering to you any notices required by this Agreement, Company’s dispatch of the email containing such notice will nonetheless constitute effective notice. You may give notice to Company at the following address: usersupport@kata-inhalation.com. Such notice shall be deemed given when received by Company by letter delivered by nationally recognized overnight delivery service or first-class postage prepaid mail at the above address.

14.9 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

14.10 Severability. If any portion of this Agreement is held invalid or unenforceable, that portion must be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions must remain in full force and effect.

14.11 Export Control. You may not use, export, import, or transfer the App except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the App, and any other applicable laws. In particular, but without limitation, the App may not be exported or re-exported (i) into any United States embargoed countries, or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Person’s List or Entity List. By using the App, you represent and warrant that (A) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country and (B) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the

App for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Company are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Company products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

14.12 Entire Agreement. The Agreement and the Privacy Policy is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.