

## **TERMS OF USE**

**LAST UPDATED:** January 23, 2020

Zing Health, Inc., and its authorized agents, (collectively, “Zing,” “we,” or “us”), require that all visitors, users, and others who access or use the websites controlled by Zing (the “Site”) adhere to the following terms and conditions of use (these “Terms”). By accessing and using the Site, you accept and agree, on your own behalf and on behalf of any company, organization or other legal entity that you represent or for which you access the Site (“Company” or “you”), to be bound by and comply with these Terms and to comply with all applicable laws and regulations. **PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING THE SITE. IF YOU DO NOT AGREE TO THESE TERMS, YOU ARE NOT AUTHORIZED TO ACCESS OR USE THE SITE.**

**These Terms require the use of binding arbitration to resolve disputes rather than jury trials or class actions. Please see [Section 15](#) for details, including instructions to follow in order to opt out of binding arbitration and the class action waiver.**

### **MEDICAL EMERGENCIES**

ELECTRONIC COMMUNICATION IS NOT APPROPRIATE FOR ALL HEALTH ISSUES, ESPECIALLY THOSE OF AN URGENT NATURE, AND ZING MAKES NO GUARANTEE OF ANY PARTICULAR RESPONSE TIME TO AN INQUIRY YOU MAY MAKE. ACCORDINGLY, IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, YOU SHOULD NOT RELY ON THE SITE FOR ASSISTANCE, BUT SHOULD INSTEAD SEEK APPROPRIATE EMERGENCY MEDICAL ASSISTANCE.

### **1. CHANGES TO THESE TERMS AND THE SITE**

We reserve the right, at our sole discretion, to change, modify, add, or remove portions of these Terms at any time. All such changes are effective immediately upon notice, which we may give by any means, including, but not limited to, by posting such changes or other notice on the Site. You should check these Terms each time you access the Site from time to time to stay informed of changes that may affect you. Your continued use of the Site following the posting of changes means that you accept and agree to the changes.

### **2. PRIVACY POLICY AND HIPAA PRIVACY NOTICE**

Information that you provide to us or that we collect about you and your Company through your access to and use of the Site is subject to our Privacy Policy, and any medical information collected about you will be governed by our [HIPAA Privacy Notice](#). We encourage you to read and become familiar with our [Privacy Policy](#) and our [HIPAA Privacy Notice](#).

### **3. INTELLECTUAL PROPERTY**

You understand and agree that we own, control, or (where applicable) license from third parties, all right, title, and interest in and to the Site and any information, text, data, databases, graphics, images, sound recordings, audio and visual clips, logos, software, opportunities, features, services,

and other materials within the Site (all such materials, and any compilation, collection, or arrangement thereof, collectively, the “Content”). You acknowledge and agree that the Content constitutes valuable proprietary information that is protected by applicable intellectual property and other proprietary rights, laws, and treaties of the United States and other countries, and that you acquire no ownership interest by accessing or using the Site or the Content. Such intellectual property and proprietary rights may include, but are not limited to, copyrights, trademarks and service marks, trade dress, and trade secrets, and all such rights are the property of Zing or its licensors and content providers.

If you believe that any content available on the Site has been or is being used in a way that constitutes copyright infringement, please follow the steps outlined in our Copyright Policy.

#### **4. LICENSE TO ACCESS AND USE**

4.1 You may access and use this Site only for your personal use (or, if accessing the Site on behalf of your Company, only for your Company’s own internal use). Any other access to or use of the Site or the Content constitutes a violation of these Terms and may violate applicable copyright, trademark, or other laws. We make no representation that the Site or the Content is appropriate or available for use in locations other than the United States. If you choose to access the Site from locations other than in the United States, you do so at your own initiative, at your own risk, and are responsible for complying with applicable local laws and regulations.

4.2 You may not access, use, or copy any portion of the Site or of the Content through the use of bots, spiders, scrapers, web crawlers, indexing agents, automated devices or mechanisms, or any similar or equivalent manual process to monitor or copy any portion of the Site or any Content or for any other purpose not authorized by us. You agree not to remove or modify any copyright notice or trademark legend, author attribution, or other notice placed on or contained within any of the Content. Except as expressly authorized by us in writing, in no event will you reproduce, redistribute, duplicate, copy, sell, resell, or exploit for any commercial purpose any portion of the Site or the Content or any access to or use of the Site or the Content.

#### **5. RESTRICTIONS ON ACCESS**

5.1 You represent and agree that all information that you provide to us in connection with your access to and use of the Site is true, accurate, and complete to the best of your knowledge and belief. Zing reserves the right, in its sole discretion, to terminate your access to all or part of the Site, without notice or liability, for any reason, including, but not limited to: (a) the unauthorized use of any username or password; (b) any illegal, unauthorized, or otherwise inappropriate use of the Site, as determined in the sole discretion of Zing; or (c) the breach of any agreement between you and Zing, including, without limitation, these Terms. Following any such termination of access, you will continue to be bound hereunder to the fullest extent applicable.

5.2 Upon being notified that your access is terminated, you must destroy any materials you have obtained from the Site. You may not access the Site after your access is terminated without our written approval. After terminating your access, Zing will retain all rights, including all intellectual property rights, proprietary rights, and licenses retained in these Terms, and the limitations upon your use and treatment of the Content will remain in full force.

## **6. USER CONDUCT**

In connection with your access and use of the Site and that of any person authorized by you to access and use the Site, you are responsible for complying with all applicable laws, regulations, and policies of all relevant jurisdictions, including all applicable local laws and rules regarding online conduct. Specifically, in connection with your use of the Site, neither you nor your Company may cause or permit any person to do any of the following:

- (a) Use the Site or Content for any unlawful purpose;
- (b) Use the Site to post or transmit any material that contains any viruses, Trojan horses, worms, time bombs, cancelbots, malware, adware, or other computer programming routines that may damage, interfere with, surreptitiously intercept, or expropriate any system, data, or personal information;
- (c) Impose an unreasonably or disproportionately large load on the Site or otherwise interfere with or inhibit any other visitor, user or person accessing the Site from using or enjoying the Site;
- (d) Use the Site to post or transmit any unlawful, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive, harassing, or otherwise objectionable material of any kind;
- (e) Use the Site to post or transmit any material which is invasive of another's privacy or publicity rights or that otherwise violates or infringes in any way upon the rights of others; and
- (f) Use the Site to post or transmit any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or schemes, or other unsolicited commercial communication.

## **7. FEEDBACK**

7.1 By disclosing or offering any feedback or suggestions to us, including comments, computer files, documents, graphics, suggestions, ideas, or other information related to the Site, services provided via the Site, or otherwise related to Zing ("Feedback"), either through your use of the Site or otherwise, you authorize Zing to make such copies thereof as we deem necessary, including to facilitate the posting and storage of Feedback on the Site. By providing Feedback, you automatically grant, and you represent and warrant that you have the right to grant to Zing an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such Feedback for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or

incorporate into other works, such Submission, and to grant and authorize sublicenses of the foregoing.

7.2 By providing Feedback, you represent that you have all requisite rights to, and are authorized to disclose, all of the information contained in the Feedback. You are fully responsible for any Feedback you make and for the legality, reliability, appropriateness, and originality thereof.

## **8. COPYRIGHT POLICY**

8.1 If you believe that any materials made available on the Site infringe your copyright, please notify us and provide the information below. We will respond appropriately to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512(c)(3). You should send any notice of infringement relating to the Site or any materials made available on the Site to our designated copyright agent. If you decide to send us any such notice, you must:

(a) identify in sufficient detail the copyrighted work or intellectual property that you claim has been infringed;

(b) provide the electronic or physical signature of the owner of the copyright or a person authorized to act on the owner’s behalf;

(c) include a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;

(d) include a statement by you that the information contained in your notice is accurate and that you attest, under penalty of perjury, that you are the copyright owner or that you are authorized to act on the copyright owner’s behalf; and

(e) include your name, mailing address, telephone number and email address.

You may submit your notice of alleged copyright infringement to our designated copyright agent by mail or email as set forth below:

Zing Health, Inc.  
ATTN: Reneatha Gordon  
Privacy Officer  
Email: [privacy@myzinghealth.com](mailto:privacy@myzinghealth.com)  
303 West Madison, Suite 800  
Chicago, IL 60606

8.2 Please note that you may be liable for damages, including costs and attorneys’ fees, if you knowingly materially misrepresent that material or activity on the Site is infringing your copyright.

## **9. SECURITY**

Zing takes such commercially reasonable measures as it deems appropriate to secure and protect information transmitted to and from the Site. Nevertheless, we cannot and do not guarantee that any such transmissions are or will be totally secure. You are responsible for maintaining the confidentiality of your information, including any username and any password used in connection with your use of the Site. Zing will not be liable for any loss or damage arising from the unauthorized use of your username or password.

## **10. HYPERLINKS**

10.1 The Site may include hyperlinks to other websites which are not maintained by Zing. We are not responsible for the content of such external websites and we make no representations whatsoever concerning the content or accuracy of, opinions expressed in, or other links provided by such websites. The inclusion of any hyperlink to external websites does not imply endorsement by Zing of those websites or any products or services referred to therein. The terms of use and privacy policies applicable to external websites may be different from those applicable to the Site. If you decide to access any external websites through a link within the Site, you do so entirely at your own risk, and Zing will have no liability for any loss or damage arising from your access or use of any external websites. Since Zing is not responsible for the availability of these websites, or their contents, you should direct any concerns regarding an external website to the administrator of that website. You agree that you will bring no suit or claim against us arising from or based upon any such use of external websites. Hyperlinks to other websites that are provided on the Site are not intended to imply that: (a) we are affiliated or associated with any external website; or (b) any linked website is authorized to use any of our trademarks, trade names, logos, or copyrights.

10.2 Images of the Zing logo can only be used for linking purposes and can only be made with our express written permission. By linking to the Site, you agree that you will not misrepresent your relationship with us or present false or misleading impressions about us. No hyperlinks to the Site may be used in a manner that implies or suggests that Zing approves or endorses you, your website, or your goods and services. We will have no responsibility or liability for any content appearing on your website. No hyperlink may appear on any page on your website or within any context containing content or materials that may be interpreted as libelous, obscene, or criminal, or which infringes, otherwise violates, or advocates the infringement or other violation of, any third party rights.

10.3 We reserve the right, at any time and in our sole discretion, to request that you remove from your website all hyperlinks or any particular hyperlink to the Site. We may at any time, in our sole discretion, with or without cause, withdraw the permission granted herein to use the Zing logo and your right to link to any pages on the Site. Upon our request, you agree to immediately remove all hyperlinks to the Site and to cease using the Zing logo for linking purposes. If at any point we request you to remove all hyperlinks to the Site and/or to stop using the Zing logo, your posting of any future hyperlinks to the Site will require our express written permission.

## **11. USE OF TRADEMARKS**

Except for the limited permission to use the Zing logo as set forth in these Terms, you may not, without our express written permission, use any of Zing trademarks or service marks for any other purpose.

## **12. DISCLAIMER**

THE USE OF THE SITE BY YOU AND YOUR COMPANY IS AT YOUR AND ITS SOLE RISK. ACCORDINGLY, THE SITE AND THE CONTENT ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED, TO THE FULLEST EXTENT PERMITTED BY LAW. SPECIFICALLY, ZING, ITS AFFILIATES, HEALTHCARE SERVICES PROVIDERS, MEDICAL ADVISORS, CONTRACTORS, CONTENT-PROVIDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND OTHER SIMILAR ENTITIES, REPRESENTATIVES AND AGENTS OF EACH OF THE FOREGOING, (EACH, A “ZING PARTY”, AND COLLECTIVELY, THE “ZING PARTIES”) DO NOT WARRANT THAT: (a) THE USE OF THE SITE OR ANY THIRD PARTY WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THAT THE USE OF THE SITE OR ANY SUCH THIRD PARTY WEBSITE WILL ALLOW YOU TO OBTAIN ANY PARTICULAR RESULTS WHATSOEVER; (c) THE CONTENT OR ANY INFORMATION, SERVICE PROVIDED THROUGH THE SITE OR ANY THIRD PARTY WEBSITE ARE OR WILL BE ACCURATE, CURRENT, COMPLETE, RELIABLE, OR OF ANY PARTICULAR VALUE OR QUALITY; (d) THAT ANY DEFECTS IN THE SITE OR IN THE CONTENT WILL BE CORRECTED; OR (e) THAT THE SITE AND THE CONTENT ARE FREE OF VIRUSES OR OTHER DISABLING DEVICES OR HARMFUL COMPONENTS.

## **13. LIMITATION OF LIABILITY**

13.1 As partial consideration for your access to the Site and use of the Content, you agree that in no event will any Zing Party be liable to you, your Company, or any third party for any losses or damages, alleged under any legal theory, arising out of or in connection with: (a) your use of, or reliance on, the Site or the Content; (b) a Zing Party’s performance of or failure to perform its obligations in connection with these Terms; (c) the defamatory, offensive, or illegal conduct of other visitors, users or persons accessing the Site or of third parties; or (d) your purchase or use of any products or services provided by third parties.

13.2 Under no circumstances will a Zing Party be liable to you, your Company, or any third party for any indirect, consequential, incidental, punitive, special, or similar damages or costs (including, but not limited to, lost profits or data, loss of goodwill, loss of or damage to property, loss of use, business interruption, and claims of third parties) arising out of or in connection with these Terms, the provision of services through the Site, or the use of the Site or the Content, or the transmission of information to or from the Site over the Internet, even if such party was advised, knew, or should have known of the possibility of such damages or costs. In jurisdictions that do

not allow the exclusion or limitation of liability for certain damages, the liability of the Zing Parties will be limited in accordance with these Terms to the extent permitted by law.

13.3 Without limiting any of the foregoing, if a Zing Party is found liable to you or to any third party as a result of any claims or other matters arising under or in connection with these Terms, the Site, or your use of the Site, the maximum liability for all such claims and other matters will not exceed \$100 in any calendar year.

#### **14. INDEMNIFICATION**

You agree to defend and indemnify Zing, and our officers, directors, employees, representatives, and agents, against all claims, demands, suits, or other proceedings, and all resulting loss, damage, liability, cost, and expense (including reasonable attorneys' fees), made by any third party arising out of: (a) content, data, or information that you submit, post to, or transmit through the Site; (b) your access to and use of the Content, the Site, and other materials, products, and services available on or through the Site and Zing; (c) your violation of these Terms; (d) your violation of any rights of any third party; (e) any unauthorized use of a username, password, or account number; and (f) any illegal, unauthorized, or otherwise inappropriate use of the Site, as determined in the sole discretion of Zing. We reserve, and you grant to us, the right to assume the exclusive defense and control of any matter subject to indemnification by you.

#### **15. DISPUTE RESOLUTION, ARBITRATION AND CLASS ACTION WAIVER**

**PLEASE READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES YOU AND ZING TO AGREE TO RESOLVE ALL DISPUTES BETWEEN US THROUGH BINDING INDIVIDUAL ARBITRATION.**

Any dispute or claim arising from, relating to, or connected with these Terms or the Services (each a "Claim") will be resolved by binding arbitration (rather than in court). All Claims submitted to arbitration under these Terms will be administered by the American Arbitration Association under its Commercial Arbitration Rules (including the Supplementary Procedures for Consumer-Related Disputes, if applicable), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be the State of Illinois or, where limited by applicable law, the jurisdiction in which you reside or may be conducted by telephone, online or based solely upon written submissions where no in-person appearance is required. Notwithstanding this Section 15, we may bring a Claim for injunctive or other equitable relief in any court of competent jurisdiction as necessary to enforce our intellectual property rights or those of our affiliates, suppliers, or licensors.

**WAIVER OF CLASS ACTIONS.** We each agree that any Claim will be arbitrated or litigated, as the case may be, on an individual basis and shall not be consolidated with any Claim of any other party whether through class action proceedings, class arbitration proceedings or otherwise. **WE EACH AGREE THAT WE ARE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVING ANY RIGHT WE MAY HAVE TO A JURY TRIAL WITH**

**RESPECT TO ANY LITIGATION ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THESE TERMS.**

**OPTION TO OPT-OUT.** To opt out of the arbitration and class-action waiver terms in this Section 15, you must notify us in writing within 30 days of the date that you first accept these Terms (unless a longer period is required by applicable law). You must mail your written notification to Zing, Attention: Legal Department to 303 West Madison, Suite 800, Chicago, IL 60606 and your written notification must include your name, address and an unequivocal statement that you want to opt-out of this arbitration agreement.

You acknowledge and agree that, regardless of any statute or law to the contrary, any Claim or cause of action you may have must be filed within one (1) calendar year after such Claim or cause of action arises, or forever be barred.

For purposes of any Claim that is not subject to the arbitration procedures in this Section 15, we both agree to the governing law and jurisdiction as set out in Section 16 below.

**16. JURISDICTION**

These Terms will be construed and enforced in accordance with the laws of the State of Illinois, without regard to any choice or conflict of law provision or rule. Each of you and your Company submits to personal jurisdiction in Illinois, and any cause of action arising under these Terms or otherwise involving this Site will be brought exclusively in a court in Cook County, Illinois.

**17. WAIVER OF JURY TRIAL**

YOU AND YOUR COMPANY HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THESE TERMS AND THE MATTERS CONTEMPLATED HEREBY.

**18. MISCELLANEOUS**

18.1 These Terms (as may be revised and amended from time to time according to its terms) constitute the entire agreement with respect to your access to and use of the Site and the Content.

18.2 Our electronically or otherwise properly stored copy of these Terms will be deemed to be the true, complete, valid, authentic, and enforceable copy, and you agree that you will not contest the admissibility or enforceability of our copy of these Terms in connection with any action or proceeding arising out of or relating to these Terms.

18.3 Any provisions of these Terms that are reasonably inferable to have been intended to survive termination (including, but not limited to, any provisions regarding limitation of our liability or indemnification) will continue in effect beyond any such termination of access to the Site.

18.4 These Terms do not confer any rights, remedies, or benefits upon any person other than you.



18.5 We may assign our rights and duties under these Terms at any time to any third party without notice. You may not assign these Terms without our prior written consent.

18.6 Our waiver of any breach of these Terms will not be a waiver of any preceding or subsequent breach thereof.

18.7 If any provision of these Terms is held to be invalid or unenforceable, that provision will be stricken and will not affect the validity and enforceability of any remaining provisions.

18.8 Possible evidence of use of the Site for illegal purposes will be provided to law enforcement authorities.

18.9 Discontinuation of use of the Site is your sole right and remedy for any dissatisfaction with the Site or any of the Content.

## **19. OTHER AGREEMENTS**

If you have entered into a separate agreement with Zing with respect to your use of the Site or any Content that agreement will supersede these Terms to the extent they are in conflict.

## **20. CONTACT US**

Please contact us with any questions regarding the Site or these Terms at:

Zing Health, Inc.  
303 West Madison, Suite 800  
Chicago, IL 60606  
Phone: 1-866-946-4458  
Email: [webmaster@myzinghealth.com](mailto:webmaster@myzinghealth.com)