TERMS OF USE AGREEMENT
SleepImage
Date of Last Revision: March 8, 2021

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 ("Agreement") that governs the access and use of (i) the www.SleepImage.com website and its content (including, without limitation, any subdomains thereof) (the “Website”); (ii) the related mobile application and its content to be used by patients (the “App”); and (iii) MyCardio’s FDA1-cleared software as a medical device technology (the “Technology”). The Website, App, and Technology are collectively referred to as the “SleepImage Offerings.”

The Technology is intended for use by or on the order of 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 for health and wellness evaluation and clinical decisions. Patients under the care of a healthcare professional are referred to as “Patients.” The healthcare professionals that use the Technology must have a registered account and are referred to as “Clinicians”. "Users" means, collectively, visitors to the Website, Patients, and Clinicians.

THIS IS A LEGAL AGREEMENT BETWEEN AND AMONG USERS AND MYCARDIO, AND GOVERNS THEIR 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 engaging with the SleepImage Offerings, all Users consent to the terms and conditions herein and are bound by this Agreement and MyCardio’s Privacy Policy and consent to allow MyCardio to communicate with Clinicians and Patients electronically regarding the SleepImage Offerings. If you are a representative of a legal entity that is accepting this Agreement for use of the Technology by multiple individuals at your entity, you represent and warrant that you have all necessary rights and authority to accept this Agreement on behalf of your legal entity. If you do not agree to this Agreement, do not use the SleepImage Offerings.

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

Clinicians and Patients 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 service to which such warnings, recommendations, precautions and user manuals relate. Clinicians and Patients are responsible for the use of the SleepImage Offerings and will only use the SleepImage Offerings based on the intended use, follow instructions from user manuals and follow all privacy policies or rules in accordance with laws and regulations of the United States, and in accordance with the laws and regulations of their local jurisdiction. The SleepImage Offerings

1 United States Food and Drug Administration
are provided as an English only version. Clinicians and Patients are responsible for ensuring that they understand the information in the language provided, the safety of the Clinicians and Patients is guaranteed, and they agree with using the language provided. MyCardio enables Clinicians to get access to information about sleep data of their Patients for health and wellness and enables Clinicians to share this information via the SleepImage Offerings. The Technology is cleared by the FDA, which means that it can only be available for purchase by Clinicians who are licensed healthcare providers.

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

2 PRECAUTIONS
NONE OF THE SLEEPIMAGE OFFERINGS ARE INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. CONTENT FOUND ON OR THROUGH THE SLEEPIMAGE OFFERINGS IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO REPLACE THE RELATIONSHIP BETWEEN PATIENTS AND THEIR CLINICIAN, PHYSICIAN OR OTHER MEDICAL PROVIDER. 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. Patients should always consult with their clinician before making any lifestyle changes based on the results of a SleepImage study or if Patients have any questions regarding a medical condition. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING READ ON OR THROUGH THE SLEEPIMAGE OFFERINGS. 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 to work with the SleepImage Offerings. We are not responsible for any health problems that may result from changes made as a result of the use of the SleepImage Offerings and agree that—as between Clinicians, Patients and MyCardio—any changes made are at the Clinicians’ and Patients’ own risk.

THE SLEEPIMAGE OFFERINGS MAY OR MAY NOT INCLUDE A MEDICAL DEVICE, THE USE OF WHICH IS RESTRICTED UNDER LOCAL LAW TO CLINICIANS OR PERSONS ACTING ON THE ORDER OF A CLINICIAN. THE SLEEPIMAGE OFFERINGS 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 SLEEPIMAGE OFFERINGS 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 the terms and conditions related to the SleepImage Offerings and this Agreement from time to time. A link to the most current Agreement will be available on the Website, and we will indicate the date of the “Latest Update” of such terms and conditions. MyCardio may additionally, but is not required to, place a special notice on the SleepImage Offerings or communicate significant changes by email. Users’ continued use of the SleepImage Offerings following the posting of such changes constitutes their acceptance thereof. If Clinicians or Patients decide not to continue use of the SleepImage Offerings due to a modification of this Agreement or the
SleepImage Offerings, Clinicians and Patients will notify MyCardio by email at support@sleepimage.com. Users will continue to be bound by the Agreement and Privacy Policy that were in effect as of the termination date.

4 PASSWORD AND REGISTRATION
In order to use the SleepImage Offerings, Clinicians will be required to create an account and Patients will be required to use a unique system generated random patient ID and their date of birth to use the App. Clinicians and Patients, as applicable, will be required to provide MyCardio with certain personal information and financial information. Clinicians and Patients agree to supply accurate information to MyCardio when requested, and to update that information if and when it changes. Clinicians will be required to select a unique username and password (“Clinician Login Information”), and Patients will need to submit the random, unique, system-generated patient ID, provided to them by their Clinician, along with their date of birth (“Patient Verification Information”). Clinicians and Patients are responsible for maintaining the confidentiality of their respective Clinician Login Information and Patient Verification Information, and Clinicians and Patients will be responsible for all uses of their respective Clinician Login Information and Patient Verification Information, whether or not authorized by the Clinician or Patient. In the event that Clinicians or Patients become aware of or reasonably suspect any breach of security including, without limitation, any loss, theft or unauthorized disclosure of their respective Clinician Login Information or Patient Verification Information, Clinicians and Patients agree to immediately notify MyCardio via the “Contact Us” page of the Website or email: 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 or Patient’s account in any unauthorized or fraudulent manner, or for any third party’s fraudulent use or misuse of information submitted by Clinicians or Patients.

5 INTELLECTUAL PROPERTY RIGHTS
We will have access and will need to use data provided by Users (“Data”). Users hereby grant to MyCardio a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license, with the right to sublicense, to reproduce, distribute, transmit, publicly perform, publicly display, digitally perform, modify, create derivative works of, and otherwise use and commercially exploit any Data they submit to MyCardio in any media now existing or hereafter developed, including without limitation on websites, in audio format, and in any print media format. 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: (a) will not infringe any third party’s copyright, patent, trademark, trade secret or other proprietary rights; (b) will not violate any law, statute, ordinance or regulation; (c) 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 (d) will not violate any third party’s rights of publicity or privacy. Data does not include Protected Health Information, which is addressed in Section 13 below.

Subject to and conditioned on the Clinician’s acceptance of and adherence to this Agreement, MyCardio grants Clinicians a non-exclusive, revocable, limited, personal and nontransferable license to use the Technology and App solely for their intended purpose (the “License”). The Technology and 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 App except as necessary to view the content therein for the benefit of Patients. All rights in the SleepImage Offerings not expressly...
granted are retained. If Clinicians violate the Agreement, permission to use the Website and Technology automatically terminates, and Clinicians must immediately cease use of the Website and Technology.

Subject to and conditioned on the Patients’ acceptance of and adherence to this Agreement, MyCardio grants Patients a non-exclusive, revocable, limited, personal and nontransferable license to use the Website and Technology automatically terminates, and Clinicians must immediately cease use of the Website and Technology.

MyCardio grants Patients a non-exclusive, revocable, limited, personal and nontransferable license to use the App, and nothing else, solely for its intended purpose. The App and any work product created by or on behalf of MyCardio in connection to the App shall at all times remain the property of MyCardio, and Patients shall have no right, title, or interest therein except as expressly set forth in this Agreement. A Patient may not reproduce, distribute, modify or create derivative works of, publicly display, or commercially exploit any part of the App except as necessary to view the content therein for such Patient’s personal, non-commercial use. All rights in the App that are not expressly granted to Patients are retained. If Patients violate the Agreement, permission to use the App automatically terminates and Patient must immediately cease use of the App.

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, or (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. Users shall not use the SleepImage Offerings to develop any product, service or application having the same primary function as the SleepImage Offerings. Users agree that they shall not use any automated device or process, such as a “bot” or a “spider,” to copy or extract information or content from the SleepImage Offerings.

6 INFRASTRUCTURE REQUIREMENTS

Users acknowledge and understand that certain physical and non-physical goods need to be purchased or obtained in order to use the SleepImage Offerings. Patients, whether independently or through a Clinician, will need to obtain a third-party device in order to transmit data to the SleepImage Offerings. Internet access, certain software and hardware, Bluetooth capability, and smartphone technology are also needed 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.

7 DISCLAIMER

MyCardio is not responsible for any third-party device manufactured or supplied by a person or entity other than MyCardio (a “Third Party Device”). MyCardio makes no representation or warranty regarding any Third Party Device, and all such Third Party Devices are provided “AS IS” and “WITH ALL FAULTS.” To the extent that any warranties for Third Party Devices are provided to MyCardio, MyCardio shall use commercially reasonable efforts to pass such warranties through to the Clinician or Patient, to the extent that MyCardio is able to do so.

WITHOUT LIMITATION TO THE FOREGOING, 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.

8 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. If Clinicians or Patients 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 SleepImage Offerings. Users agree that MyCardio will not be liable to Users or to any third party for any such change, suspension or discontinuance.

9 LIMITATION OF LIABILITY
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 SHALL NOT EXCEED IN THE AGGREGATE THE SPECIFIC FEES PAID BY USERS TO MYCARDIO FOR THE SLEEPIMAGE OFFERING IN THE TWELVE MONTHS PRECEDING THE APPLICABLE INCIDENT OUT OF WHICH THE LIABILITY 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 ANY USER OF THE SLEEPIMAGE OFFERINGS. 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.

10 INDEMNITY
Upon MyCardio’s request, all Users of the SleepImage Offerings 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 claim, loss, damage, or demand, including reasonable attorneys’ fees, made by
any third party due to or arising out of the indemnifying party’s use of the SleepImage Offerings, breach of this Agreement by the indemnifying party (or anyone using Clinician Login Information or Patient Verification Information received other than as a result of MyCardio’s negligence or willful misconduct) or violation of any law or the rights of a third party by the indemnifying party (or anyone using Clinician Login Information or Patient Verification Information received other than as a result of MyCardio’s negligence or willful misconduct).

11 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.

12 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 www.SleepImage.com. 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.

13 BUSINESS ASSOCIATE AGREEMENT
MyCardio may be a business associate (as defined by HIPAA) to Clinicians that are covered entities under HIPAA (for purposes of this Section 13, a “covered entity”). This Section 13, along with MyCardio’s Privacy Policy, shall govern MyCardio’s use and disclosure of Protected Health Information (“PHI”) and dictate covered entity’s and MyCardio’s obligations regarding PHI. This Section 13 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 13 and any other agreement or provision between a covered entity and MyCardio, this Section 13 shall control. Unless otherwise expressly defined in this Section 13, all capitalized terms in this Section 13 will have the meanings set forth in the Agreement or in 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”).

MyCardio as Business Associate. This Section 13 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 13.

Use and Disclosure. MyCardio may Use or Disclose PHI to provide services for covered entities as specified in the 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 13 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 13.

Safeguards. 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 13.
Notice of Impermissible Uses and Disclosures. MyCardio will notify covered entity of any unauthorized Use or Disclosure of PHI of which it becomes aware, including any Breaches of Unsecured PHI.

Notice of Security Incidents. MyCardio will notify covered entity of any successful Security Incidents on a quarterly basis. MyCardio and covered entity acknowledge and agree that no further notice will be provided to covered entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to 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.

Subcontractors. 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 13.

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

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

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

Internal Records. 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 covered entity’s compliance with HIPAA.

Covered Entity Obligations. Covered entity is responsible for implementing privacy and security safeguards in order to protect PHI. 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. Covered entity will not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause MyCardio to violate this Section 13 or any applicable law. Covered entity will not request or cause MyCardio to make any Use or Disclosure of PHI in a manner that does not comply with HIPAA or this Section 13. To the extent MyCardio is to carry out an obligation of covered entity under the HIPAA privacy rule, MyCardio will comply with the requirements of the Privacy Rule that apply to covered entity in the performance of such obligation.

Effect of Termination. Once the relationship between 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 13. MyCardio may maintain one (1) copy of such information for its internal purposes and legal obligations.

14 THIRD PARTY CONTENT
The SleepImage Offerings 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.

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

16 UNLAWFUL ACTIVITY
MyCardio reserves the right to investigate complaints or reported violations of the 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 your profile, email addresses, usage history, posted materials, IP addresses, and traffic information.

17 EXPORT
The SleepImage Offerings and all related technical data are subject to U.S. export control laws (“Export Control Laws”). The SleepImage Offerings 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 and Patients 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 and Patients warrant, represent and covenant that (a) Clinicians and Patients shall not export, re-export or otherwise use the SleepImage Offerings, 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 and Patients may contact the U.S. Department of Commerce, State and Treasury for guidance as to the applicable licensing requirements and other restrictions.

18 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, at its sole discretion, may terminate, remove or alter the SleepImage Offerings at any time and for any reason or no reason.

Users may cancel their license to any or all of the SleepImage Offerings, 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 RELATED TO THE SLEEPIMAGE OFFERINGS.

19 ASSIGNMENT
Without MyCardio’s prior written consent, Users shall not assign, transfer, pledge, or otherwise transfer this Agreement. MyCardio may assign or novate this Agreement or delegate and/or subcontract its duties, in whole or part, without notice. Any attempted assignment contrary to this Agreement shall be void.
**20 ARBITRATION, JURY WAIVER, AND CLASS ACTION WAIVER**

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.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between authorized representatives who have authority to settle the controversy. If good faith negotiations do not lead to an amicable resolution within thirty (30) business days of commencing negotiations, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The tribunal will consist of one arbitrator. The arbitration will take place in the city and country where MyCardio’s headquarters is located. If this location is not feasible, the arbitration shall occur in a location of MyCardio’s choosing. 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.

**Waiver of Jury Trial.** USERS AND MYCARDIO WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. Users and MyCardio are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between Users and MyCardio over whether to vacate or enforce an arbitration award, USERS AND MYCARDIO WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

**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 20.

**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 24 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, and/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 either party, and Users and MyCardio agree that any judicial proceeding will be brought in the state or federal courts located in Denver, Colorado, USA.

**Governing Law.** This Agreement shall be 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.

**21 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.
22 ENTIRE AGREEMENT
This Agreement and the documents referenced herein contain the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written, between the parties with respect to such subject matter.

23 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.

24 CONTACT INFORMATION
All questions concerning this Agreement shall be directed to:
MyCardio Customer Service
3003 E 3rd Ave, Suite 201
Denver, CO 80216, USA
Email: support@sleepimage.com

SleepImage® is a registered trademark of MyCardio LLC.