

# TERMS OF USE AGREEMENT

Date of Last Revision: February 2, 2015

MyCardio LLC dba SleepImage (“MyCardio”, “we” or “us”) has established this Terms of Use Agreement (“Agreement”) that governs your use, access and/or procurement of the [www.SleepImage.com](http://www.SleepImage.com) website (including, without limitation, any subdomains thereof, the “Website”), including the content on the Website (together with the Website, the “Online Offering”) any recorder device(s) provided to you by or on behalf of MyCardio (each, a “Device”), and any other ancillary products or consumables (such items, together with the Device, the “Goods” and the Goods, together with the Software and Online Offerings, the “Products”) provided or licensed by or on behalf of MyCardio and all services performed by MyCardio in connection with any of the foregoing (the “Services,” and the Services together with the Products, the “SleepImage Offerings”). All information MyCardio collects from you via the Online Offering is subject to our Privacy Policy which can be found at [www.SleepImage.com](http://www.SleepImage.com) and MyCardio’s notice of Privacy Practices Concerning Personal Health Information which can be found at [www.SleepImage.com](http://www.SleepImage.com). By using the Online Offering, you consent to all actions taken by us with respect to your information in compliance with such policies.

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND MYCARDIO AND GOVERNS YOUR USE OF THE SLEEPIMAGE OFFERINGS. The terms “you” and “user” refers to all individuals and entities that access or use any SleepImage Offering.

By your affirmative actions of procuring, registering for, using the SleepImage Offerings or by clicking a box that states you agree to this Agreement (as applicable), you signify your agreement to the terms and conditions herein and are bound by to this Agreement and MyCardio’s Privacy Policy and consent to allow MyCardio to communicate with you electronically regarding the SleepImage Offerings. If you do not agree to this Agreement, do not use the SleepImage Offerings.

The SleepImage Offerings are available for individuals under the age of majority. If you are under the age of 18 or the age of majority in the jurisdiction that you access or use the SleepImage Offerings, or otherwise unable to bind yourself by contract, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it and agree that you are bound by it.

Full use of the SleepImage Offerings requires compatible Products, Internet access, and certain software, and may require periodic updates; and the SleepImage Offerings may be affected by the performance of these factors. You agree that you have carefully read all warnings, recommendations, precautions and user manuals provided to you by MyCardio related to the SleepImage Offerings, or will do so before using the Product to which such warnings, recommendations, precautions and user manuals relate. MyCardio enables users to get immediate, real-time information about their sleep data for general wellness and enables users to share this information with their healthcare providers via the Online Offering, if such users so choose. The Device and Online Offering are FDA-cleared medical devices, which means that it can be available for purchase by clinician users that are licensed healthcare providers, by users that have a prescription from their clinician user. The Device and Online Offering may also be used by users that are using it for general wellness without a prescription.

## 1 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 you and your 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 medical condition. You should always consult with your clinician or physician before changing your sleep, diet or if you have any questions regarding a medical condition. Never disregard professional medical advice or delay in seeking it because of something you have read on or through the SleepImage Offerings. If you think you may have a medical emergency, call your physician or 911 immediately. If you feel discomfort or pain while using the Device, immediately stop using the Device and consult your doctor or clinician. While using the Device under a prescription, you represent that you have received consent from a clinician or your physician to participate in the SleepImage Offerings. We are not responsible for any health problems that may result from changes you make as a result of your use of the SleepImage Offerings, and you agree that—as between you and MyCardio—any changes you make are at your own risk.

A PRODUCT MAY OR MAY NOT INCLUDE A MEDICAL DEVICE, THE USE OF WHICH IS RESTRICTED UNDER LOCAL LAW TO PHYSICIANS OR PERSONS ACTING ON THE ORDER OF A PHYSICIAN. A PRODUCT MAY GENERATE OR USE COMPUTERIZED ANALYSIS OF PHYSIOLOGIC DATA. THE ANALYSIS ACTS ONLY AS AN AID FOR THE PHYSICIAN IN DETERMINATION OF A PROPER DIAGNOSIS. IT DOES NOT REPLACE THE PHYSICIAN AND DOES NOT DENOTE A DIAGNOSIS. THE FUNCTIONS AND CAPABILITIES OF THE SLEEPIMAGE OFFERINGS ARE NOT INTENDED TO REPLACE THE USE OF SOUND, PROFESSIONAL JUDGMENT BY PHYSICIANS AND TECHNOLOGISTS. Except as otherwise provided herein, you, at your sole expense, shall maintain the Devices in good repair, condition, and functional order, shall not use the SleepImage Offerings unlawfully, and shall not alter any of the SleepImage Offerings without MyCardio’s prior written consent.

## 2 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 also place a special notice on the Products or communicate significant changes by email. Your continued use of the SleepImage Offerings following the posting of such changes constitutes your acceptance thereof. If you decide not to continue use of the SleepImage Offerings due to a modification of this Agreement or the SleepImage Offerings, you will notify MyCardio by email at [support@sleepimage.com](mailto:support@sleepimage.com). You will continue to be bound by the Terms of Use Agreement and Privacy Policy that were in effect as of the date you terminate or stop using the SleepImage Offerings.

## 3 PASSWORD AND REGISTRATION

In order to use the SleepImage Offerings, or certain other materials made available on or via the Website (the "[Website Materials](#)"), you will be required to create a user account. When creating your user account, you will be required to provide MyCardio with certain personal information and financial information. You agree that you will supply accurate information to MyCardio when requested, and that you will update that information if and when it changes. When registering an account, you will be required to select a unique username and a password (collectively, the "[Login Information](#)"). You are responsible for maintaining the confidentiality of the Login Information, and you will be responsible for all uses of the Login Information, whether or not authorized by you. In the event that you become aware of or reasonably suspect any breach of security including, without limitation, any loss, theft or unauthorized disclosure of the Login Information, you agree to immediately notify MyCardio via the "Contact Us" page of the Website or email: [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 your account in any unauthorized or fraudulent manner, or for any third party's fraudulent use or misuse of information submitted by you.

## 4 INTELLECTUAL PROPERTY RIGHTS

We will have access and will need to use data provided by you ("[User Data](#)"). You 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 User Data you 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, you 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 User Data, and you hereby release MyCardio and its sublicensees from any such claims. You represent that the User Data you 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.

Subject to and conditioned on your acceptance of and adherence to this Agreement, MyCardio grants you a non-exclusive, revocable, limited, personal and nontransferable license to use the Products and the Services for their intended purpose (the "[License](#)"). The Software and Online Offering, and any work product created by or on behalf of MyCardio as a result of its performance of the Services shall at all times remain the property of MyCardio, and you shall have no right, title, or interest therein except as expressly set forth in this Agreement. You may not reproduce, distribute, modify or create derivative works of, publicly display, or commercially exploit any part of the Online Offering except as necessary to view the content therein (a) for your personal, non-commercial use if you are a patient, or (b) for the benefit of the patient, if you are a clinician. All rights in the SleepImage Offerings not expressly granted to you are retained. If you violate the Agreement, your permission to use the SleepImage Offering automatically terminates and you must immediately cease use of all SleepImage Offerings.

MyCardio, SleepImage and other trademarks contained in the SleepImage Offerings are trademarks of MyCardio, its affiliates or third parties. You 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 you to use MyCardio's or its licensors' names or any of their respective trademarks.

Except as otherwise provided herein, you may not (a) reproduce, make or distribute copies of the Online Offering or any software comprising a part of or accompanying the Products or Services (the "[Software](#)"), (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 Software or Website Materials. You shall not use the SleepImage Offerings to develop any product, service or application having the same primary function as the SleepImage Offerings. You agree that you shall not use any automated device or process, such as a "bot" or a "spider," to copy or extract information or content from the Online Offering.

## 5 PURCHASE OF GOODS

All orders for the purchase of Goods are subject to acceptance by MyCardio. Upon acceptance by MyCardio, you agrees that any orders or purchase for Goods are subject to this Agreement and, for clarity, your acceptance or use of any Goods constitutes your irrevocable acceptance that the terms and conditions of this Agreement apply to such purchase of Goods. Prices for Goods are at MyCardio's then-current rates for the Goods at the time of purchase, unless otherwise agreed by MyCardio in writing. You agree to pay the fees for the SleepImage Offerings ordered by you, in addition to any taxes, duties, transportation or shipping charges, special packaging or other

services necessary for MyCardio or its representatives to provide the Goods. All prices quoted are in U.S. Dollars, unless expressly indicated otherwise.

You shall remit payment in U.S. Dollars (unless otherwise specified by MyCardio) and by wire transfer, check or otherwise as agreed between the parties. Late payment is subject to service charges and interest at a rate of the lesser of 1½% per month or the maximum amount allowed by law. Notwithstanding delivery and the passing of the risk of loss to you, title in all Goods supplied to you shall remain in MyCardio until MyCardio has received the entire purchase price and any other sums due in full for the applicable Goods. The provisions of this section shall not entitle you to refuse or delay payment or to require MyCardio to accept the return of the Goods on the grounds that the title in the Goods remains in MyCardio until receipt of payment. MyCardio shall have no obligation pursuant to deliver any Goods unless and until all necessary authorizations required pursuant to applicable laws have been obtained.

Upon your receipt of Goods, you agree to immediately inspect the Goods. Unless you provide MyCardio with written notice of any claim for damaged, defective or insufficient Goods within ten (10) days after receipt of shipment of such Goods, such Goods shall be deemed finally inspected, checked and accepted by you.

All shipments of Goods to addresses within the United States are offered and procured "FOB – Shipping Point." Shipment of Goods outside the United States are offered and procured "EXW – Ex Works". All shipments are F.O.B. the original shipping point. ANY AND ALL CLAIMS FOR LOSS OR DAMAGE TO GOODS IN TRANSIT MUST BE MADE TO THE DELIVERING CARRIER AND NOTED ON THE DELIVERY RECEIPT.

MyCardio warrants the MyCardio sleep recorder device for 90 days from the purchase date against any defects in material or workmanship. In the event any warranty claim is made within such 90 days, MyCardio or its authorized agents may, at its election, inspect the Device subject to the warranty claim or issue shipping instructions for return of such Product to MyCardio or its designee. If MyCardio determines that the warranty claim for such Device is valid, MyCardio shall, in its sole discretion, replace such Device and arrange for such Device to be returned to MyCardio at MyCardio's expense or refund the fees paid for such Device. Such replacement or refund is your sole and exclusive remedy, and MyCardio will bear no other expenses or liabilities for a breach of the foregoing warranty. Replacement of a Device under the terms of MyCardio's limited warranty does not extend the original limited warranty period (*i.e.* replaced Devices are covered by the limited warranty for the remainder of the original warranty period). You assume and shall bear the entire risk of loss, theft, destruction, or damage of or to any part of a Good to you from any cause whatsoever ("loss or damage"), and no loss or damage shall release you of your obligations under this Agreement. The foregoing notwithstanding, MyCardio makes no warranty and shall have no liability under this Agreement or otherwise for damages, errors or the like to any Product caused by accident, abuse or misuse; variations or problems with electrical power; natural disaster; servicing not authorized by MyCardio; handling, storage, operation, use or maintenance in a manner or environment not conforming to or not in accordance with the applicable specifications, product literature or other instructions or specifications provided by MyCardio (whether via the Website or elsewhere); problems caused by third party software; or problems resulting from hardware parts or components not supplied by MyCardio.

TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SLEEPIMAGE OFFERINGS ARE PROVIDED "**AS IS**," 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.

## **6 PRODUCT SUPPORT**

MyCardio shall use reasonable efforts to provide technical support for each Product (unless and until MyCardio is no longer offering such Product for sale or license). 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 you need Product 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. You agree that we will not be liable to you or to any third party for any such change, suspension or discontinuance.

## **7 LIMITATION OF LIABILITY**

IN NO EVENT WILL YOU 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, YOU AGREE THAT YOU 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. YOUR RECOVERY FROM MYCARDIO FOR ANY CLAIM OR SET OF CLAIMS SHALL NOT EXCEED IN THE AGGREGATE TOTAL THE FEES PAID BY YOU TO MYCARDIO FOR THE PRODUCT OR SERVICE GIVING RISE TO SUCH CLAIM, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SUCH LIMITATION MAY NOT APPLY TO YOU.

## **8 INDEMNITY**

Upon MyCardio's request, you 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 your use of the SleepImage Offerings, breach of this Agreement by you (or anyone using Login 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 you (or anyone using Login Information received other than as a result of MyCardio's negligence or willful misconduct).

## **9 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, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

## **10 PRIVACY POLICY**

MyCardio has established a Privacy Policy that describes how MyCardio collects and uses various types of information. You may review the Privacy Policy at [www.SleepImage.com](http://www.SleepImage.com). By agreeing to this Agreement, you 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 you are covered by laws requiring your consent for data transfer to the United States, you agree that your data may be transferred to the United States and collected and used in accordance with the Privacy Policy.

In the case you are a health care provider or other covered entity within the meaning of the HIPAA Privacy Rule and use a SleepImage Offering in connection with individually identifiable personal health information, you agree to have a HIPAA Privacy Rule compliant Notice of Privacy Practices Concerning Your Personal Health Information or similar document consistent with, and at least as restrictive as, MyCardio's notice of Privacy Practices Concerning Personal Health Information available at [www.SleepImage.com](http://www.SleepImage.com).

## **11 THIRD PARTY CONTENT**

The Website sometimes shows links or provides 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.

## **12 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. You represent and warrant that you 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, you warrant, represent and covenant that you (a) you shall not export, re-export or otherwise use the SleepImage Offerings or otherwise transfer, directly or indirectly, the Goods 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. You may contact the U.S. Department of Commerce, State and Treasury for guidance as to the applicable licensing requirements and other restrictions.

## **13 TERM AND TERMINATION**

MyCardio may terminate the License, your right to access the Online Offerings, and your license to the Software at any time and for any or no reason, whether you violate this Agreement or not. You 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.

You may cancel your License to any or all of the Products or Services at any time, by notifying MyCardio Customer by email at [support@sleepimage.com](mailto:support@sleepimage.com), and such cancellation shall be effective 30 days thereafter. Regardless of the reason for termination, you will continue to be bound by the Terms of Use 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.

#### **14 ASSIGNMENT**

Without MyCardio's prior written consent, you shall not assign, transfer, pledge, or otherwise transfer this Agreement. If you are a clinician, you will only transfer the Products, or any interest therein, or sublet or lend the Products or permit them to be used by patients whom you oversee their use thereof. MyCardio may assign or novate this Agreement or delegate and/or subcontract its duties, in whole or part, without notice to you. Any attempted assignment contrary to this Agreement shall be void.

#### **15 GOVERNING LAW & DISPUTE RESOLUTION**

This Agreement and any dispute or claim arising out of or related to the Agreement, its formation or subject matter, or the SleepImage Offerings (in each case, including without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to any choice or conflict of law provision or rule.

If you bring or institute any legal suit, action, or proceeding arising out of or related to these Agreement, its formation or subject matter, or the SleepImage Offerings (in each case, including without limitation, non-contractual disputes or claims) you agree to do so exclusively in the federal or state courts located in Denver, Colorado USA, and you further agree that such courts shall have *in personam* jurisdiction and venue with respect to you, and you hereby submit to the *in personam* jurisdiction and venue of such courts and waives any objection. You agree to waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts. **YOU HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

#### **16 WAIVERS**

The failure of MyCardio at any time or times to enforce any provisions of this Agreement or to require your 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.

#### **17 ENTIRE AGREEMENT**

This Agreement and the documents referenced herein contains 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.

#### **18 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.

#### **19 CUSTOMER SERVICE**

All questions concerning this Agreement shall be directed to:  
MyCardio Customer Service  
370 Interlocken Blvd. Suite 650  
Broomfield, CO 80021 USA  
Email: [support@sleepimage.com](mailto:support@sleepimage.com)

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