

## **Heartbeat Mobile Application Terms of Service**

**Last Updated: April 2, 2018**

### **1. Your Acceptance**

Welcome to the Terms of Service for the Heartbeat mobile application and any services provided by Heartbeat Technologies, Inc. (collectively referred to as the “App”). This is an agreement (“Agreement”) between Heartbeat Technologies, Inc. (“Heartbeat”), the owner and operator of the App and you (“you”, “your” or “user(s)”), a user of the App. If you are Brand, as defined within this Agreement, you must agree to additional agreements before using our App.

Throughout this Agreement, the words “Heartbeat,” “us,” “we,” and “our,” refer to our company, Heartbeat Technologies, Inc., as is appropriate in the context of the use of the words.

By clicking “I agree” or accessing the App you agree to be bound by this Agreement and the Privacy Policy. We may amend this Agreement at any time and may notify you if we do so. PLEASE BE AWARE THAT THERE ARE ARBITRATION AND CLASS ACTION PROVISIONS THAT MAY AFFECT YOUR RIGHTS.

### **2. User Accounts and Sign-up**

Portions of the App may require you to create a login or sign-up for an account. You must fully complete the registration process by providing us with your current, complete, truthful, and accurate information as prompted by the applicable registration form. Where required, Heartbeat may also assign you a username and password. You are entirely responsible for maintaining the confidentiality of your password and account and for any and all activities that occur under your account. You agree to notify Heartbeat immediately of any unauthorized use of your account or any other breach of security. Heartbeat will not be liable for any losses you incur as a result of someone else using your password or account, either with or without your knowledge. However, you could be held liable for losses incurred by Heartbeat or another party due to someone else using your account or password. You may not use anyone else’s account at any time, without the permission of the account holder. Companies may register via the App but may only have one user account. If you are registering on behalf of your company, you represent and warrant that you are authorized by your company to create an account on your company’s behalf and you represent and warrant that you are authorized by your company to incur financial obligations and enter into legally binding agreements on behalf of your company. Heartbeat has the sole discretion in granting or denying any accounts.

### **3. Privacy**

Please read Heartbeat’s Privacy Policy for more information regarding the collection and use of your information. The Privacy Policy is integrated into this Agreement as one in the same.

### **4. Access to the App**

After properly registering for the App, we grant you a limited, fully revocable, non-exclusive license to download and use one copy of the App on your mobile device. Please be aware that you do not receive any ownership interest in the App; you merely receive the license granted by us. All rights not explicitly granted are reserved for Heartbeat. You agree to abide by the following restrictions listed below:

- You may not decompile, reverse engineer, disassemble, modify, rent, sell, lease, loan, distribute, or create derivative works or improvements to the App or any portion of the App.
- You may not share your access with any other parties unless permitted by us in writing.
- You may not violate any laws, rules or procedures of the United States.
- You may not violate any of our additional policies.
- You may not use our App except through specific channels provided by us.
- You may not use the App on a computer that is used to operate nuclear facilities, life support, or other mission critical applications where life or property may be at stake.
- You may not sell, lease, loan, distribute, transfer, or sublicense your access to the App.

Please be aware that this is not an all-encompassing list of restrictions, if you breach any of these restrictions, we may revoke your access to our App, at our discretion. Additionally, we may revoke or restrict your access to our App if we believe that your actions may harm or have harmed Heartbeat or the App itself. Failure by us to revoke your access does not act as a waiver of your conduct.

## **5. Your Conduct While Using The App**

When accessing or using our App, you are solely responsible for your use and for any use of the Heartbeat App made using your account. You agree to abide by the following rules of conduct:

- You will not copy, distribute or disclose any part of the App in any medium, including without limitation by any automated or non-automated “scraping”;
- You will not attempt to interfere with, compromise the system integrity or security of, or decipher any transmissions to or from the servers running the App;
- You will not use any robot, spider, crawler, scraper or other automated means or interface not provided by us to access the App or to extract or export data collected through the App;

- You will not take any action that imposes, or may impose at our sole discretion, an unreasonable or disproportionately large load on our infrastructure;
- You agree not to use the App to stalk, harass, bully or harm another individual;
- You agree that you will not hold Heartbeat responsible for your use of the App;
- You may not post any User Content that is violent, distasteful, contains sexual nudity or sex acts, or is otherwise not up to community standards;
- You agree not to violate any requirements, procedures, policies or regulations of networks connected to Heartbeat;
- You agree not to interfere with or disrupt the App;
- You agree to not violate any US federal or state laws while using the App; and
- You agree not to use the App in any way that is: misleading, unlawful, defamatory, obscene, invasive, threatening, or harassing.

If you are discovered to be undertaking any of the aforementioned actions or if we believe that any of your actions may harm Heartbeat's App or business interests your privileges to use our App may at our sole discretion be terminated, revoked, or suspended. Generally, we will provide an explanation for any suspension or termination of your use of any of our App, but Heartbeat reserves the right to suspend or terminate any account at any time without notice or explanation.

## **6. App Availability and Modification**

Although we will attempt to provide continuous App availability to you, we do not guarantee that the App will always be available, work, or be accessible at any particular time. We make no uptime guarantees. The App and any content found within the App is offered "as -is" and without warranty. Occasionally there may be content on the App that contains typographical errors, inaccuracies, or omissions that may relate to service descriptions, content, alerts, pricing, availability, and other information. We reserve the right to alter, modify, update, or remove our App at any time. We may conduct such modifications to our App for security reasons, intellectual property, legal reasons, or various other reasons at our discretion, and we are not required to explain such modifications. For example, we may provide updates to fix security flaws, or to respond to legal demands. Please note that this is a non-binding illustration of how we might exercise our rights under this section, and nothing in this section obligates us to take measures to update the App for security, legal, or other reasons.

## **7. Mobile Notifications**

Based on the functionality of the App or your preferences, we may send you mobile notifications or alerts ("Notifications"). The number of Notifications received will vary by alert type and also depends on your location and the settings you choose. You acknowledge and agree that the App may send you Notifications related to billing, maintenance, usage, tips, reminders, alerts, technical support and the operation of the App. Please be aware that

the App along with any Notifications may not be available at all times and in all areas; certain variables could affect delivery of the messages, including but not limited to the functionality of your mobile provider network, your text messaging preferences, and restrictions set by your mobile provider to your account. Neither Heartbeat nor its third party service providers guarantee Notification delivery, completeness, accuracy, or timeliness. Neither Heartbeat nor its third party service providers are responsible for Notifications that are lost or misdirected. If you wish to opt out of any Notifications please follow the directions on the App dashboard or contact us at [info@getheartbeat.co](mailto:info@getheartbeat.co).

## **8. User Content**

Your ability to submit or transmit any information through the App, including but not limited to links, content, video, photos, data, information, images, references, or any other information will be referred to as “User Content” throughout this Agreement. Please be aware that we are not required to host, display, migrate, or distribute any of your User Content and we may refuse to accept or transmit any User Content. You agree that you are solely responsible for any User Content submitted and you release us from any liability associated with any User Content submitted. We provide industry standard security for our App but we cannot guarantee the absolute safety and security of any such User Content. Any User Content found to be in violation of this Agreement or that we determine to be harmful to the App may be modified, edited, or removed at our discretion. Furthermore, you represent and warrant that you have the right to submit any User Content, all User Content is legal, and the User Content does not interfere with any third party rights or obligations. When you submit any User Content to us, you grant Heartbeat, its partners, affiliates, users, representatives and assigns a non-exclusive, limited, fully-paid, royalty-free, revocable, world-wide, universal, transferable, assignable license to display, distribute, store, broadcast, transmit, reproduce, modify, prepare derivative works, or use and reuse all or part of your User Content purposes as solely determined by Heartbeat and its licensees. Additionally, you grant to Heartbeat a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the App any suggestion, enhancement request, recommendation, correction, or other feedback provided by you relating to the operation of our App.

## **9. Monitoring User Content**

Heartbeat shall have the right, but not the obligation, to monitor all User Content on the App at all times, to determine compliance with this Agreement and any guidelines established by us. Without limiting the foregoing, Heartbeat shall have the right, but not the obligation, to remove any User Content that Heartbeat within Heartbeat’s sole and complete discretion. We have no obligation to retain or provide you any copies of your User Content

## **10. Termination**

You may cancel your account at any time via your Heartbeat dashboard or contacting us at [info@getheartbeat.co](mailto:info@getheartbeat.co). Please be aware that upon termination of your account, access to portions of our App may become immediately disabled. Termination of this Agreement does not relieve you from any obligations contained in this Agreement. Upon termination you will not be entitled to any refunds or proration of any fees paid except as stated in this Agreement. We may terminate your account or this Agreement with you if we determine

that: (1) you have violated any applicable laws while using our App; (2) if you have violated this Agreement or any other of our App policies; (3) if your account has remained inactive for an extended period of time; or (4) if we believe that any of your actions may harm Heartbeat, at our sole decision or discretion. In the event of termination, we will strive to provide you with a timely explanation; however, we are not required to do so. Where termination has occurred, portions of this Agreement shall survive and remain in full force as stated in the “Survival” section of this Agreement.

## **11. Idea Submission**

Heartbeat or any of its employees do not accept or consider unsolicited ideas, including but not limited to ideas relating to processes, technologies, product enhancements, or product names. Please do not submit any unsolicited ideas, content, artwork, suggestions, or other works (“Submissions”) in any form to Heartbeat. The sole purpose of this policy is to avoid potential misunderstandings or disputes when Heartbeat’s products might seem similar to ideas you submitted to Heartbeat. If, despite our request that you not send us your ideas, you agree to the following: (1) your Submissions and their contents will automatically become the property of Heartbeat, without any compensation to you; (2) Heartbeat may use or redistribute the Submissions and their contents for any purpose and in any way; (3) there is no obligation for Heartbeat to review the Submission; and (4) there is no obligation to keep any Submissions confidential.

## **12. Intellectual Property**

The name “Heartbeat,” the design of the Heartbeat App along with Heartbeat created text, writings, images, templates, scripts, graphics, interactive features and the trademarks, marks and logos contained therein (“Marks”), are owned by or licensed to Heartbeat. The Marks are subject to copyright and other intellectual property rights under US laws and international conventions. Heartbeat reserves all rights not expressly granted in and to the App. You agree to not engage in the use, copying, or distribution of the Marks or anything else contained within the App unless we have given you express written permission. All rights not expressly granted are hereby reserved.

## **13. Representations and Warranties**

THE APP AND ALL ASSOCIATED SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER HEARTBEAT, NOR ANY OF THEIR EMPLOYEES, MANAGERS, OFFICERS, ASSIGNS OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE APP; (B) ANY INFORMATION PROVIDED VIA THE APP; (C) ANY BRANDS FOUND ON THE APP OR (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO HEARTBEAT OR VIA THE APP. IN ADDITION, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS. HEARTBEAT MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OF ANY BRANDS AND ANY AVAILABILITY OF ANY BRANDS ON THIS APP DOES NOT CONSTITUTE ANY ENDORSEMENT OR RECOMMENDATION BY HEARTBEAT.

HEARTBEAT DOES NOT REPRESENT OR WARRANT THAT THE APP WILL BE ERROR-FREE OR UNINTERRUPTED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE APP OR THE SERVER THAT MAKES THE APP AVAILABLE IS FREE FROM ANY HARMFUL COMPONENTS. HEARTBEAT DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION (INCLUDING ANY INSTRUCTIONS) ON THE APP ARE ACCURATE, COMPLETE, OR USEFUL. HEARTBEAT DOES NOT WARRANT THAT YOUR USE OF THE APP IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND HEARTBEAT SPECIFICALLY DISCLAIMS ANY SUCH WARRANTIES.

#### **14. Limitation of Liability**

IN NO EVENT SHALL HEARTBEAT, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT HEARTBEAT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM (I) YOUR USE OR INABILITY TO USE THE APP OR ANY ERRORS, MISTAKES, OR INACCURACIES FOUND WITHIN THE APP, (II) ANY PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR APP OR FROM ANY INTERACTION WITH ANY BRANDS, (III) ANY INTERRUPTION, MISINFORMATION, INCOMPLETE INFORMATION, OR CESSATION OF TRANSMISSION TO OR FROM OUR APP TO YOU, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR APP VIA A THIRD PARTY, (V) ANY FAILURES OR DISRUPTIONS WHETHER INTENTIONAL OR UNINTENTIONAL, (VI) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS RELATED TO YOUR USER CONTENT, (VII) ANY INJURY OR CLAIM THAT OCCURS OUT OF THE USE OF ANY USER CONTENT BY ANY BRANDS OR (VIII) ANY POTENTIAL OR ACTUAL LOSS OR DAMAGE TO PERSON OR PROPERTY THAT MAY OCCUR WHILE USING THE APP. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. IN JURISDICTIONS THAT ALLOW A LIMITATION ON LIABILITY, YOU AGREE THAT OUR LIABILITY TO YOU IS NO MORE THAN THE AMOUNT YOU PAID IN THE PAST SIX MONTHS FOR SERVICES OR ONE-HUNDRED US DOLLARS, WHICHEVER IS GREATER.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY BETWEEN JURISDICTIONS. Specifically, in those jurisdictions not allowed, we do not disclaim liability for: (a) death or personal injury caused by Heartbeat's negligence or that of any of its officers, employees or agents; (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future. The foregoing limitations on liability and any other limitations of liability set forth herein are not applicable to residents of New Jersey. With respect to residents of New Jersey, Heartbeat shall not be liable for any damages arising out of your access to or use of the App, unless such damages are the result of our negligent or reckless acts or omissions; provided, however, that we shall not be liable for consequential, indirect or punitive damages.

#### **15. Indemnity**

You agree to defend, indemnify and hold harmless Heartbeat, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses,

liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:

- your use of and access to the Heartbeat App;
- your violation of any term of this Agreement;
- your negligence and willful misconduct; and
- any claim that your use of the App harmed another user or third party.

This defense and indemnification obligation will survive this Agreement and your use of the Heartbeat App. You also agree that you have a duty to defend us against such claims and we may require you to pay for an attorney(s) of our choice in such cases. You agree that this indemnity extends to requiring you to pay for our reasonable attorneys' fees, court costs, and disbursements. In the event of a claim such as one described in this paragraph, we may elect to settle with the party/parties making the claim and you shall be liable for the damages as though we had proceeded with a trial.

## **16. Age Compliance**

Heartbeat and its App may only be used by persons 18 years and older. If you are under 18 please stop using our App and please do not submit any information to us.

## **17. Intellectual Property and Copyrights**

### Takedown Notice

We take copyright infringement very seriously. If you believe that any copyrighted material owned by you has been infringed upon by someone using our App, please send us a message which contains:

- Your name.
- The name of the party whose copyright has been infringed, if different from your name.
- The name and description of the work that is being infringed
- The location on our App of the infringing copy.
- A statement that you have a good faith belief that use of the copyrighted work described above is not authorized by the copyright owner (or by a third party who is legally entitled to do so on behalf of the copyright owner) and is not otherwise permitted by law.
- A statement that you swear, under penalty of perjury, that the information contained in this notification is accurate and that you are the copyright owner or have an exclusive right in law to bring infringement proceedings with respect to its use.

You must sign this notification and send it to our Copyright Agent: Copyright Agent of Heartbeat, info@getheartbeat.co

### Counter Notice

In the event that you receive a notification from Heartbeat stating content posted by you has been subject to a DMCA takedown, you may respond by filing a counter-notice pursuant to the DMCA. Your counter-notice must contain the following:

- Your name, address, email and physical or electronic signature.
- The notification reference number (if applicable).
- Identification of the material and its location before it was removed.
- A statement under penalty of perjury that the material was removed by mistake or misidentification.
- Your consent to the jurisdiction of a federal court in the district where you live (if you are in the U.S.), or your consent to the jurisdiction of a federal court in the district where your service provider is located (if you are not in the US).
- Your consent to accept service of process from the party who submitted the takedown notice.

Please be aware that we may not take any action regarding your counter-notice unless your notification strictly complies with the foregoing requirements. Please send this counter-notice to: info@getheartbeat.co

### **18. Choice of Law**

This Agreement shall be governed by the laws in force in the state of California. The offer and acceptance of this contract is deemed to have occurred in California.

### **19. Arbitration**

By using this App, you agree that: (1) any claim, dispute, or controversy you may have against us, Heartbeat or the App arising out of, relating to, or connected in any way with this Agreement shall be resolved exclusively by final and binding arbitration administered by the American Arbitration Association (“AAA”) and conducted before a single arbitrator pursuant to the applicable Rules and Procedures established by AAA (“Rules and Procedures”); (2) the claim or dispute must be brought within one (1) year of the first date of the event giving rise to such action and the arbitration shall be held in Santa Monica, CA, or at such other location as may be mutually agreed upon by you and Heartbeat (the foregoing time limitation is not applicable to residents of New Jersey); (3) the arbitrator shall apply California law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law; (4) there shall be no authority for any claims to be arbitrated on a class or representative basis; arbitration can decide only your and/or Heartbeat’s individual claims; and the arbitrator may not consolidate or join the claims of other persons

or parties who may be similarly situated; (5) both parties will bear their own costs of representation and filing for the dispute; (6) where possible and allowed for under the AAA Rules and Procedures, Heartbeat shall be entitled to appear electronically or telephonically for all proceedings; and (7) with the exception of subpart (4) above, if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures established by AAA, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, subpart (4) is found to be invalid, unenforceable or illegal, then the entirety of this Arbitration Provision shall be null and void, and neither user nor Heartbeat shall be entitled to arbitrate their dispute. For more information on AAA and its Rules and Procedures, users may visit the AAA website at <http://www.adr.org>. In the event that any portion of this arbitration provision is found to be unenforceable or void, both parties agree to settle any disputes arising out of this Agreement in a court of competent jurisdiction located in Los Angeles County, CA.

## **20. Class Action**

You and Heartbeat agree that any proceedings to resolve or litigate any dispute whether through a court of law or arbitration shall be solely conducted on an individual basis. You agree that you will not seek to have any dispute heard as a class action, representative action, collective action, or private attorney general action. The foregoing class action waiver does not apply to residents of New Jersey.

## **21. Force Majeure**

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labor shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

## **22. Statements By Employees**

Please be aware that Heartbeat may offer employees or other staff to assist you with our App. Any statements made or actions undertaken by our employees are non-binding in nature. Unless stated explicitly stated otherwise, Heartbeat employees and staff do not have the authority to execute an agreement or contractually bind Heartbeat to any agreements between you and Heartbeat.

## **23. Severability**

In the event that a provision of this Agreement is found to be unlawful, conflicting with another provision of the Agreement, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it.

If two or more provisions of this Agreement or any other agreement you may have with Heartbeat are deemed to conflict with each other's operation, you agree that Heartbeat shall have the sole right to elect which provision remains in force.

#### **24. Non-Waiver**

We reserve all rights permitted to us under this Agreement as well as under the provisions of any applicable law. Our non-enforcement of any particular provision or provisions of this Agreement or any applicable law should not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

#### **25. Survival**

All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, content provisions, representations and warranties, payment provisions, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

#### **26. Assignment**

You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

#### **27. Additional Agreements**

This Agreement along with the Privacy Policy constitutes the complete and exclusive understanding and agreement between the parties regarding the subject matter herein and supersedes all prior or contemporaneous agreements or understandings written or oral, relating to its subject matter.

#### **28. Amendments**

We may amend this Agreement from time to time. When we amend this Agreement, we will update this page and indicate the date that it was last modified or we may email you. You may refuse to agree to the amendments, but if you do, you must immediately cease using our App.

#### **29. California Users**

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about Heartbeat must be sent to our agent for notice to: [info@getheartbeat.co](mailto:info@getheartbeat.co)

Lastly, California users are also entitled to 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., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

#### **30. Export Controls**

The App and the underlying information and technology may not be downloaded, accessed, or otherwise exported or re-exported: (1) into (or to a national or resident of) any country to which the U.S. has currently embargoed goods; or (2) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the App, you agree to the foregoing and 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, and that you will otherwise comply with all applicable export control laws.

### **31. Non-Affiliation**

This Agreement is entered solely into between you and Heartbeat, the owner and operator of the App. Although the App may be available for download in the Google Play Store ("Google") or the iTunes Store ("Apple"), neither Google nor Apple are a party to this Agreement and shall have no obligations with respect to the App. Heartbeat is solely responsible for the App and the content thereof as set forth hereunder. However, Google and Apple are third party beneficiaries of this Agreement. Upon your acceptance of this Agreement, Apple or Google shall have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof. This Agreement incorporates by reference the Licensed Application End User License Agreement published by Apple and Google, for purposes of which, you are "the end-user." In the event of a conflict in the Terms of the Licensed Application End User License Agreement and this Agreement, the terms of this Agreement shall control.

### **32. Third Party Links**

The App may permit you to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the App. These links lead to websites published or operated by third parties who are not affiliated with or in any way related to Heartbeat. When you access third party resources on the Internet, you do so at your own risk. These other resources are not under our control, and you acknowledge that Heartbeat is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such links, websites, or resources. The inclusion of any such link does not imply our endorsement or any association between us and their operators. Such links have been included in the App to enhance your user experience and are presented for information purposes only. We endeavor to select reputable websites and sources of information for your convenience. However, by providing links to an external website, Heartbeat shall not be deemed to endorse, recommend, approve, or guarantee any third parties (including any Brands) or the services/products they provide on their websites, unless otherwise stated by Heartbeat. You further acknowledge and agree that Heartbeat 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 of or reliance on any content provided by a Brand or linked content, goods or services available on or through any such linked website or resource. Please be mindful that when you click on a link and leave our App you will be subject to the terms of use and privacy policies of the other website that you are going to visit.

### **33. Data Rates**

You will be able to access the App through your mobile device or cellphone. Please be aware that data and messaging rates may apply depending on your carrier and phone service. Please be sure to check your data plan to understand any relevant costs incurred by your use. We cannot be responsible for any fees charged by your data or cellphone carrier.

### **34. Electronic Communications**

The communications between you and Heartbeat use electronic means, whether you visit the App or send Heartbeat e-mails, or whether Heartbeat posts notices on the App or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Heartbeat in an electronic form; and (2) agree that all terms, conditions, agreements, notices, disclosures, and other communications that Heartbeat provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

### **35. Specific Terms for Influencers**

Sections 35 through 47 specifically govern the use of the App by social media influencers (“Influencers”) of Heartbeat. Users wishing to be Influencers must properly register and sign-up. After signing up Heartbeat may review a user’s application and approve the user as an Influencer. Where you have been granted an Influencer account you may be able to access additional portions of the App. Influencers may begin to participate in advertising campaigns (“Campaigns”) through the display of Brand content advertisements (“Brand Content”) that are available on the App. The App provides tools to assist Influencers in their participation with any Campaigns. THE HEARTBEAT APP IS MERELY A CAMPAIGN MANAGEMENT APP AND DOES NOT RECOMMEND OR ENDORSE ANY BRANDS OR PRODUCTS SOLD BY ANY BRANDS.

### **36. License Grant to Brand Content**

Where any Brand Content is made available to you and subject to your compliance with this Agreement, Heartbeat grants you a non-exclusive, fully revocable, non-assignable, non-transferrable and non-sub-licensable right and license to use, display, and publish any Brand Content solely on social media networks including but not limited to Facebook, Instagram, and Twitter (“Social Media Networks”). We may specifically limit the scope, territory, or the term of the license at any time. The license granted to any Brand Content excludes all rights not explicitly granted and Heartbeat and its licensors reserve all such rights.

### **37. Derivative Content**

When you use any Brand Content on any Social Media Networks, any content created or posted by you shall be referred to as derivative content (“Derivative Content”). For any Derivative Content you grant Heartbeat, its partners, affiliates, users, representatives and assigns a non-exclusive, limited, fully-paid, royalty-free, revocable, world-wide, universal, transferable, assignable license to display, distribute, store, broadcast, transmit, reproduce, modify, prepare derivative works, or use and reuse all or part of your Derivative Content for purposes as solely determined by Heartbeat and its licensees.

### **38. Access to Influencer’s Social Media Networks**

During the term of this Agreement and as required after the termination of this Agreement, Influencer grants Heartbeat access to Influencer's Social Media Networks as necessary and required by Heartbeat. Specifically, Influencer grants to Heartbeat the following rights:

- Heartbeat shall be able to monitor any Derivative Content placed on any Social Media Networks;
- Heartbeat shall be able to maintain any identifying marks as requested by Brands to comply with any relevant advertising laws;
- Heartbeat shall have the ability to interact with Influencer's Social Media Networks for the purposes of optimizing, tracking, measuring, or otherwise improving the App and any services offered; and
- Heartbeat shall have the ability to access the Influencer's Social Media Networks and any Derivative Content as required in Heartbeat's sole discretion to provide the services contemplated under this Agreement.

### **39. Compensation**

Influencers who post Derivative Content may be entitled to fees ("Commission Fees") for each Brand's Campaign. All Commission Fees shall be calculated using the App and all calculations shall be viewable on your dashboard. Where you have any questions relating to any Commission Fees please contact us. All Commission Fees shall be available in Influencer's account ninety (90) days after they have been earned. Where Influencer elects to have any payments made from its account, payment shall be made in the method as selected. Heartbeat reserves the right to institute a minimum amount earned before any Commission Fees may be paid. Heartbeat reserves the right to withhold Commissions Fees that are potentially fraudulent as determined by Heartbeat in its sole discretion. Heartbeat reserves the right to suspend payment of Commission Fees at any time and indefinitely, if it suspects fraud or other improper activity or a potential breach of any of the terms in this Agreement by the Influencer. Heartbeat, in its sole discretion, reserves the right to withhold indefinitely any Commission Fee, and/or to reverse, deny or reject any Commission Fee, for any attempt by an Influencer to manipulate, falsify or inflate any engagement related to any Derivative Content. Where Heartbeat and Influencer are engaged in any dispute related or arising out of this Agreement, Heartbeat may suspend payments until such dispute is resolved.

### **40. Taxes**

Influencer agrees to pay and withhold all taxes as required by their local laws and jurisdictions. In some instances Heartbeat may withhold taxes for Influencer. However, Influencer agrees that Heartbeat is not required to, cannot, and will not provide Influencer with any tax or legal advice. Before any Commission Fees may be paid Heartbeat may require Influencer to submit its tax information. Heartbeat shall not be responsible for any non-paid Commission Fees where Influencer has failed to properly submit its relevant tax information.

### **41. Influencer's Content**

Influencer's content posted on the Social Media Networks including any Derivative Content, shall be subject to Heartbeat's subjective approval and must comply with all applicable laws and regulations (including all laws respecting intellectual property rights) and, in any event, shall not include the following:

- Pornographic material, including any material appealing to the prurient interests;
- Racial, ethnic, political, hate-mongering or otherwise objectionable content;
- Investment, money-making opportunities or advice not permitted under law;
- Gratuitous violence or profanity;
- Material that defames, misrepresents, abuses, or threatens physical harm to others;
- Promotion of illegal substances or activities such as illegal online gambling, how to build a bomb, counterfeiting money, etc.;
- Software pirating;
- Obscenity and any spoofing, redirecting, or trafficking from adult-related websites;
- Infringement or violations of the patents, copyrights, trademarks, rights of publicity, rights of privacy, moral rights, music performance or other music-related rights, or any other right of any third party;
- Any illegal activity whatsoever; and
- Violate any relevant US federal, state, or local laws.

In the event that any Influencer's content on any Social Media Networks or any Derivative Content are found to be offensive or otherwise not in keeping with Heartbeat's company image, Heartbeat shall notify Influencer of its violation and terminate this Agreement (and withhold any Commission Fees), at Heartbeat's sole decision and discretion. Upon termination of this Agreement due to this section, Influencer shall not be entitled to any compensation that is owed but unpaid.

#### **42. Fraud**

Heartbeat actively monitors traffic for deceptive or fraudulent activity. If deception or fraud is detected as determined in Heartbeat's sole discretion, Influencer's account will be made inactive pending further investigation. After determining that Influencer has participated in fraudulent or deceptive activity, Heartbeat may terminate Influencer's account and Influencer shall not be entitled to any Commission Fees that are owed but unpaid.

#### **43. Influencer Warranties**

Influencer represents, warrants, and covenants as follows:

- Influencer owns and operates all social media accounts where any Brand Content will be placed;
- Any Influencer content that appears alongside any Brand Content is owned or properly licensed to the Influencer;
- Influencer has the ability and the right to grant the permissions required to effectuate this Agreement and the rights to any Derivative Content;
- Influencer shall comply with all US federal, state, and local laws while performing any actions under this Agreement;
- Influencer has not entered into any previous agreements which would limit its ability to undertake or perform this Agreement;
- Influencer will comply in good faith with Heartbeat’s directions and all other agreements provided; and
- Influencer is capable of undertaking this Agreement without infringing on the rights of third parties.

#### **44. Compliance with Laws**

Influencer agrees to comply with all US federal, state and local laws, including but not limited to US copyright laws, the Children’s Online Privacy Protection Act, Telephone Consumer Protection Act, and CAN-SPAM. Furthermore, Influencer agrees to follow US advertising laws including the Federal Trade Commission (“FTC”) Act and any and all FTC Advertising Guidelines and Rules. This means where Influencer uses any Derivative Content that purports to provide an endorsement or assessment of a Brand, Influencer must prominently disclose the fact that financial or in-kind compensation has been provided. You are advised to seek and obtain your own legal advice on how these rules apply to your promotional activities for which you receive compensation.

#### **45. Specific Limitations of Liability and Disclaimers for Influencers**

Unless otherwise provided in this Agreement, in no event shall Heartbeat be liable to the Influencer be liable for any lost profits or any special, incidental, consequential, exemplary, punitive or other indirect damages of any nature, for any reason, whether based on breach of contract, tort (including negligence), or otherwise and whether or not either has been advised of the possibility of such damages. UNDER NO CIRCUMSTANCES SHALL HEARTBEAT BE LIABLE TO ANY INFLUENCER FOR AN AMOUNT GREATER THAN THE AMOUNTS PAID BY HEARTBEAT TO INFLUENCER DURING THE PRECEDING MONTH.

DUE TO THE NATURE OF INTERNET AVAILABILITY AND ACCESSIBILITY, HEARTBEAT CANNOT GUARANTEE THAT THERE WILL BE NO DOWNTIME OR OTHER INTERRUPTIONS IN SERVICE REGARDING THE APP OR ANY ASSOCIATED SERVICES. WITHOUT LIMITING THE ABOVE, THE APP, ANY RELATED SERVICES AND ANY OTHER MATERIALS PROVIDED TO INFLUENCER ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, AND HEARTBEAT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AND

EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, EARNINGS OR FINANCIAL SUCCESS, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, HEARTBEAT DOES NOT REPRESENT OR WARRANT (A) THAT THERE ARE NO VIRUSES OR OTHER HARMFUL COMPONENTS ON THE APP, (B) THAT A PARTY'S SECURITY METHODS EMPLOYED WILL BE SUFFICIENT IN ALL CIRCUMSTANCES OR IN THE FACE OF ALL ATTACKS, OR (C) ANY INFORMATION WILL BE CORRECT, COMPLETE, OR ACCURATE. SOME JURISDICTIONS LIMIT THE ABILITY TO DISCLAIM ALL WARRANTIES, SO THIS CLAUSE OR SOME PORTIONS OF THIS CLAUSE MAY NOT APPLY TO YOU. Where not permitted Heartbeat does not disclaim liability for: (a) death or personal injury caused by its negligence or that of any of its officers, employees or agents; (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future.

Heartbeat makes no representations and warranties whatsoever, and disclaims any responsibility and liability, regarding the content or nature of any Brand Content, or its App, or any product or service advertised in connection therewith. Heartbeat has no liability to Influencer for unapproved materials, including all copy, images, URL names, and search terms used by Influencer or any content displayed by a Brand.

#### **46. Relationship of Parties**

The parties agree that Heartbeat is acting as an independent contractor in performing any services contemplated under this Agreement and that the relationship between the Heartbeat and Influencer shall not constitute a partnership, joint venture or agency. Neither Heartbeat nor any of Heartbeat's employees or agents (i) is an employee, agent or legal representative of Influencer, or (ii) shall have any authority to represent Influencer or to enter into any contracts or assume any liabilities on behalf of Influencer. Neither Influencer nor Influencer's employees or agents (a) is an employee, agent or legal representative of Heartbeat, or (b) shall have any authority to represent Heartbeat or to enter into any contracts or assume any liabilities on behalf of Heartbeat.

#### **47. Entire Agreement**

This Agreement along with and the Privacy Policy and any other supporting agreements provided by Heartbeat constitutes the complete and exclusive understanding and agreement between the parties regarding the subject matter herein and supersedes all prior or contemporaneous agreements or understandings written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by a duly authorized representative of each party.