

TERMS OF SERVICE
MY-CARDIA (USA) INC.
EFFECTIVE DATE: June 7, 2018

1. SCOPE OF AGREEMENT.

1.1. **Terms of Service.** These terms of service (“**Terms of Service**”) govern the access and use of the website www.my-cardia.com (the “**Site**”), and affiliated websites, features, services, mobile applications, products, software and other services, the My-Cardia application (the “**My-Cardia App**” or “**App**”) or any portion thereof (collectively, the “**Service**”), owned or controlled by My-Cardia (USA) Inc., or its affiliated companies (“**MyCardia**” or “**we**” or “**our**” or “**us**”). Affiliated companies are entities that control, are controlled by or are under common control with us.

1.2. **Privacy Policy.** For information about how MyCardia collects, uses, and shares your information, please review our privacy policy (“**Privacy Policy**”), which can be found at [\[link to privacy policy\]](#), and is incorporated herein by reference. You agree that by using the Service you consent to the collection, use, and sharing (as set forth in the Privacy Policy) of such information, including the transfer of this information to the United States and/or other countries for storage, processing, and use by My-Cardia.

1.3. **Agreement.** These Terms of Service, the Privacy Policy, and any other legal notices published by us on the Service are, collectively, an agreement (this “**Agreement**”) between My-Cardia. and you (“**You**” or “**your**” or “**you**” or, a “**User**”), a user of the Service. A User is any individual user who uses the Services for personal use, or a user authorized by an entity to use the Services. By accessing or using the Service you acknowledge and agree to this Agreement, including, without limitation, these Terms of Service, Privacy Policy, and any other legal notices published by us on the Services. IF YOU CHOOSE TO NOT AGREE WITH ANY OF THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THESE TERMS OF SERVICE OR THE PRIVACY POLICY, YOUR CHOICE IS TO IMMEDIATELY STOP USING THE SERVICE. By using the Service, you represent and warrant that:

- You have reached the age of majority in the jurisdiction in which you reside;
- You are able to create a binding legal obligation;
- You are not barred from receiving products or Service under applicable law;
- Your use of the Website and App will at all times comply with these Terms of Use;
- You will only make purchases on the Website and App for authorized use;
- You have the right to provide any and all information you submit to the Website/App, and all such information is accurate, true, current and complete, and you will update information provided to the Website/App to ensure that it is accurate at all times.

2. INTELLECTUAL PROPERTY.

2.1. **License.** Subject to these Terms, we grant you a non-transferable, non-exclusive, revocable, limited license to use and access the Site, the MyCardia App, and Services.

2.2. **Intellectual Property Rights.** Subject to the terms hereof, and excluding any User Content that you may provide (defined below), you acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Site and its content are owned by Company or Company's suppliers. Neither these Terms (nor your access to the Site or Services) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 2.1. We reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

2.3. **Restrictions.** You will not, directly or indirectly, reverse engineer, duplicate, replicate, remove, transfer, reveal, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Service or any software, documentation or data related to the Service ("**Software**"); modify, translate, or create derivative works based on the Service or any Software; use the Service or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

3. THE MY-CARDIA SERVICE SOLUTIONS.

3.1. **Eligibility.** The Service is a general audience service and is not intended for users under 18 years old. We require that only persons 18 years of age or older use any of the Service. By using the Service, you hereby represent that you are at least 18 years old. To view information on our policy regarding the privacy of children under the age of 13, please see the Privacy Policy. Parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that may be considered harmful to minors.

3.2. **Technology Platform.** You understand that My-Cardia acts only as a technology platform and interface between Users and that My-Cardia may, but is not required to verify the qualifications of Users. Further, My-Cardia reserves the right, but is not obligated to evaluate or control any ongoing manner exchanges between Users. Any opinions or statements expressed by a User are of those of the User alone, and shall not be attributed to My-Cardia. My-Cardia cannot and does not assume responsibility for the accuracy, completeness, safety, reliability, timeliness, innocuousness, legality or applicability of anything said, written, posted, displayed or otherwise made available by any User. Please use caution, common sense, and practice safety when using the Services. By using the Services, you agree to accept such risks and that My-Cardia (and our officers, directors, agents, subsidiaries, joint ventures and employees) is not responsible for any and all acts or omissions of Users.

3.3. **Disputes with Users.** If you have a dispute with one or more Users, you release us (and our affiliates and subsidiaries, and our and their respective officers, directors, employees and agents) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. **In entering into this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.** My-Cardia is not responsible for the conduct of any User. As set forth in, and without limiting, Sections 11 and 12 below, in

no event shall My-Cardia (or our affiliates and subsidiaries, or our and their respective officers, directors, employees and agents) be liable, directly or indirectly, for any losses or damages whatsoever, whether direct, indirect, general, special, compensatory, consequential, and/or incidental, arising out of or relating to the conduct of you or anyone else in connection with the use of the Service including, without limitation, death, bodily injury, emotional distress, and/or any other damages resulting from communications or meetings with other Users or persons you meet through the Service. You agree to take all necessary precautions in all interactions with other Users, particularly if you decide to communicate off the Service or meet in person, or if you decide to send money to another User. You understand that My-Cardia makes no guarantees, either express or implied, regarding your interactions with individuals you meet through the Service. You should not provide your financial information (for example, your credit card or bank account information), or wire or otherwise send money, to other Users directly.

3.4. No Affiliation with Brands. My-Cardia is a private company and has no affiliation or rights with any brand or third-party products on the Service. My-Cardia disclaims ownership of any trademarks, logos or images belonging to any brand or third-party products appearing on this site. The appearance of trademarks and/or logos belonging to brands, third party products or their respective companies on the Service does not constitute affiliation or endorsement by such companies of any of the services provided by My-Cardia.

3.5. Errors, Inaccuracies and Omissions. Occasionally there may be information in the Service that contains typographical errors, inaccuracies or omissions. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information if any information in the Service or on any related website is inaccurate at any time without prior notice. We undertake no obligation to update, amend or clarify information in the Service or on any related website, including without limitation, except as required by law. No specified update or refresh date applied in the Service or on any related website, should be taken to indicate that all information in the Service or on any related website has been modified or updated.

4. YOUR ACCOUNT.

4.1. Account Registration. If you choose to register for an account, you must complete the account registration process by providing us with current, complete, and accurate information as prompted by the applicable registration form. You agree to register only once using a single account. You agree you will not (i) register on behalf of another person; (ii) register under the name of another person or under a fictional name or alias; (iii) choose a username that constitutes or suggests an impersonation of any other person (real or fictitious) or entity or that you are a representative of an entity when you are not, or that is offensive; (iv) choose a username for the purposes of deceiving or misleading our users and/or My-Cardia as to your true identity; or (v) choose a username that incorporates a solicitation.

4.2. Account Information. You are entirely responsible for maintaining the confidentiality of your account information and password. Furthermore, you are entirely responsible for any and all activities that occur under your account. You should notify us immediately of any known or suspected unauthorized use of your username and password or any other breach of security. My-Cardia will not be liable for any loss that

you may incur as a result of someone else using your username, password, or account, either with or without your knowledge. You could be held liable for losses incurred by My-Cardia or another party due to someone else using your username, password, or account. You may not use anyone else's account at any time, without the permission of the account holder. Your account is unique to you and may not be transferred to any third party.

4.3. Account Security. My-Cardia cares about the integrity and security of your account information. However, My-Cardia cannot guarantee that unauthorized third parties will never be able to defeat the Service's security measures or use any personal information you provide to us for improper purposes. You acknowledge that you provide your account information at your own risk.

4.4. Termination, Suspension, and Restrictions. My-Cardia may terminate or suspend your access to or ability to use the Service immediately, without prior notice or liability, for any reason or no reason, including breach of this Agreement. In particular, My-Cardia may immediately terminate or suspend accounts that have been flagged for Intellectual Property infringement. Upon termination of your access to or ability to use the Service, your right to use or access the Service will immediately cease. My-Cardia may change, restrict access to, suspend, or discontinue any aspect of the Service at any time, including availability of any feature, database, or content. My-Cardia may also impose limits on certain features and services or restrict your access to all or parts of the Service without notice or liability. You acknowledge that you have continued right to use the Service, nor do we have any continuing obligation to provide the Service.

4.5. Survival of Terms. This Agreement's terms and conditions that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability. Termination of your access to and use of the Service shall not relieve you of any obligations arising or accruing prior to termination or limit any liability that you otherwise may have to My-Cardia or any third party.

5. CONDUCT. As a condition of your use of and access to the Service, you agree not to use the Service for any unlawful purpose or in any way that violates these Terms. Any use of the Service in violation of these Terms of Service may result in, among other things, termination or suspension of your account and your ability to use the Service. You may not engage in any of the following prohibited activities:

- (a) Copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; collecting or harvesting any personally identifiable information, including account names, from the Service; altering, modifying or creating derivative works of the Service, or any portion thereof;
- (b) Using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service; accessing any content or features of the Service through any technology or means other than those provided or authorized by the Service;
- (c) Transmitting spam, chain letters, or other unsolicited email; using the Service for any commercial solicitation purpose or political campaigning;

- (d) Attempting to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running the Service; uploading invalid data, viruses, worms, or other software agents through the Service; bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or features or enforce limitations on use of the Service or the content or features therein;
- (e) Taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on Service infrastructure; interfering with the proper working of the Service;
- (f) Impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; or
- (g) Disrupting the normal flow of dialogue, causes a screen to “scroll” faster than other Users are able to type, or otherwise negatively affects other Users’ ability to engage in real time exchanges.
- (h) Users may not use the Service or any content contained in the Service (including, but not limited to, content of other users, designs, text, graphics, images, video, information, logos, software, audio files and computer code) in connection with any commercial endeavors, such as advertising or soliciting any user to buy or sell any products or services not offered by My-Cardia. My-Cardia may investigate and take any available legal action in response to illegal and/or unauthorized uses of the Service, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Service.

6. USER CONTENT.

6.1. **User Content.** “**User Content**” means any and all information and content, including, without limitation, any method, device, model, algorithm or other automated process, that a user submits to, or uses with, the Site (e.g., content in the user’s profile or postings). You are solely responsible for your User Content. You assume all risks associated with use of your User Content, including any reliance on its accuracy, completeness or usefulness by others, or any disclosure of your User Content that personally identifies you or any third party. You may not represent or imply to others that your User Content is in any way provided, sponsored or endorsed by Company. Because you alone are responsible for your User Content, you may expose yourself to liability if, for example, your User Content violates the Acceptable Use Policy. Company is not obligated to backup any User Content, and your User Content may be deleted at any time without prior notice. You are solely responsible for creating and maintaining your own backup copies of your User Content if you desire.

6.2. **Representations.** You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish User Content you submit. You further agree that User Content you submit to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise

legally entitled to post the material and to grant us all of the license rights granted herein. We do not permit copyright infringing activities and infringement of intellectual property rights on the Service, and we will remove all User Content if properly notified that such User Content infringes on another's intellectual property rights. We reserve the right to remove User Content without prior notice. By using the Service, you expressly agree not to use, reproduce, modify, adapt, edit, translate, publicly display, telecommunicate or perform, post, upload to, transmit, distribute, store, create derivative works from or otherwise publish throughout the world, in any media, now known or hereafter devised, on or through the Service any of the following:

- (a) User Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, foreign, national or international law, including, without limitation, the regulations of the U.S. Securities and Exchange Commission;
- (b) User Content that is indecent, profane (including masked profanity where symbols, initials, intentional misspellings or other characters are used to suggest profane language), obscene, pornographic, abusive, inflammatory, untrue, misleading, illegal, invasive of privacy or publicity rights, libelous, slanderous or defamatory. WE DO NOT TOLERATE USERS HARASSING, THREATENING, DISCRIMINATING OR EMBARRASSING OTHER USERS, INCLUDING HARASSMENT OR DENIGRATION BASED ON AGE, GENDER, RACE, RELIGION, NATIONAL ORIGIN, SEXUAL ORIENTATION OR DISABILITY, MARITAL STATUS OR VETERAN STATUS, OR THE STALKING OF OTHER USERS;
- (c) User Content that contains any confidential or proprietary information of any person or entity, or that otherwise violates the legal rights of any person or entity. You may not include in any User Content either any email addresses or telephone numbers of any person or entity, including your own. You may not use a false email address, impersonate any person or entity (including any other user), or otherwise mislead as to the origin of your User Content;
- (d) User Content that is unrelated to the topic or context in which such Content is posted, or that, in the sole judgment of My-Cardia, contravenes the above, is otherwise objectionable or inappropriate, or which restricts or inhibits any other person from using or enjoying the Service, or which may expose My-Cardia or its affiliates or its users to any harm or liability of any type.

6.3. User Content Disclaimers. We do not endorse any User Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and we expressly disclaim any and all liability in connection with User Content. My-Cardia takes no responsibility and assumes no liability for any User Content posted, stored or uploaded by you or any third party, or for any loss or damage thereto or in connection therewith, nor is My-Cardia liable for any mistakes, inaccuracies, infringements, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. As a provider of interactive services, My-Cardia is not liable for any statements, representations or User Content provided by its users. Although My-Cardia has no obligation to screen, edit or monitor any of the User Content posted to

or distributed through the Service, My-Cardia reserves the right, and has absolute discretion, to remove, screen or edit without notice any User Content posted or stored on the Service at any time and for any reason and without liability to you or any third party, and you are solely responsible for creating backup copies of and replacing any User Content you post or store on the Service at your sole cost and expense. However, we also reserve the right in our sole discretion to display any User Content that is submitted to us (or to decline to remove any User Content), even if it violates this Agreement. Since not all of the areas of the Service are monitored on a “real time” basis, you may see User Content that violates this Agreement before we do. Please report such items to info@my-cardia.com .

7. COPYRIGHT POLICY.

7.1. **Copyright Agent.** My-Cardia respects the intellectual property rights of others and expects users of the Service to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to our designated copyright agent (“**Copyright Agent**”). Our designated Copyright Agent to receive notifications of claimed infringement is:

My-Cardia (USA) Inc.
74-710 Highway 111 Suite, 112
Palm Desert, CA USA 92253
Tel: Tel: 1 (760) 205-3344

For clarity, only Digital Millennium Copyright Act (DMCA) notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to info@my-cardia.com. You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

8. THIRD PARTIES.

8.1. **Third Party Links.** The Service may contain links to third-party advertisers, websites or services. You acknowledge and agree that My-Cardia is not responsible or liable for: (i) the availability or accuracy of such advertisements, websites or services, or (ii) the content, products, or resources on or available from such advertisers, websites or services. Links to such advertisers, websites or services do not imply any endorsement by My-Cardia of those websites or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or services.

8.2. **Third Party Content.** Through the Service, you will have the ability to access and/or use content provided by third parties. My-Cardia cannot guarantee that such third-party content will be free of material you may find objectionable or otherwise. My-Cardia disclaims any responsibility or liability related to your access or use of any third-party content.

8.3. **Third Party Promotions.** Some third parties may promote sweepstakes, competitions, promotions, and other similar opportunities on the Service (“**Third Party Promotions**”). My-Cardia is not the sponsor or promoter of these Third-Party Promotions and does not bear any responsibility or liability for the actions or inactions of any third parties who organize, administer or are otherwise involved in any of

promotion of these Third-Party Promotions. If you wish to participate in any of these Third-Party Promotions, you are responsible for reading and ensuring that you understand the applicable rules and any eligibility requirements and are lawfully able to participate in such Third-Party Promotions in your jurisdiction.

8.4. **Third Party Listings.** We do not warrant and shall not be liable for the quality of any third-party products, services, information, or other material obtained by you through the Service.

8.5. **Social Media Networks.** The Service may include features that connect to third party social media networks (“**Social Media Networks**”) and allow you to share or like content or services with your friends or other users of the Social Media Networks, or you may be able to connect your user account with your Social Media Networks’ accounts. To learn more about how your information may be shared with Social Media Networks or how your Social Media Networks’ account information may be shared with us, please read our Privacy Policy and the privacy policy or settings of the relevant Social Media Networks.

9. FEES AND PAYMENTS.

9.1. **Fees.** My-Cardia reserves the right at any time to charge fees for access to the Service, or any portion thereof. However, in no event will you be charged for access to the Service unless we obtain your prior agreement to pay such charges. You may cancel your account at any time. You agree to pay all charges that may be incurred by you or on your behalf through the Service, at the price(s) in effect when such charges are incurred, including all shipping and handling charges. In addition, you remain responsible for any and all taxes that may be applicable to your purchase(s), and you agree that such taxes, if any, are not our responsibility. Refunds and exchanges shall be subject to our refund and exchange policies, in the applicable additional terms, as may be made available by us and updated by us from time to time.

9.2. **Payments.** If products, subscriptions, software, or services are made available for purchase through the Service and you wish to purchase such products, subscriptions, software, or services, you may be asked by us or our designee (or, if such product, subscriptions, software, or services are being made available by a third party provider, by such third party provider) to supply certain information relevant to your purchase, including, without limitation, credit card number, expiration date, billing address and shipping information. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO USE ANY CREDIT CARD(S) OR OTHER PAYMENT MEANS USED BY YOU OR THROUGH YOUR USERNAME(S) TO PURCHASE ANY SUCH PRODUCT AND/OR SERVICE. You acknowledge that any such information will be treated by us in accordance with our Privacy Policy. You grant us the right to provide such information to third parties in order to facilitate the completion of transactions initiated by you or on your behalf through the Service. Verification of information may be required prior to acceptance of any order through the Service.

10. GENERAL DISCLAIMERS. YOU EXPRESSLY AGREE THAT USE OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, MOBILE SERVICES), IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS

OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, MY-CARDIA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MY-CARDIA DOES NOT WARRANT THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT SERVICE OR THE SERVERS THAT MAKE IT AVAILABLE ARE FREE OF VIRUSES OR ANY OTHER HARMFUL COMPONENTS. MY-CARDIA DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE CONTENT OR DATA ON THE SERVICE, WITH RESPECT TO THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. MY-CARDIA DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCTS, OR SERVICES ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED SERVICES OR FEATURED IN ANY OTHER ADVERTISING, AND MY-CARDIA WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF PRODUCTS OR SERVICES THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

11. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL MY-CARDIA, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM YOUR USE OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, MOBILE SERVICES), OR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT OR DATA, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR DATA OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR DATA POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT MY-CARDIA IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. YOU

SPECIFICALLY ACKNOWLEDGE THAT MY-CARDIA SHALL NOT BE LIABLE FOR USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU. IN NO EVENT WILL MY-CARDIA'S TOTAL AGGREGATE LIABILITY TO YOU UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY YOU TO USE THE SERVICE DURING THE PRIOR SIX (6) MONTHS.

12. INDEMNIFICATION. To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless My-Cardia, its affiliates and subsidiaries, and each of their, officers, directors, managers, members, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, settlements, costs or debt, and expenses (including but not limited to attorneys' fees) arising from, without limitation: (i) your use of and access to the Service (including, without limitation, Mobile Services); (ii) your violation of any term of this Agreement; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your User Content caused damage to a user or third party. My-Cardia may assume the exclusive defense and control of any matter for which users have agreed to indemnify My-Cardia and you agree to assist and cooperate with My-Cardia in the defense or settlement of any such matters. This defense and indemnification obligation will survive the termination of this Agreement and your use of the Service.

13. GOVERNING LAW AND DISPUTE RESOLUTION.

14.1. **Governing Law.** This Agreement shall be governed by the internal substantive laws of the State of Delaware, without respect to its conflict of laws principles.

14.2. **Mandatory Arbitration.** For any dispute you have with My-Cardia, you agree to first contact My-Cardia and attempt to resolve the dispute informally. If My-Cardia has not been able to resolve the dispute with you informally, we each agree to resolve any claim, dispute, or controversy (excluding claims for injunctive or other equitable relief) arising out of or in connection with or relating to this Agreement by binding arbitration by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes then in effect for the AAA, except as provided herein. The arbitration will be conducted in Delaware in the United States. Each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. This arbitration agreement survives the termination of this Agreement between you and My-Cardia.

14.3. **Waivers of Class Action and Trial by Jury.** YOU AND MY-CARDIA BOTH WAIVE ANY RIGHT TO PARTICIPATE IN ANY CLASS ACTION INVOLVING DISPUTES BETWEEN US, AND YOU AND MY-CARDIA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY. ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. THIS

CLASS ACTION WAIVER IS AN ESSENTIAL PART OF OUR ARBITRATION AGREEMENT AND MAY NOT BE SEVERED. IF FOR ANY REASON THIS CLASS ACTION WAIVER IS FOUND UNENFORCEABLE, THEN THE ENTIRE ARBITRATION AGREEMENT WILL NOT APPLY. HOWEVER, THE WAIVER OF THE RIGHT TO TRIAL BY JURY SET FORTH IN THIS SECTION WILL REMAIN IN FULL FORCE AND EFFECT.

14.4. Other Remedies. Notwithstanding the foregoing, either party may bring an individual action in small claims court. Nothing in this Section precludes you from bringing issues to the attention of federal, state or local agencies. Nothing in this Section shall prevent either party from seeking injunctive or other equitable relief from the courts for matters related to data security, intellectual property or unauthorized access to the Service.

14.5. Time Limitations. YOU HEREBY WAIVE AND FOREVER RELINQUISH ANY STATUTE OF LIMITATIONS OR STATUTE OF REPOSE RELATING IN ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT. YOU AND MY-CARDIA AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT MUST COMMENCE WITHIN SIX (6) MONTHS AFTER THE CAUSE OF ACTION ACCRUES, REGARDLESS OF WHEN YOU FIRST DISCOVERED OR SHOULD HAVE DISCOVERED THE FACTS SUPPORTING THE CAUSE OF ACTION. YOU HEREBY WAIVE, AND AGREE NOT TO ASSERT, ANY ARGUMENT TO TOLL OR OTHERWISE DELAY THE BEGINNING OF ANY TEMPORAL LIMITATIONS TO BRING A CLAIM ARISING OUT OF OR RELATED TO THE SERVICE OF THIS AGREEMENT. YOU FURTHER AGREE THAT UPON EXPIRATION OF THE TIME LIMITATION HEREIN YOU SHALL NO LONGER HAVE ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE OF THIS AGREEMENT.

14. DISCLOSURES. In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect My-Cardia's systems and users, or to ensure the integrity and operation of My-Cardia's business and systems, My-Cardia may access and disclose any information it considers necessary or appropriate, including, without limitation, account information (i.e. name, email address, etc.), IP addressing and traffic information, usage history, and posted User Content. My-Cardia's right to disclose any such information, as applicable, shall be pursuant to the terms of My-Cardia's Privacy Policy. Please see My-Cardia's Privacy Policy for the terms of our personal information collection and use practices with respect to the Service.

15. NOTICE FOR CALIFORNIA USERS. Under California Civil Code Section 1789.3, California users of the online services are entitled to 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 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at (916) 445-1254 or (800) 952-5210.

16. OTHER JURISDICTIONS. By accessing or using the Service, or submitting information, you acknowledge that you accept the practices and policies outlined in this

Agreement and consent to having your data transferred to and processed in the United States. If you do not agree to the terms of this Agreement, please do not use the Service. The Service is controlled and operated by My-Cardia from the United States. We do not represent or warrant that the Service, or any part thereof, is appropriate or available for use in any particular jurisdiction. Those who choose to access the Service, do so on their own initiative and at their own risk, and are responsible for complying with all local laws, rules and regulations. We may limit the availability of the Service, in whole or in part, to any person, geographic area or jurisdiction that we choose, at any time and in our sole discretion.

17. GENERAL. This Agreement, including, without limitation, these Terms of Service, together with the Privacy Policy and any other legal notices published by us on the Service, shall constitute the entire agreement between you and My-Cardia concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and My-Cardia's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. We reserve the right to amend this Agreement, including, without limitation, these Terms of Service and the Privacy Policy, at any time and without notice, and it is your responsibility to review this Agreement, including, without limitation, these Terms of Service and the Privacy Policy for any changes. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by My-Cardia without restriction. Your use of the Service following any amendment of this Agreement will signify your assent to and acceptance of its revised terms.

18. CONTACT INFORMATION. If you have any questions, feedback or to report a violation regarding these Terms of Service, you may email us at info@my-cardia.com .