

# Terms of Use

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## ZERIGO HEALTH, INC.

**Last Revised:** [7/22/2022]

Thank You for visiting our website which is owned and operated by or on behalf of Zerigo Health, Inc., a Delaware corporation with a place of business in San Diego, CA, (“**Zerigo**”, “**We**”, “**Us**”, or “**Our**”) These Terms of Use (“**Terms**”) govern your use of:

- Our website available at zerigohealth.com and related sub-domains and subsites (together with any successor site, each, a “**Zerigo Website**”);
- Our related mobile device application (the “**Zerigo Mobile App**”);
- Any products offered through the Zerigo Website, including the Zerigo Home Phototherapy Device (the “**Zerigo Device**” and together with any other product offered through the Zerigo Website, the “**Zerigo Products**”);
- Any services offered in connection with Your use of the Zerigo Products, including the services of the ZerigoCare Guides (the “**Zerigo Services**”); and
- Any offering combining Zerigo Devices, Zerigo Products and/or Zerigo Services (individually and collectively the “**Zerigo Solution**”).

The above websites, applications, products, services and solutions are collectively referred to herein as the “**Services**”.

These Terms are entered into by and between Zerigo and any individual or entity using or accessing any Service (“**Customer**”, “**You**”, and “**Your**”). If You use the Services on behalf of a company or other entity then “You” includes You and that entity, and You represent and warrant that (a) You are an authorized representative of the entity with the authority to bind the entity to these Terms, and (b) You agree to these Terms on the entity's behalf.

Please read these Terms carefully. These Terms describe Your responsibilities, Zerigo’s liability, and the liability of third parties related to the Services. All users of the Services must accept and comply with the terms and conditions set forth herein. **BY CLICKING A BOX INDICATING ACCEPTANCE OF THESE TERMS, PLACING AN ORDER FOR ANY ZERIGO PRODUCT, ZERIGO SERVICE AND/OR ZERIGO SOLUTION, OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU ACCEPT ALL OF THE PROVISIONS OF THESE TERMS AND REPRESENT TO US THAT YOU ARE LEGALLY COMPETENT TO ENTER INTO AND AGREE TO THESE TERMS. IF YOU DO NOT ACCEPT THESE TERMS, THEN YOU ARE NOT AUTHORIZED TO USE THE SERVICES.**

THESE TERMS INCLUDE (1) AN ARBITRATION PROVISION; AND (2) A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST US. YOU HAVE THE RIGHT TO OPT-OUT OF THE ARBITRATION PROVISION AS FURTHER EXPLAINED IN SECTION 15 (ARBITRATION AND CLASS ACTION WAIVER).

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

**Zerigo Phone Number:** (877) 520-5697

or [support@zerigohealth.com](mailto:support@zerigohealth.com).

**ACHC Phone Number:** (855) 973-2242

or [customerservice@ACHC.org](mailto:customerservice@ACHC.org).

**CMS /Medical Service Center:** (800) 633-4227

or [www.medicare.gov](http://www.medicare.gov)

**Calif. Dept. of Health Information:** (916) 558-1784 (option 4)

or [www.cdph.ca.gov](http://www.cdph.ca.gov)

Telephone calls with Zerigo may be recorded or monitored.

## **1. ADDITIONAL TERMS**

1.1 Privacy Policy. Additionally, Zerigo's Privacy Policy and Notice of Privacy Practices (collectively, the "**Privacy Policy**") explain how we collect, use, and disclose Your information in connection with the Services. By using the Services, You agree that Zerigo may collect, use, and disclose such information, including Your health-related information (collectively, "**Information**"), in accordance with the Privacy Policy.

1.2 Program Sponsor. To the extent You receive the Services through Your employer, Your family member's employer, or other sponsoring organization (each, a "**Program Sponsor**"), You understand that Your use of the Services may be subject to additional terms as set forth in

the agreement between Zerigo and the Program Sponsor and that per such agreement, we may provide Your Information to Your Program Sponsor, including information regarding whether, and to what extent You have participated in the Services.

## **2. WHO MAY USE THE SERVICES**

You must be at least 18 years of age and a resident of the United States of America to use the Services. Minors under the age of majority in their jurisdiction but that are at least 13 years of age are only permitted to use the Services if the minor's parent or guardian accepts these Terms on the minor's behalf prior to use of the Services. Children under the age of 13 are not permitted to use the Services.

## **3. REGISTRATION.**

**3.1 User Account.** In order to use certain Services (including to register a Zerigo Product), You must register an account on the Services ("**User Account**"). If You are the parent or guardian of a person under the age of 18, and You decide to make the Services available to such minor, You may establish the User Account in Your name for the benefit of such minor. You are responsible for providing and maintaining up-to-date and accurate contact information, including Your telephone number and email address, and other information on Your User Account.

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

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

#### 4. **CONSENT TO EMAIL AND TEXT MESSAGING**

Zerigo may contact You through SMS/MMS text messaging or e-mail, which allows Zerigo to efficiently exchange information with patients using the Services. You understand that communications, including those involving personal health information, between You and

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

## **5. TERMS REGARDING USE OF ZERIGO DEVICES**

5.1 Physician Consultation. You agree that before using any Zerigo Device, You will consult with a licensed physician or other licensed health care provider who is authorized to prescribe the medical device for Your use and to discuss whether the Zerigo Device is appropriate for You.

5.2 **PRESCRIPTION REQUIRED BEFORE SHIPMENT. A VALID PRESCRIPTION MUST BE OBTAINED FROM A LICENSED PHYSICIAN OR OTHER QUALIFIED LICENSED HEALTH CARE PROFESSIONAL IN ORDER FOR YOU, OR THE PERSON FOR WHOM YOU ARE ACTING, TO ACQUIRE AND USE THE ZERIGO DEVICE AND YOU UNDERSTAND THAT THE ZERIGO DEVICES AND RELATED SERVICES MAY ONLY BE ACQUIRED AND USED IN THE UNITED STATES OF AMERICA.** Within a reasonable period of time after receipt of a valid prescription, and payment in full for the Zerigo Device and other Zerigo Services ordered, the Zerigo Device will be shipped to You.

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

### 5.3 Mobile Phone Requirements.

You understand and acknowledge that a smart phone with either an Android or iOS operating system capable of accessing the Zerigo Mobile App is required for use of the Zerigo Device. You are responsible for providing the mobile device, wireless service plan, software, Internet connections and/or other equipment or services that You need to download, install, and use the Zerigo Mobile App.

You agree to permit the Zerigo Mobile App to access other software, functions and features of Your smart phone or other authorized device necessary and/or desirable for the operation of the applicable Zerigo Device, including, without limitation, camera, microphone, calendar, messaging, email, audio, video, other mobile applications and/or any other software, function, or feature. Zerigo supports the most current version of the Zerigo Mobile App as well as the two (2) immediately preceding versions. All versions of the Zerigo Mobile App older than the foregoing, will not be supported by Zerigo and users should immediately download the newest version of the Zerigo Mobile App to ensure proper operation of the App.

**5.4 CONSENT TO USE OF ZERIGOCARE GUIDES. An onboarding call with a ZerigoCare Guide shall be completed prior to use of the Zerigo Device. A “ZerigoCare Guide” is a member of Zerigo who trains and educates Zerigo Device users on (i) home phototherapy with the Zerigo Solution, (ii) the use of the Zerigo Device, (iii) the use of the Zerigo Mobile App, and (iv) the operation of the Zerigo Solution. ZerigoCare Guides are available by telephone and through electronic means to provide technical support in connection with Your use of the Zerigo Device and/or the Zerigo Mobile App. In addition, ZerigoCare Guides encourage You to comply with the treatment plan prescribed by Your physician or other health care provider. ZerigoCare Guides (a) have access to Your**



health information collected and stored by Zerigo, (b) may collect and store Your health information You provide, and (c) may communicate with, collect, and store such information You provide and/or disclose such information to Your physician and/or other healthcare provider as more fully described in the [Privacy Policy](#). You may contact a ZerigoCare Guide to discuss any questions or concerns in connection with the matters described above by way of the toll-free telephone number posted on the Zerigo Website and/or the Zerigo Mobile App or through messaging that may be available on the Zerigo Mobile App and/or the Zerigo Website.

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

**5.5. READING AND COMPLYING WITH THE INFORMATION IN THE ZERIGO DEVICE PATIENT GUIDE.**

**After You obtain a prescription for, and when You receive, the Zerigo Device, You will receive and/or have access to the Zerigo Device Patient Guide (the “Patient Guide”). You agree to read the Patient Guide in its entirety and comply with all of the instructions that are contained within it. If there is anything in the Patient Guide that You do not understand, You may contact a ZerigoCare Guide by phone or through the messaging feature on the Zerigo Mobile App.**

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

**5.7. Progress Checks and Photos When Using the Zerigo Device. As more fully explained in the Patient Guide, use of the Zerigo System and the Zerigo Device requires periodic progress checks, including Your feedback, and photos, and these progress checks are important for Your healing progress and for maintaining control of Your condition. Your progress, including photos, is recorded,**

and can be viewed by You, Your physician, and Your *ZerigoCare* Guides.

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

**5.9. ZERIGO DEVICE WARNINGS AND CAUTIONS.**

- **WARNING: USE OF THE ZERIGO DEVICE, OTHER THAN AS INSTRUCTED, MAY RESULT IN HAZARDOUS UV LIGHT EXPOSURE. USE OF THE ZERIGO DEVICE MAY CAUSE THE SKIN TO BURN IF IT IS OVEREXPOSED. IF AFTER USE, BLISTERS ARE VISIBLE, IT MAY BE A SIGN OF A SECOND-DEGREE BURN AND YOU MUST REPORT IT TO YOUR PHYSICIAN AND/OR OTHER HEALTH CARE PROVIDER IMMEDIATELY.**

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

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

## 6. **USE OF DIGITAL SERVICES.**

6.1 Limited License. Subject to the terms and conditions of these Terms, Zerigo grants You a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, limited license to access and use the software provided to You as part of the Services and to download a single copy of the Zerigo Mobile App solely for Your personal use and for no other purposes.

6.2 Restrictions. You are expressly prohibited from using the Services for any or the following purposes and/or activities:

(a) using software robots, crawlers, spiders, data mining or

any other data gathering or extraction tools or methods for any purpose;

(b) obtaining (directly or indirectly) or attempting to obtain contact information, account information, personal information, personally identifiable information, health care information, protected health information and/or any other information or data about any user of the Services, and/or any actual or prospective Zerigo customer;

(c) impersonating another person or entity's identity or conveying or posting any incomplete, false, or misleading information about You or Your affiliation with any person or entity;

(d) disclosing any personal information, personally identifiable information, health-related information, protected health information and/or any other information about any other person or entity without their express consent;

(e) conveying or posting anything on the Services that Zerigo determines, in its sole discretion, to be abusive, harassing, obscene or objectionable content in any way;

(f) using the Services or using any Zerigo Product for any unlawful purposes or to engage in any unlawful conduct;

(g) obtaining any trade secrets, confidential, or proprietary information from or regarding Zerigo;

(h) introducing any viruses, trojan horses, worms, logic bombs or other content or computer code that are or seek to be malicious or technologically harmful into Zerigo systems;

(i) access or use the Services in any manner that could disable, overburden, damage, disrupt or impair the

Services or interfere with any other party's access to or use of the Services or use of any device, software, computer code or routine that causes the same result;

(j) framing or utilizing framing techniques to enclose the Services or any portion thereof;

(k) modifying, downloading, or indexing any of the Services (except caching or as necessary for viewing);

(l) copying, distributing, modifying, adapting, translating, or creating any derivative works based upon all, or any portion, of the Services;

(m) using any metadata, meta tags, or any other hidden text utilizing Zerigo's name, trade names, trademarks, service marks and/or trade dress;

(n) decompiling, disassembling, reverse engineering, or otherwise attempting to derive any source code from the Services or any Zerigo Product;

(o) engaging in direct, indirect, contributory, and/or joint infringement of, and/or inducing a third party to infringe upon, any patents owned by, and/or exclusively licensed to, Zerigo;

(p) interfering with, engaging in theft of, and/or gaining unauthorized access to the Services and/or any other devices, technologies, hardware, or software used in connection with the Services;

(q) removing, defacing, obscuring, or altering any copyright, patent, trademark, or other intellectual property rights notices affixed to, or provided in connection with, the Services or any Zerigo Product;

(r) creating or attempting to create a substitute or similar service or product offering through the use of, or access

to the Services;

(s) compromising the safety and essential performance of the Services and/or any other devices, technologies, hardware and/or software used in connection with the Services;

(t) rendering the Services and/or data, systems, servers, and other applications inaccessible to authorized users; and/or

(u) anything other than as expressly permitted under these Terms.

## **7. INTELLECTUAL PROPERTY RIGHTS.**

7.1. Ownership of the Services. All copyrightable content and other materials contained within or on, or used in connection with, the Services including, but not limited to, all intellectual property and technology of the Zerigo Devices and the text, graphics, logos, the “look and feel” of the Services, button icons, pictures, images, audio recordings and files, video recordings and files, software, data, routines, documentation, literary works, and compilations are owned by, or licensed by third parties to, Zerigo and are protected by copyright, trademark and other intellectual property laws. All patent rights, copyrights, trademark rights, trade dress rights, trade secret rights and other intellectual property and other rights applicable to the Services and any Zerigo Products are owned by Zerigo and/or its licensors, and as between You and Zerigo, Zerigo retains ownership of all such



rights.

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

7.3 User Submissions. It is the policy of Zerigo to decline unsolicited suggestions and ideas. Notwithstanding this policy, with regard to unsolicited suggestions and ideas, inclusive of any inquiries, feedback, suggestions, ideas or other information or content that You provide to Zerigo through the Services or otherwise by e-mail, messaging or other written communication, or transmitted or delivered orally and/or in writing by any other means, including product reviews and/or testimonials (hereinafter referred to as "**User Submission(s)**"), will be treated as non-proprietary and non-confidential. By communicating, transmitting or posting any User Submissions to Zerigo, through or on the Services or by any other means, You hereby grant Zerigo a non-exclusive, royalty-free, perpetual, assignable, transferable, irrevocable, and fully sub-licensable right to use, reproduce, modify, adapt,

publish, sell, assign, translate, create derivative works from, make, use, offer to sell, sell, distribute and display any User Submissions (including the contents thereof) in any form, media, or technology, whether now known or hereafter developed, alone or as part of other works.

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

9. **USE OF THE ZERIGO MOBILE APP.**

9.1 Push Notifications. You may receive push notifications, local client notifications, text (SMS/MMS) and picture messages, alerts, emails, or other types of

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

9.2 Apple Terms. The following terms and conditions apply to You only if You are using the Zerigo Mobile App from the Apple App Store. To the extent the other terms and conditions of these Terms are less restrictive than, or otherwise conflict with, the terms and conditions of this paragraph, the more restrictive or conflicting terms and conditions in this paragraph apply, but solely with respect to the Zerigo Mobile App from the Apple App Store. You acknowledge and agree that these Terms are solely between You and Zerigo, not Apple, and that Apple has no responsibility for the Zerigo Mobile App or content

thereof. Your use of the Zerigo Mobile App must comply with the App Store's applicable terms of use. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Zerigo Mobile App. In the event of any failure of the Zerigo Mobile App to conform to any applicable warranty, You may notify Apple, and Apple will refund the purchase price, if any, for the App to You. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Zerigo Mobile App, and any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty will be solely governed by these Terms. You and Zerigo acknowledge that Apple is not responsible for addressing any claims of Yours or any third party relating to the Zerigo Mobile App or Your possession and/or use of the Zerigo Mobile App, including, but not limited to: (a) product liability claims, (b) any claim that the App fails to conform to any applicable legal or regulatory requirement, and (c) claims arising under consumer protection or similar legislation. You and Zerigo acknowledge that, in the event of any third-party claim that the Zerigo Mobile App, or Your possession and use of the Zerigo Mobile App, infringes upon any third party's intellectual property rights, Zerigo, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms. You must comply with applicable third-party terms of agreement when using the Zerigo Mobile App. You and

Zerigo acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms as they relate to Your use of the Zerigo Mobile App, and that, upon Your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against You as a third-party beneficiary thereof.

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

11. **LIMITED ZERIGO PRODUCTS WARRANTY.**

YOU EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT (A) ZERIGO'S PRODUCTS, INCLUDING THE ZERIGO DEVICE AND ITS ACCESSORIES, ARE SUBJECT TO A LIMITED WARRANTY IN FAVOR OF THE ORIGINAL BUYER OF THE ZERIGO DEVICE ("BUYER") ONLY TO BE FREE FROM MANUFACTURING DEFECTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF SHIPMENT, AND (B) THE SOLE AND EXCLUSIVE REMEDY SHALL BE FOR ZERIGO TO REPAIR OR REPLACE THE DEFECTIVE ZERIGO DEVICE

AND/OR OTHER ZERIGO PRODUCT OR COMPONENT THEREOF PURCHASED BY BUYER, PROVIDED THAT BUYER GIVES WRITTEN NOTICE TO ZERIGO OF BUYER'S CLAIM OF DEFECT AND BUYER COMPLIES WITH ZERIGO'S INSTRUCTIONS FOR RETURNING THE DEFECTIVE PRODUCT TO ZERIGO OR ZERIGO'S AUTHORIZED AGENT. ZERIGO MAY OFFER BUYER THE OPPORTUNITY TO EXTEND THE EXPIRATION DATE OF THIS LIMITED REPAIR OR REPLACEMENT WARRANTY FOR AN ADDITIONAL FEE AS PUBLISHED ON ZERIGO'S WEBSITE OR AS OTHERWISE COMMUNICATED IN WRITING TO BUYER. ZERIGO'S DETERMINATION AS TO WHETHER A MANUFACTURING DEFECT EXISTS AND IS COVERED BY THIS LIMITED WARRANTY SHALL BE FINAL AND BINDING. IF THE FAILURE OF OPERATION IS DEEMED BY ZERIGO TO BE OUTSIDE OF WARRANTY COVERAGE, ZERIGO WILL CHARGE BUYER FOR REPAIR OR REPLACEMENT.

## **12. DISCLAIMER**

EXCEPT AS SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND ZERIGO MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESSED, OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR TREATMENT OUTCOME, WITH RESPECT TO SERVICES, EXCEPT TO THE EXTENT THAT APPLICABLE LAW PRECLUDES DISCLAIMER OF ANY SUCH IMPLIED WARRANTIES. ZERIGO HEREBY DISCLAIMS ALL EXPRESS

OR IMPLIED WARRANTIES AND GUARANTIES TO THE FULLEST EXTENT NOT PROHIBITED BY ANY APPLICABLE LAW. WE MAKE NO WARRANTY OR REPRESENTATION AND DISCLAIM ALL RESPONSIBILITY AND LIABILITY FOR: (A) THE COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, SECURITY OR RELIABILITY OF THE SERVICES; (B) ANY HARM TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM YOUR ACCESS TO OR USE OF THE SERVICES; (C) THE OPERATION OR COMPATIBILITY WITH ANY OTHER APPLICATION OR ANY PARTICULAR SYSTEM OR DEVICE; (D) WHETHER THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE OR ERROR-FREE BASIS; AND (E) THE DELETION OF, OR THE FAILURE TO STORE OR TRANSMIT, YOUR DATA AND OTHER COMMUNICATIONS MAINTAINED BY THE SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US OR THROUGH THE SERVICES, WILL CREATE ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY MADE HEREIN

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

have read on or about the Services.

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

13. **LIMITATION OF LIABILITY.** YOU EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE ON BEHALF OF YOURSELF, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY FOR WHOM YOU ARE ACTING THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ZERIGO, ITS AFFILIATES, AND THEIR DIRECTORS, MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, ATTORNEYS, PARTNERS, LICENSORS AND LICENSEES WILL NOT BE RESPONSIBLE OR LIABLE TO YOU, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY (WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY), UNDER ANY CIRCUMSTANCES, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL OR



EQUITABLE THEORY, EVEN IF ZERIGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ALSO AGREE THAT ZERIGO IS NOT RESPONSIBLE FOR ANY DAMAGES OR OTHER HARM YOU, YOUR MINOR CHILD AND/OR ANY OTHER PERSON OR ENTITY SUFFERS AS A RESULT OF ANY ACTS, OMISSIONS AND/OR HEALTH CARE DECISIONS OF ANY PHYSICIAN OR OTHER HEALTH CARE PROVIDER. FURTHER, YOU ACKNOWLEDGE AND AGREE THAT THERE ARE RISKS INHERENT TO THE TRANSMISSION OF PERSONAL INFORMATION AND/OR HEALTH CARE INFORMATION ELECTRONICALLY OVER THE INTERNET AND STORED ON ANY COMPUTER, SERVER, OR OTHER ELECTRONIC MEMORY DEVICE, AND THAT ZERIGO IS NOT RESPONSIBLE FOR ANY LOSSES, CORRUPTION, DAMAGE, OR HARM TO YOU, YOUR INFORMATION, AND/OR YOUR CONFIDENTIALITY OR PRIVACY RESULTING FROM ANY UNAUTHORIZED DATA BREACH. YOU ACKNOWLEDGE ON BEHALF OF YOURSELF, YOUR MINOR CHILD AND/OR ANY PERSON OR ENTITY FOR WHOM YOU ARE ACTING THAT IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF ZERIGO TO YOU, YOUR MINOR CHILD, ANY PERSON FOR WHOM YOU ARE ACTING, AND ANY OTHER PERSON OR ENTITY FOR ANY CLAIM OR CLAIMS IN THE AGGREGATE EXCEED ONE THOUSAND DOLLARS (\$1,000.00) OR THE AMOUNT PAID BY YOU TO ZERIGO FOR THE SERVICES (INCLUDING THE ZERIGO DEVICE), WHICHEVER IS GREATER.

14. **TERMINATION.** Zerigo reserves the right to terminate (i) Your access to the Services, and/or (ii) Your User Account and/or relationship with Zerigo, with or without cause in Zerigo's sole discretion. You will be given written e-mail notice of such termination; sent to the last known e-mail address that You have provided to Zerigo. Zerigo also reserves the right to refuse to provide any product or service to You without cause in Zerigo's sole discretion. You may terminate Your User Account and/or relationship with Zerigo in accordance with the procedures on the Services. Upon termination of (i) Your access to the Services, and/or (ii) Your User Account and/or relationship with Zerigo, You shall immediately cease accessing and using the Services. Upon such termination, all provisions of these Terms shall remain in full force and effect, excluding the provisions in which Zerigo has granted You any licenses or access to the Services, which shall thereafter be terminated.

15. **ARBITRATION AND CLASS ACTION WAIVER**

THIS SECTION INCLUDES AN ARBITRATION AGREEMENT AND AN AGREEMENT THAT ALL CLAIMS WILL BE BROUGHT ONLY IN AN INDIVIDUAL CAPACITY (AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE PROCEEDING). **PLEASE READ IT CAREFULLY.** YOU MAY OPT OUT OF THE ARBITRATION AGREEMENT BY FOLLOWING THE OPT OUT PROCEDURE DESCRIBED BELOW.

15.1. Informal Process First. You agree that in the event

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

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

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

termination of these Terms.

If You wish to begin an arbitration proceeding, after following the informal dispute resolution procedure, You must send a letter requesting arbitration and describing Your claim to Zerigo at: 12651 High Bluff Drive, Suite 300, San Diego CA 92130. The arbitration will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures.

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

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

The arbitrator, and not any federal, state, or local court,

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

**Opt-out: If You are an individual, You may opt out of this arbitration agreement, within thirty (30) days of the first date You access or use the Services, by sending an email to: [support@zerigohealth.com](mailto:support@zerigohealth.com). If you opt-out of these arbitration provisions, Zerigo also will not be bound by them**

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

arbitrator. The parties understand that any right to litigate a claim, case, or grievance in court, to have a judge or jury decide their case, or to be a party to a class or representative action, is waived and that any claims must be decided individually, through arbitration.

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

## 16. **GENERAL PROVISIONS.**

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

16.2 Export Laws. You agree that You will not export or re-export, directly or indirectly the Products or Services and/or other information or materials provided by Zerigo hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license

or other governmental approval at the time of export of such device, software, or data without first obtaining such license, approval or other applicable license exemption or exception. In particular, but without limitation, the Services may not be exported or re-exported (a) into any U.S. embargoed countries or any country that has been designated by the U.S. Government as a "terrorist supporting" country, or (b) to anyone listed on any U.S. Government list of prohibited or restricted parties, including the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Services, You represent and warrant that You are not located in any such country or included on any such list. You also agree that You will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missiles, or chemical or biological weapons. You are responsible for and hereby agree to comply, at Your sole expense, with all applicable United States export laws and regulations.

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

16.4 Miscellaneous. These Terms will inure to the benefit

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



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

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

17. **MODIFICATIONS**. We may modify these Terms at any time in which case we will update the "Last Revised"

date at the top of these Terms . If we make changes that are material, we may use reasonable efforts to attempt to notify You, including by email or placing a prominent notice on the first page of the Website and the Zerigo Mobile App. However, it is Your sole responsibility to review the Terms from time to time to view any such changes. Your continued access or use of the Services after the modifications have become effective will be deemed Your conclusive acceptance of the modified Terms. If You do not agree with the modifications to the Terms, then please do not continue to access or use the Services.

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

**ZERIGO HEALTH, INC.**

12651 High Bluff Drive, Suite 300,  
San Diego CA 92130