

## LICENSE AGREEMENT FOR SOFTWARE

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any other Heath-branded equipment or device and related Software within the (10) days of the occurrence of each issue. After receipt of such report, Heath will promptly investigate such report and make commercially reasonable efforts to verify the issue and, if appropriate, make commercially reasonable efforts to correct verified defects or provide a work-around and/or provide the applicable service credit, as further provided below in this Section 5 (collectively, "**Warranty Fix**"). If, prior to the expiration of the Warranty Period, the Device or Software fails to perform substantially in accordance with the Specifications, then, subject to the Warranty Exclusions and the processes set forth in this Section 5, You may return the Devices to the place of purchase for repair or replacement of the non-performing Device or Software. Regarding our Uptime Commitment, we are dedicated to maintaining the availability of the Portal. Nonetheless, it's important to acknowledge that all online services may encounter occasional disruptions and outages. We want to emphasize that we cannot be held accountable for any disruptions or losses you might incur as a result of such events. Given the potential for online service interruptions, as a prerequisite for accessing the Portal, you are required to establish and uphold manual business operating procedures, referred to as "Portal Backup Procedures." These procedures should be in place to guide you in the event that the Portal becomes inaccessible. The Portal Backup Procedures must ensure that your business can continue to operate smoothly even without access to the Portal, until such time as the Portal is fully restored.

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**13. Severability and Waiver.** If any provision of this License Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, all other terms of this License Agreement shall remain in full force and effect. The terms or conditions of this License Agreement may only be waived in writing and signed by both parties. The failure of either party at any time to require performance of any provision hereof shall not affect its rights to enforce the same later. No waiver by either party of any condition or term shall be deemed a continuing waiver of such condition or term or of any other condition or term.

**14. Modifications and Entire Agreement.** This License Agreement may be updated or amended by Heath from time to time by providing written notice to You or by including such updates or amendments in a Software update. This License Agreement constitutes the entire agreement between the parties regarding the subject matter herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, related to such subject matter.

**15. Language Clause.** The English language shall prevail in the interpretation and construction of this License Agreement.

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**17. Governing Law and Forum.** This License Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements. The parties agree to mediate in good faith any dispute arising out of, in connection with, or relating to this License Agreement, provided, that if any dispute remains unsolved after thirty (30) days, the parties subject to binding arbitration before one arbitrator, administered by JAMS and conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures. Mediation and arbitration shall be held Harris County, Texas. The arbitrator shall have authority to issue any award allowed under this Agreement. Judgment on any award in arbitration may be entered in any court of competent jurisdiction. Notwithstanding the above, Heath shall have recourse to any court of competent jurisdiction to enforce claims for injunctive and other equitable relief.

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