

## LICENSE AGREEMENT FOR SOFTWARE

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**5. Limited Warranty.** Heath provides a limited warranty ("the Limited Warranty") for Your benefit alone and not for the benefit of any other party, that during the Warranty Period (as defined below in this Section 5) (A) the Device, Advanced Analytics, and Software will operate substantially in accordance with the applicable functional specifications ("Specifications") set forth in the Documentation, and (B) Heath will make commercially reasonable efforts to ensure that the Portal meets the Uptime Commitment. "Uptime Commitment" means, as calculated by Heath in good faith, the Portal is available for at least 99% of the time in each calendar quarter during the Warranty Period excluding downtime arising from any Warranty Exclusions. The "Warranty Period" means with respect to the Device one (1) year from the date the original purchaser takes delivery of the Device; with respect to the Software five (5) years from the date the original purchaser takes delivery of the Device; with respect to the Portal, the longer of (a) one (1) year from the date the original purchaser takes delivery of the Device or (b) the period of time during which You maintain a paid subscription to the Portal; and with respect to Advanced Analytics, the longer of (a) one (1) year from the date the original purchaser takes delivery of the Device or (b) the period of time during which You maintain a paid subscription to Advanced Analytics. The Limited Warranty does not apply to any issues, including any non-conformity, downtime or unavailability, arising from the following: (i) use of the Software, Portal, Advanced Analytics, or Device in a manner inconsistent with this License Agreement or the Documentation, including any suspension by Heath of Your access; (ii) use of the Software, Portal, Advanced Analytics, or Device for a purpose other its intended purpose; (iii) Your breach of this License Agreement or applicable laws; (iv) any third party equipment, software, or components; (v) any actions of a third party; (vii) any routine or emergency maintenance or other scheduled downtime; (viii) a Force Majeure Event (as defined in Section 21 below); (ix) any acts or omissions of You or Your representatives; or (x) Your equipment, software, or other technology or services (collectively, the "Warranty Exclusions"). To report any issues under the Limited Warranty, You must submit a warranty request, including reasonable documentation of each issue, by email to [discoversupport@heathus.com](mailto:discoversupport@heathus.com) for an issue with any Discover Advanced Mobile Leak Detection device and related Software and [info@heathus.com](mailto:info@heathus.com) for the sale of

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.

**6. DISCLAIMER OF WARRANTIES.** YOU HEREBY AGREE THAT THE LIMITED WARRANTY PROVIDED ABOVE CONSTITUTES YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY PROBLEM WHATSOEVER WITH THE LICENSED MATERIALS. EXCEPT AS PROVIDED IN THE LIMITED WARRANTY, THE LICENSED MATERIALS ARE LICENSED "AS IS," AND HEATH, ITS AFFILIATES AND ANY THIRD PARTY SUPPLIERS AND LICENSORS EXPRESSLY DISCLAIM AND YOU EXPRESSLY WAIVE, RELEASE AND RENOUNCE ALL WARRANTIES ARISING BY LAW OR OTHERWISE WITH RESPECT TO THE LICENSED MATERIALS, INCLUDING, BUT NOT LIMITED TO: ANY IMPLIED WARRANTY OF ACCURACY, MERCHANTABILITY, FREEDOM FROM VIRUSES OR OTHER HARMFUL CODE, LOSS OF DATA, OR FITNESS FOR A PARTICULAR PURPOSE; ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE; ANY WARRANTY OF TITLE OR NON-INFRINGEMENT; AND, ANY OTHER WARRANTY ARISING UNDER ANY THEORY OF LAW, INCLUDING TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. HEATH MAKES NO COMMITMENTS ABOUT THE DATA OR CONTENT WITHIN THE SOFTWARE OR PORTAL. ADDITIONALLY, HEATH SHALL HAVE NO LIABILITY

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**12. Indemnification.**

(a) You agree to defend, indemnify and hold harmless Heath and its Affiliates, and its and their respective officers, directors, shareholders, members, employees, agents and representatives from and against all out-of-pocket costs, damages, losses, judgments, fines, and expenses (including reasonable attorneys' fees) (collectively, "**Out-of-Pocket Costs**") arising from any third-party demand, claim or proceeding (each, a "**Third-Party Claim**") arising from or in connection with Your use of the Licensed Materials.

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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

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

**16. Assignment by Heath.** Heath may assign this License Agreement without Your prior consent to (i) an Affiliate, or (ii) any successor to substantially all of its business or assets whether through merger, reorganization, combination, consolidation, purchase of assets or any other means, or to any party acquiring substantially all of the assets or business of the relevant business unit to which this License Agreement relates. "**Affiliate**" means any entity directly or indirectly controlling, controlled by or under common control with a party. The term "control" means ownership or the ability to direct at least fifty percent (50%) of the voting interests in such entity.

**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.

**18. Representations of Licensee.** BY ACCEPTING THIS LICENSE AGREEMENT, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS LICENSE AGREEMENT; (B) REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS LICENSE AGREEMENT; (C) AGREE THAT THIS LICENSE AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE LICENSED MATERIALS AND ON WHOSE BEHALF IT IS USED; AND, (D) AGREE TO PERFORM THE OBLIGATIONS OF THIS LICENSE AGREEMENT.

**19. Notices.** All notices under this License Agreement shall be made in writing. Except for warranty claims as set forth in Section 11 hereof, You shall send all notices to Heath by certified or registered mail or by an internationally recognized overnight courier service to

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