

## TERMS OF USE AGREEMENT

SleepImage

Date of Last Revision: January 7, 2026

### **THIS AGREEMENT CONTAINS A CLASS ACTION WAIVER, JURY WAIVER, AND AN AGREEMENT TO RESOLVE ANY DISPUTE THAT MAY ARISE BY ARBITRATION.**

MyCardio LLC dba SleepImage (“MyCardio”, “we” or “us”) has established this Terms of Use Agreement (this “Agreement”) that governs the access to and use of (i) our website located at [www.SleepImage.com](http://www.SleepImage.com) and its content (including, without limitation, any subdomains thereof) (collectively, the “Website”); (ii) our SleepImage digital library and its contents (collectively, the “Content Library”), (iii) MyCardio’s FDA<sup>1</sup>-cleared Software as a Medical Device technology (the “Technology”), (iv) the medical device data system mobile application and its content to be used by patients in connection with the Recorder (the “App”); and (v) MyCardio-supplied wearable data collection devices compatible with the Technology and the App (each a “Recorder”). The Website, the Content Library, the Technology, the App, and the Recorders are collectively referred to as the “SleepImage Offerings.”

The Technology is intended for use by or on the order of licensed healthcare professionals to aid in the evaluation of sleep disorders and to enable such professionals to provide sleep data information about patients under their care (each, a “Patient”) for health and wellness evaluation and clinical decisions, including to aid in diagnosis and management of sleep disordered breathing. Each licensed healthcare professional that desires to use the Technology, as well as each licensed healthcare practice that desires to make the Technology available to the licensed clinicians in its practice, must have a registered account with us. Each such licensed healthcare professional and licensed healthcare practice that has a registered account with us is referred to herein as a “Clinician”. “Users” means, collectively, visitors to the Website and Clinicians.

THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN EACH USER AND MYCARDIO, AND GOVERNS EACH USER’S USE OF THE SLEEPIMAGE OFFERINGS. The SleepImage Offerings are not available for individuals under the age of majority. If you are under the age of 18 or the age of majority in the applicable jurisdiction when accessing or using the SleepImage Offerings, or otherwise unable to be bound by contract, then you are not authorized to use the SleepImage Offerings.

#### **1. ACCEPTANCE**

By accessing or using the SleepImage Offerings, Users consent to the terms and conditions herein, are bound by this Agreement and MyCardio’s Privacy Policy, and consent to allow MyCardio to communicate with you electronically. If you are a representative of a healthcare practice, you represent and warrant that you have all necessary rights and authority to accept this Agreement on behalf of your practice. If you do not agree to this Agreement, do not use the SleepImage Offerings.

The Technology may generate or use computerized analysis of physiological data. This analysis (and any report or graphic generated by the Technology) acts only as an aid for the Clinician in determination of a proper diagnosis. The Technology does not diagnose or treat any Patient. The functions and capabilities of the Technology are not intended to replace the use of sound, professional judgment by Clinicians.

Clinicians agree that they have carefully read all warnings, recommendations, precautions, and user manuals provided by MyCardio related to the SleepImage Offerings or will do so before using the SleepImage Offering to which such warnings, recommendations, precautions, and user manuals relate. Clinicians are responsible for the use of the Technology and will only use the Technology for its intended use and strictly in accordance with the Technology user manual, all applicable privacy policies, and all applicable laws and regulations.

---

<sup>1</sup> United States Food and Drug Administration

Clinicians are responsible for ensuring that they understand the information in the language provided. The Technology, the Recorders and the App enable Clinicians to access information about sleep data of their Patients for review and their clinical interpretation. The Technology is cleared or registered for use in certain markets, including the United States of America by the FDA as a prescription medical device, and as such it can only be purchased and used in the United States by Clinicians who are licensed healthcare providers. Conditions for use and status of registration may differ among markets where the Technology is cleared or registered for use. Further information on markets where the Technology is available can be found under “Instructions for Use” on the Website.

Each Clinician represents and warrants that it is a licensed healthcare provider that is authorized under law to use the Technology in the manner for which it is intended. MyCardio is not required to, nor does it take any measures to, verify the correctness of such statement. Clinicians are solely responsible and liable for any and all potential legal ramifications of any breach of such representation and warranty.

## **2. PRECAUTIONS**

MYCARDIO IS NOT A LICENSED MEDICAL CARE PROVIDER AND HAS NO EXPERTISE IN DIAGNOSING, EXAMINING, OR TREATING MEDICAL CONDITIONS OF ANY KIND, OR IN DETERMINING THE EFFECT OF SLEEP ON A PATIENT’S MEDICAL CONDITION. MYCARDIO IS NOT RESPONSIBLE FOR THE USE OF ANY THIRD-PARTY DEVICES (AS DEFINED HEREIN), INCLUDING THOSE THAT HAVE BEEN IDENTIFIED TO WORK WITH THE TECHNOLOGY OR THE APP. WE ARE NOT RESPONSIBLE FOR ANY HEALTH PROBLEMS THAT MAY RESULT FROM ANY DIAGNOSES OR TREATMENTS MADE AS A RESULT OF THE USE OF THE TECHNOLOGY, AND ANY DIAGNOSES OR TREATMENTS MADE ARE AT THE CLINICIANS’ OWN RISK.

NOTHING IN THE CONTENT LIBRARY IS INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. CONTENT FOUND ON OR THROUGH THE CONTENT LIBRARY IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO REPLACE THE RELATIONSHIP BETWEEN PATIENTS AND THEIR CLINICIAN, PHYSICIAN OR OTHER MEDICAL PROVIDER. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING READ ON OR THROUGH THE CONTENT LIBRARY. IN A MEDICAL EMERGENCY, CALL 911 IN THE UNITED STATES OF AMERICA. IT IS THE CLINICIAN’S OR PATIENT’S RESPONSIBILITY TO KNOW WHERE AND HOW TO SEEK MEDICAL EMERGENCY ASSISTANCE IF THEY ARE LOCATED IN ANY OTHER COUNTRY. MyCardio is not responsible for the use of any Third-Party Device (as defined herein) that has been identified in the Content Library. We are not responsible for any health problems that may result from changes made as a result of the use of the Content Library and agree that—as between Clinicians, Patients and MyCardio—any changes made are at the Clinicians’ and Patients’ own risk.

THE TECHNOLOGY AND THE RECORDERS ARE MEDICAL DEVICES, THE USE OF WHICH ARE RESTRICTED UNDER US LAW TO CLINICIANS AND, IN THE CASE OF RECORDERS, TO PERSONS ACTING ON THE ORDER OF A CLINICIAN. SIMILAR OR OTHER RESTRICTIONS MAY BE APPLICABLE UNDER THE LAWS OF OTHER JURISDICTIONS. CLINICIANS ARE SOLELY RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE LAWS IN CONNECTION WITH THEIR USE OF THE TECHNOLOGY. THE TECHNOLOGY MAY GENERATE OR USE COMPUTERIZED ANALYSIS OF PHYSIOLOGIC DATA. THE ANALYSIS ACTS ONLY AS AN AID FOR THE CLINICIAN IN DETERMINATION OF A PROPER DIAGNOSIS. IT DOES NOT REPLACE THE CLINICIAN AND DOES NOT DIAGNOSE OR TREAT ANY PATIENT. THE FUNCTIONS AND CAPABILITIES OF THE TECHNOLOGY ARE NOT INTENDED TO REPLACE THE USE OF SOUND, PROFESSIONAL JUDGMENT BY CLINICIANS.

Users shall not use the SleepImage Offerings unlawfully, and shall not alter any of the SleepImage Offerings without MyCardio’s prior written consent.

## **3. MODIFICATIONS TO THIS AGREEMENT**

MyCardio may make changes to this Agreement from time to time. A link to the most current Agreement will be available on the Website. MyCardio may additionally, but is not required to, place a special notice on the SleepImage Offerings or communicate significant changes to this Agreement by email. Users’ continued use

of the SleepImage Offerings following the posting or communication of such changes constitutes their acceptance thereof.

#### **4. PASSWORD AND REGISTRATION**

Clinicians will be required to create an account with MyCardio in order to access and use the Technology. In creating an account with us, Clinicians will be required to (a) provide MyCardio with certain personal and financial information (the “Account Information”) and (b) select a unique username and password to access their MyCardio account (“Clinician Login Information”). Clinicians agree to supply accurate Account Information to MyCardio, and to update their Account Information if and when it changes. Clinicians are responsible for maintaining the confidentiality of their Clinician Login Information, and Clinicians will be responsible for all uses of their Clinician Login Information, whether or not authorized by the Clinician. In the event that Clinicians become aware of or reasonably suspect any breach of security including, without limitation, any loss, theft or unauthorized disclosure of their Clinician Login Information, they agree to immediately notify MyCardio via the “Contact Us” page of the Website or email at [support@sleepimage.com](mailto:support@sleepimage.com). MyCardio cannot and does not assume any responsibility or liability for any information submitted by someone who has accessed a Clinician’s account in any unauthorized or fraudulent manner, or for any third party’s fraudulent use or misuse of information submitted by Clinicians.

#### **5. INTELLECTUAL PROPERTY RIGHTS**

All content within the Content Library, including but not limited to text, images, and videos, is protected by copyright. Unauthorized use of any content is strictly prohibited.

Subject to and conditioned on the User’s acceptance of and adherence to this Agreement, MyCardio grants to User a non-exclusive, revocable, limited, personal, nontransferable, and royalty-free license under any of the copyrights in, to, or under the Content Library and its contents solely to use the Content Library and its contents (the “Content Library License”). The Content Library and its contents shall at all times remain the property of MyCardio, and User shall have no right, title, or interest therein except as expressly set forth in this Agreement. User may not modify or create derivative works of, publicly display, or commercially exploit any part of the Content Library. All rights in the Content Library not expressly granted are retained by MyCardio. If User violates the Agreement, permission to use the Content Library and its contents automatically terminates, and User must immediately cease use of the Content Library and all parts thereof.

Without limiting the foregoing, users may not use or incorporate any part of the Content Library for training or developing any form of large language model (LLM) or artificial intelligence (“AI”), including in any generative or other form of AI. This prohibition extends to the use of apps, web crawlers, or other automated devices for the purpose of scraping, copying, or extracting the Content Library or any part thereof.

We will have access to and will need to use data provided by Users, including Patient data (“Data”). Users hereby (a) grant to MyCardio a perpetual, irrevocable, non-exclusive, sublicensable, worldwide, royalty-free license to use the Data, in de-identified form, to comply with applicable laws or in connection with the SleepImage Offerings, research or development work, or post-market surveillance conducted for purposes of improving the SleepImage Offerings, including their safety and effectiveness, and (b) represent and warrant to MyCardio that they have the full right, power and authority to grant the foregoing license. So long as MyCardio is in conformance with its Privacy Policy, Users agree not to assert any claim, whether based on tort, contract, or other legal theory, against MyCardio or its sublicensees, relating to MyCardio’s or its sublicensees’ use of the Data, and Users hereby release MyCardio and its sublicensees from any such claims. Users represent that the Data they provide: (i) will not infringe any third party’s copyright, patent, trademark, trade secret or other proprietary rights; (ii) will not violate any law, statute, ordinance or regulation; (iii) will not contain any viruses, worms, time bombs or other computer programming code that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; and (iv) will not violate any third party’s rights of publicity or privacy. Data does not include Protected Health Information, which is addressed in Section 15 below.

Subject to and conditioned on a Clinician's acceptance of and adherence to this Agreement, MyCardio grants such Clinician a non-exclusive, revocable, limited, personal and nontransferable license to use the Technology and the App solely for their intended purposes (the "License"). The Technology, the App, and any work product created by or on behalf of MyCardio shall at all times remain the property of MyCardio, and Clinicians shall have no right, title, or interest therein except as expressly set forth in this Agreement. Clinicians may not reproduce, distribute, modify or create derivative works of, publicly display, or commercially exploit any part of the Technology or the App, except as necessary to view the content therein for the benefit of Patients. All rights in the SleepImage Offerings not expressly granted herein are retained.

If a User violates this Agreement, such User's permission to use the SleepImage Offerings automatically terminates and such User must immediately cease use of the SleepImage Offerings.

MyCardio, SleepImage and other trademarks contained in the SleepImage Offerings are trademarks of MyCardio, its affiliates or third parties. Users may not, and agree not to, remove or alter any trademark, trade name, product name, logo, copyright or other proprietary notice, legend, symbol or label from the SleepImage Offerings. This Agreement does not authorize anyone to use MyCardio's or its licensors' names or any of their respective trademarks.

Except as otherwise provided herein, Users may not (a) reproduce, make or distribute copies of the SleepImage Offerings or any software comprising a part of or accompanying the SleepImage Offerings, (b) alter, merge, modify, adapt or translate the SleepImage Offerings, or decompile, reverse engineer or disassemble the SleepImage Offerings, or create derivative works based upon the SleepImage Offerings, or (c) use the SleepImage Offerings in any manner with, or as part of, or as input to, or to facilitate the input of data to, any other medical devices unless specifically granted permission to do that by MyCardio. Users shall not use the SleepImage Offerings to develop or use any product, service or application having the same primary function as the SleepImage Offerings. Users agree that they shall not use any artificial intelligence or any automated device or process such as a "bot" or a "spider" to copy or extract information or content from the SleepImage Offerings.

## **6. USER CONDUCT**

Users must use the Content Library responsibly and ethically. Users are solely responsible for maintaining the confidentiality and security of the account. If a User allows any others to access their account, this Agreement applies to their access, use, and disclosure of information.

Users agree to comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding their use of the Content Library provided herein.

## **7. CONTENT ACCURACY AND AVAILABILITY**

MyCardio strives to provide accurate and up-to-date content but makes no guarantees regarding the completeness, accuracy, or availability of the Content Library. MyCardio reserves the right to terminate or suspend access to the Content Library at any time, with or without cause, and without prior notice.

MyCardio may provide technical support for the Content Library (unless and until MyCardio is no longer offering such Content Library). Technical support may be provided via the Internet, telephone or any other method and at times as determined by MyCardio in its sole and absolute discretion. If Users need support, contact MyCardio via the "Contact Us" page, or via email at support@sleepimage.com. Response times may vary.

MyCardio reserves the right to make changes to, or to suspend or discontinue (temporarily or permanently), the Content Library. Users agree that MyCardio will not be liable to Users or to any third party for any such change, suspension or discontinuance.

## **8. INFRASTRUCTURE REQUIREMENTS**

Users acknowledge and understand that certain hardware and software need to be purchased or obtained in order to use the SleepImage Offerings. Users acknowledge and agree that these infrastructure requirements are their responsibility and that periodic updates to these requirements may be needed from time to time.

## **9. RECORDER INSPECTION; LIMITED WARRANTY; DISCLAIMER**

Each Clinician who purchases a Recorder from MyCardio shall conduct an inspection of the Recorder when received, and shall give written notice of any shortage or discrepancy to MyCardio promptly (but not more than five (5) business days) after receipt. Any Recorders that are not the subject of such a notice, timely given, shall be deemed to have been accepted by such Clinician. A Clinician's sole remedies with respect to damage to or defects in the Recorders purchased from MyCardio shall be those set forth in this Section 9 below.

MyCardio warrants to each Clinician who purchases a Recorder from MyCardio that for a period of one (1) year from the date of delivery of such Recorder to such Clinician (the "Warranty Period") such Recorder shall be free from any material defects in workmanship, material and design, and shall be fit for its intended use and operate as intended (collectively, the "Limited Express Warranties").

During the Warranty Period, if a Recorder purchased by a Clinician from MyCardio does not comply with the Limited Express Warranties, MyCardio shall, in its sole discretion: (i) cause such defective Recorder to be repaired or replaced within fifteen (15) calendar days of receipt of the defective Recorder by MyCardio, or (ii) issue a refund to such Clinician for the purchase price paid for the defective Recorder, in each case provided that such Clinician asserts a Limited Express Warranty claim as provided in the paragraph below (including, without limitation, shipping such defective Recorder to MyCardio prior to the expiration of the Warranty Period). If a defective Recorder is repaired or replaced, the Limited Express Warranties will continue to apply to such repaired or replaced Recorder for the remainder of the Warranty Period, if any, applicable to the defective Recorder that was repaired or replaced. Shipping the Recorders only in bubble wrap envelopes (or similar) will void the Warranty Period, as outside pressure applied to the Recorder sensor may damage or destroy the functionality of the Recorder. Except as provided in this paragraph, the Recorders are not returnable. To assert a Limited Express Warranty claim, the Clinician shall return the subject Recorder, at the Clinician's sole expense and risk of loss, to MyCardio or its designee. Prior to doing so, the Clinician must notify MyCardio, in writing via email to support@sleepimage.com, of the claimed defect and shall include the model and lot/serial number of such Recorder as well as a photo of the Recorder and the number and date of the invoice therefor.

MYCARDIO IS NOT RESPONSIBLE FOR ANY THIRD-PARTY RECORDER SUPPLIED BY ANY PERSON OR ENTITY OTHER THAN MYCARDIO (EACH, A "THIRD PARTY DEVICE"). MYCARDIO MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY THIRD PARTY DEVICE.

TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SLEEPIMAGE OFFERINGS ARE PROVIDED "**AS IS**" AND "**WITH ALL FAULTS**," AND MYCARDIO DOES NOT WARRANT THE FITNESS, MERCHANTABILITY, DESIGN, CONDITION, CAPACITY, SUITABILITY, OR PERFORMANCE OF THE SLEEPIMAGE OFFERINGS, AND DOES NOT WARRANT THAT THE SLEEPIMAGE

OFFERINGS WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SLEEPIMAGE OFFERINGS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, MYCARDIO EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE AND NON INFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE.

Clinicians may send secured links (“Links”) to Patients and to other third-parties to share study results and other information. Clinicians are responsible for the acts and omissions of those third-parties relating to their use or disclosure of the data made available to them. MYCARDIO EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY THAT ARISES OUT OF OR IS RELATED TO THE SHARING, USE, OR DISCLOSURE OF THESE LINKS OR THE DATA ACCESSED THROUGH THE USE OF THE LINKS, INCLUDING THE UNAUTHORIZED USE OR DISCLOSURE OF PHI. Clinicians agree to indemnify and hold harmless MyCardio and its members, managers, officers, employees, subsidiaries, representatives, agents, licensors, and affiliates from and against, for and in respect of, any and all losses, damages, liabilities, costs, and expenses, including reasonable attorneys’ fees, suffered or incurred by any of them due to or arising out of the indemnifying party’s provision of Links to any third-party or the use or disclosure of the information made available through the Links.

## **10. SUPPORT**

MyCardio shall use reasonable efforts to provide technical support for the SleepImage Offerings (unless and until MyCardio is no longer offering such SleepImage Offering). Technical support may be provided via the Internet, telephone or any other method and at times as determined by MyCardio in its sole and absolute discretion. Any User that needs support may contact MyCardio via the “Contact Us” page or via email at support@sleepimage.com. Response times may vary.

MyCardio reserves the right to make changes to, or to suspend or discontinue (temporarily or permanently), any or all of the SleepImage Offerings. Users agree that MyCardio will not be liable to Users or to any third party for any such change, suspension or discontinuance.

## **11. LIMITATION OF LIABILITY**

The Content Library may show links or provide access to other websites and resources. MyCardio does not control such sites and resources. MyCardio is not responsible for their availability, and MyCardio does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. In addition, MyCardio shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use or purchase of, or reliance on, any such content, goods or services available on or through any such site or resource.

IN NO EVENT WILL ANY USER BE ENTITLED TO, AND MYCARDIO, ITS MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, SUBSIDIARIES, REPRESENTATIVES, AGENTS, LICENSORS, AND AFFILIATES WILL NOT BE LIABLE FOR, ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SLEEPIMAGE OFFERINGS INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, LOSS OF CUSTOMERS, INTERRUPTIONS OF SERVICE INCLUDING, WITHOUT LIMITATION, ISP DISRUPTIONS, SOFTWARE OR HARDWARE FAILURES OR ANY OTHER EVENT WHICH MAY RESULT IN A LOSS OF DATA OR DISRUPTION OF SERVICE, EVEN IF MYCARDIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, USERS AGREE THAT THEY WILL NOT BRING A CAUSE OF ACTION RELATING TO THE SLEEPIMAGE OFFERINGS OR THIS AGREEMENT AGAINST MYCARDIO’s MEMBERS, MANAGERS, OFFICERS OR EMPLOYEES IN THEIR PERSONAL CAPACITY.

THE RECOVERY FROM MYCARDIO FOR ANY CLAIM OR SET OF CLAIMS BY A USER WITH RESPECT TO THIS AGREEMENT OR THE SLEEPIMAGE OFFERINGS SHALL NOT EXCEED THE AGGREGATE FEES PAID BY SUCH USER TO MYCARDIO FOR THE SLEEPIMAGE OFFERINGS PURCHASED BY SUCH USER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE APPLICABLE INCIDENT OUT OF WHICH THE CLAIM AROSE, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE.

THE NEGATION AND LIMITATION OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN US AND EACH USER. THE SLEEPIMAGE OFFERINGS WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SUCH LIMITATION SHALL APPLY TO USERS TO THE MAXIMUM EXTENT ALLOWED UNDER SUCH JURISDICTIONS.

## **12. INDEMNITY**

Each User agrees to indemnify and hold harmless MyCardio and its members, managers, officers, employees, subsidiaries, representatives, agents, licensors, and affiliates from and against, for and in respect of, any and all losses, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, suffered or incurred by any of them due to or arising out of (i) use of the Content Library or any part thereof, (ii) any breach of this Agreement by such User (or anyone using such User's Clinician Login Information, except if such Clinical Login Information was obtained solely as a result of MyCardio's gross negligence or willful misconduct), or (iii) violation of any law or the rights of a third party by such User (or anyone using such User's Clinician Login Information, unless such Clinical Login Information was obtained solely as a result of MyCardio's gross negligence or willful misconduct).

## **13. FORCE MAJEURE**

MyCardio shall not be liable for any delay or failure to perform resulting from causes outside the reasonable control of MyCardio including, without limitation, acts of God, pandemics, epidemics, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

## **14. PRIVACY POLICY**

MyCardio has established a Privacy Policy that describes how MyCardio collects and uses various types of information. The Privacy Policy is available at the Website. By using the SleepImage Offerings, all Users consent to the privacy practices detailed in the Privacy Policy, which may be modified from time to time as set out in the Privacy Policy. To the extent Users are covered by laws requiring their consent for data transfer to the United States, such Users agree that their data may be transferred to the United States and collected and used in accordance with the Privacy Policy.

## **15. BUSINESS ASSOCIATE AGREEMENT**

MyCardio may be a business associate (as defined under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations (collectively, "HIPAA")) to Clinicians that are covered entities under HIPAA (for purposes of this Section 15, a "covered entity"). This Section 15, along with MyCardio's Privacy Policy, shall govern MyCardio's use and disclosure of Protected Health Information as defined under HIPAA ("PHI") and dictate a covered entity's and MyCardio's obligations regarding PHI. This Section 15 shall survive the termination of this Agreement for so long as MyCardio creates, receives, transmits, or maintains PHI. If there is a conflict between this Section 15 and any other agreement or provision between a covered entity and MyCardio, this Section 15 shall control. Unless otherwise expressly defined in this Section 15, all capitalized terms in this Section 15 will have the meanings set forth in the Agreement or in HIPAA.

This Section 15 shall only apply when MyCardio is acting as a business associate to a covered entity. If MyCardio is not acting as a business associate, it shall have no obligations under this Section 15.

MyCardio may Use or Disclose PHI to provide services for covered entities as specified in this Agreement. MyCardio will not Use or further Disclose PHI in a manner that would violate the requirements of the HIPAA privacy rule if done by a covered entity, except that MyCardio may Use and Disclose PHI as necessary for its proper management and administration or to carry out its legal obligations. MyCardio will not Use or further Disclose PHI other than as permitted by this Section 15 or as Required by Law. MyCardio may de-identify PHI in accordance with the requirements of HIPAA. Data that has been de-identified in accordance with HIPAA is no longer PHI or subject to the terms of this Section 15.

MyCardio will use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as permitted by this Section 15.

MyCardio will notify the applicable covered entity of any unauthorized Use or Disclosure of PHI of which it becomes aware, including any Breaches of Unsecured PHI.

MyCardio will notify the applicable covered entity of any successful Security Incidents on a quarterly basis. MyCardio and each covered entity acknowledge and agree that no further notice will be provided to such covered entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to such covered entity is required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on a firewall, port scans, unsuccessful log on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in any unauthorized access, use, or disclosure of PHI.

MyCardio will ensure that any subcontractor that creates, receives, maintains, stores, or transmits PHI on behalf of MyCardio will agree to substantially similar restrictions and conditions as those found in this Section 15.

MyCardio will make available PHI in a Designated Record Set to each covered entity as necessary for such covered entity to satisfy its obligations under 45 CFR 164.524.

MyCardio will make any amendments to PHI in a Designated Record Set as directed or agreed to by each covered entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary for such covered entity to satisfy its obligations under 45 CFR 164.526.

MyCardio will maintain and make available the information required to provide an accounting of disclosures to each covered entity as necessary for such covered entity to satisfy its obligations under 45 CFR 164.528.

MyCardio will make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services for the purpose of determining a covered entity's compliance with HIPAA.

Each covered entity is responsible for implementing privacy and security safeguards in order to protect PHI. Each covered entity warrants that it has obtained any necessary authorizations, consents, and other permissions that may be required under applicable law prior to transmitting any PHI to MyCardio. No covered entity will agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause MyCardio to violate this Section 15 or any applicable law. No covered entity will request or cause MyCardio to make any Use or Disclosure of PHI in a manner that does not comply with HIPAA or this Section 15. To the extent MyCardio is to carry out an obligation of a covered entity under the HIPAA privacy rule, MyCardio will comply with the requirements of the Privacy Rule that apply to such covered entity in the performance of such obligation.

Once the relationship between a covered entity and MyCardio terminates, MyCardio will, if feasible, return or destroy all PHI that it maintains in any form. If return or destruction is not feasible, in MyCardio's sole

discretion, it shall maintain such PHI in accordance with this Section 15. MyCardio may maintain one (1) copy of such information for its internal purposes and legal obligations.

## **16. THIRD PARTY CONTENT**

The Website may show links or provide access to other websites and resources. MyCardio does not control such sites and resources, is not responsible for their availability, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. In addition, MyCardio shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use or purchase of, or reliance on, any such content, goods or services available on or through any such site or resource.

## **17. LEGAL COMPLIANCE**

Users agree to comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding their use of the SleepImage Offerings.

## **18. UNLAWFUL ACTIVITY**

MyCardio reserves the right to investigate complaints or reported violations of this Agreement and to take any action we deem appropriate including, but not limited to, reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to any User's profile, email addresses, usage history, posted materials, IP addresses, and traffic information.

## **19. EXPORT**

The Technology, the Recorders and all related technical data are subject to U.S. export control laws ("Export Control Laws"). The Technology and the Recorders may not be exported into (or to a national or resident of) any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. Clinicians represent and warrant that they are not located in, under the control of, or a national or resident of any such country or on any such list. As part of the express consideration hereunder, Clinicians warrant, represent and covenant that they (a) shall not export, re-export or otherwise use the Technology or the Recorders, directly or indirectly, in violation of Export Control Laws or any other applicable law, and (b) shall be responsible for obtaining any necessary U.S. government authorization required to ensure compliance with Export Control Laws. Clinicians may contact the U.S. Department of Commerce, State and Treasury for guidance as to the applicable licensing requirements and other restrictions.

## **20. TERM AND TERMINATION**

MyCardio may terminate the License and/or the right to access the SleepImage Offerings at any time and for any or no reason, whether a User violates this Agreement or not. Users further understand and agree that MyCardio, in its sole discretion, may terminate, discontinue, remove or alter the SleepImage Offerings at any time and for any reason or no reason. Regardless of the reason for termination or discontinuance, Users will continue to be bound by the Agreement and Privacy Policy that were in effect as of the date of termination or discontinuance.

Users may cancel their License to any or all of the Content Library, as applicable, at any time, by notifying MyCardio by email at support@sleepimage.com, and such cancellation shall be effective thirty (30) calendar days thereafter. Regardless of the reason for termination, Users will continue to be bound by the Agreement and Privacy Policy that were in effect as of the date of termination.

**IN THE EVENT OF TERMINATION OR CANCELLATION, MYCARDIO DOES NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL, MONTHLY OR ANNUAL PAYMENTS (IF ANY) RELATED TO THE CONTENT IN THE CONTENT LIBRARY.**

**MYCARDIO DOES NOT PROVIDE REFUNDS OR CREDITS IN THE EVENT OF TERMINATION OR CANCELLATION**

OF ANY SUBSCRIPTION TO THE TECHNOLOGY.

## **21. ASSIGNMENT**

Without MyCardio's prior written consent, Users shall not assign, transfer, pledge, or otherwise transfer this Agreement or their rights or obligations hereunder. Any attempted assignment contrary to this Agreement shall be void. MyCardio may assign this Agreement or its rights or obligations hereunder, may novate this Agreement, and may delegate or subcontract its duties hereunder, in whole or part, without notice.

## **22. ARBITRATION, JURY WAIVER, CLASS ACTION WAIVER, CHOICE OF LAW**

Please read the following arbitration agreement carefully because it requires Users to arbitrate certain disputes and claims with MyCardio and limits the manner in which Users can seek relief from MyCardio.

**General.** Each User and MyCardio shall attempt in good faith to resolve any dispute between them arising out of or relating to this Agreement (including the Privacy Policy, and including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination) or the SleepImage Offerings (each, a "Dispute") promptly by negotiation between authorized representatives who have authority to settle the controversy. If good faith negotiations do not lead to an amicable resolution of such Dispute within thirty (30) business days of commencing negotiations, such Dispute will be resolved through final and binding arbitration under the rules of arbitration of the American Arbitration Association ("AAA") applying Colorado law, without regard to its conflict of laws rules. The tribunal will consist of one arbitrator. Within ten (10) calendar days after the arbitration demand is served upon a party, the parties shall jointly select an arbitrator with at least five (5) years' experience in that capacity and who has knowledge of and experience with the subject matter of the dispute. If the parties do not agree on an arbitrator within ten (10) calendar days, a party may petition the AAA to appoint an arbitrator, who must satisfy the same experience requirement. The arbitration will take place in Denver, Colorado, USA. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear one-half of the fees paid for the arbitrator and the administration of the arbitration. The parties agree that the arbitrator shall not have the authority to award attorneys' fees, unless otherwise expressly authorized by statute or contract. The arbitrator shall have no authority to award punitive damages, and each party hereby waives any right to seek or recover punitive damages with respect to any Dispute resolved by arbitration. Except as required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right.

**Waiver of Jury Trial.** YOU AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU ARE WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION AND THAT YOU MAY BRING CLAIMS AGAINST MYCARDIO ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY ARBITRATION OR OTHER ACTION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.

**Waiver of Class or Consolidated Actions.** USERS AND MYCARDIO AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither Users nor MyCardio is entitled to arbitration, and all claims and disputes will be resolved pursuant to the exclusive venue section of this Section 22.

**Opt-Out.** Users have the right to opt out of the provisions of this Section by sending written notice of User's decision to opt out to the address in Section 26 postmarked within thirty (30) calendar days of first accepting this Agreement. Users must include (i) the User's name and residence address, (ii) the email address and/or telephone number associated with the User's account, and (iii) a clear statement that User wants to opt out of this Agreement's arbitration provisions.

**Exclusive Venue.** If a User sends an opt-out notice or in any circumstances where the foregoing arbitration

agreement permits either User or MyCardio to litigate any dispute arising out of or relating to the subject matter of this Agreement in court, then the foregoing arbitration agreement will not apply to such User or MyCardio, and such User and MyCardio agree that any judicial proceeding will be brought in the state or federal courts located in (or with jurisdiction over) Denver, Colorado, USA.

**Governing Law.** This Agreement shall be exclusively governed by the laws of the State of Colorado without regard to conflicts or choice of law rules or principles.

**Survival.** This arbitration agreement will survive the termination of a User's relationship with MyCardio.

### **23. WAIVERS**

The failure of MyCardio at any time or times to enforce any provisions of this Agreement or to require User's performance of any provisions hereof shall in no way be construed to be a waiver of this Agreement or the right of MyCardio thereafter to enforce each and every provision in accordance with the terms of this Agreement.

### **24. ENTIRE AGREEMENT**

This Agreement and the documents referenced herein contain the complete agreement between each User and MyCardio with respect to the subject matter hereof and thereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written, between such User and MyCardio with respect to such subject matter.

### **25. SEVERABILITY**

If any provision(s) of the Agreement is found by a court of competent jurisdiction to be contrary to law, then such provision(s) will be construed, as nearly as possible and to the maximum extent permissible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

### **26. CONTACT INFORMATION**

All questions concerning this Agreement shall be directed to:

MyCardio Customer Service  
3200 E Cherry Creek South Dr, Suite 540  
Denver, CO 80209, USA  
Email: [support@sleepimage.com](mailto:support@sleepimage.com)  
Telephone: +1 888-975-7464

SleepImage® is a registered trademark of MyCardio LLC.