



## Nightingale Terms & Conditions

MA 02451 USA, provides: (1) a Nightingale user account website that may be

that Nightingale provides. Some Nightingale products and Services can be used together or in ways that integrate with products and services from third

NOTICE: Nightingale is NOT A MEDICAL DEVICE and has not been evaluated by the Food & Drug Administration. Nightingale is not intended to diagnose, treat, cure or prevent any disease, medical conditions or injuries. If you have a medical condition you should seek the advice of your doctor. Nightingale has been found to comply with class B digital device, pursuant to part 15 of the FCC Rules. Your purchase includes the right to access your products over the internet for a period of 10 years from the date of activation.

and use of the Services. Please read these terms carefully. They require the use of binding arbitration to resolve disputes rather than jury trials or class actions. Please follow the instructions in the Dispute Resolution and Arbitration section below if

Terms, means any person or entity who accesses or uses the Services and any person or entity who creates an Account (as defined in Section 2(a)) and accepts these Terms, including Owners, Authorized Users (as defined in Section 2(b)), and the parents or guardians of Authorized Users, as applicable (as described in Section 1(b)(ii)). These Terms give you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under these Terms will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the

exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to you.

THIS IS A LEGAL AGREEMENT. BY ACKNOWLEDGING THE AGREEMENT OR BY ACCESSING AND USING THE SERVICES (INCLUDING THE SITES), YOU ARE ACCEPTING AND AGREEING TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT IN CONNECTION WITH THE ACCESS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY (SUBJECT TO SECTION 1(b)(ii) BELOW) TO ACCEPT AND AGREE TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE, SUBJECT TO SECTION 1(b)(ii) BELOW, OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO USE OR ACCESS THE SERVICES AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS, YOU SHOULD DISCONNECT YOUR PRODUCTS FROM YOUR ACCOUNT (AS DESCRIBED BELOW) AND CEASE ACCESSING OR USING THE SERVICES. AS DESCRIBED BELOW, YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATE OF THE SERVICES AND OF THE PRODUCTS CONNECTED TO THE SERVICES. IF YOU DO NOT AGREE, YOU SHOULD NOT USE THE SERVICES. AS DESCRIBED BELOW, SECTIONS 4 AND 5 DESCRIBE IMPORTANT LIMITATIONS OF THE SERVICES, ESPECIALLY IN CONNECTION WITH LIFE SAFETY AND CRITICAL USES. PLEASE READ THESE DISCLOSURES CAREFULLY, AS YOU ARE ACKNOWLEDGING THEM AND ACCEPTING THEM.

## 1. Overview, Eligibility, Customer Service, Term and Termination

(a) Overview and Relation to Other Agreements. These Terms govern your use of the Services. Your purchase of any Product is governed by the limited

(b) Eligibility. (i) You may use the Services only if you can form a binding contract with CSM (except subject to the provisions of clause (1)(b)(ii) below), and only if you are in compliance with these Terms and all applicable local, state/provincial, national, and international laws, rules, and regulations. Only individuals age 18 and older are permitted to act as Owners of Nightingale Accounts. (ii) If you are an Authorized User, you represent and warrant that you are over the age of 13, and in the event you are between the age of 13

and the age of majority in the jurisdiction where you reside, that you will only use the Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms. Any use or access to the Services by individuals under the age of 13 is strictly prohibited and is a violation of these Terms. The Services are not available to any users previously prohibited from using the Services by CSM.

(c) Customer Service. If you have any questions or concerns regarding the Products, the Services, or these Terms, please contact CSM.

(d) Term and Termination. These Terms will remain in full force and effect so long as you continue to access or use the Services, or until terminated in accordance with the provisions of these Terms. At any time, CSM may (i) suspend or terminate your rights to access or use the Services, or (ii) terminate these Terms with respect to you if CSM in good faith believes that you have used the Services in violation of these Terms, including any incorporated guidelines, terms or rules. If you transfer a Product to a new owner, your right to use the Services with respect to that Product automatically terminates, and the new owner will have no right to use the Product or Services under your Account (as described below) and will need to register for a separate Account with CSM.

(e) Effect of Termination. Upon termination of these Terms, your Account and your right to use the Services will automatically terminate.

## 2. Accounts

(a) Your Account. To use the Services, you must register for a user account

applicable registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Services does not violate any U.S. or other applicable law or regulation (e.g., you are not located in an embargoed country or are not listed as a prohibited or restricted party under applicable export control laws and regulations). You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur under your Account. You agree to

lower case letters, numbers and symbols) with your Account, and to maintain your password securely to prevent others from gaining access without your permission. You agree to immediately notify CSM of any unauthorized use, or suspected unauthorized use, of your Account or any other breach of security.

CSM is not liable for any loss or damage arising from your failure to comply with the above requirements.

is the Owner of the Nightingale Products associated with that Account. \_\_\_\_\_ nd

Authorized Users may have the ability to use the Services and monitor and control the Products. Authorized Users may also have the ability to view information (including personal information) and content across all of \_\_\_\_\_ connections. Authorized Users are responsible for their own actions in connection with the Products and Services, but Owner also hereby agrees to be fully responsible for all actions taken by Authorized Users relating to the \_\_\_\_\_

If you are an Owner who invites or enables an Authorized User, you acknowledge and agree that such Authorized User may subsequently invite or enable other Authorized Users with the same access and ability to use your Products and Services set out above. As a result, if you are an Owner, you should authorize only those individuals that you trust to access your Account, Products, and Services.

### 3. Access to Services

(a) Access and Use. Subject to these Terms, CSM grants you a non-transferable, non-exclusive, right (without the right to sublicense) to access and use the Services by (i) using the Web Apps in connection with, and solely for the purpose of, controlling and monitoring the Products you own or are authorized to control and monitor or otherwise accessing a service explicitly

using the Mobile Apps solely on your own handheld mobile device (e.g., iPhone, iPad, or Android smartphone) and solely for the Permitted Purpose.

(b) Automatic Software Updates. CSM may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the \_\_\_\_\_ ). These

may be automatically installed without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such Updates, your remedy is to terminate your Account and stop using the Services and the Product. If you do not terminate a previously created Account, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Services and the Product and you agree to promptly install any Updates CSM provides. Your continued use of the Services and the Product is your agreement (i) to these

Terms with respect to the Services, and (ii) to the End User License Agreement with respect to updated Product Software.

(c) Interface to Third-Party Products and Services. Over time, CSM may provide the opportunity for you to interface the Products and Services to one or more third-party products and services, through and using the Services, for

Products and Services you want to interface. Your explicit consent and authorization is required for this interface, and is revocable by you at any time. Once your consent is given for a particular Third-Party Product and Service, you agree that CSM may exchange information and control data regarding you and your products, including your personal information, in order to enable the interface you have authorized. Once this information is shared with the particular Third-Party Product and Service, its use will be governed by the third party's privacy policy and not by CSM's privacy documentation. You acknowledge and agree that CSM makes no representation or warranty about the safety of any Third-Party Products or Services. Accordingly, CSM is not responsible for your use of any Third Party Product or Service or any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to your use of any Third Party Products or Services. You should contact the third party with any questions about their Third Party Products and Services.

(d) Certain materials may be displayed or performed on the Services (including, but not limited to text, graphics, articles, photographs, video,

that you and other users provide us in the course of using the Services to provide, maintain and improve the Services. Some content may be visible to others (for example, the Service allows you to upload, post, or otherwise share video content). You may also post feedback, comments, questions, or other information on the Sites. You are solely responsible for all Content that you upload, post, email, transmit, or otherwise disseminate using, or in connection with, the Services, or that you contribute in any manner to the Services; you represent and warrant that you have all rights necessary to do so, in the manner in which you contribute it; and you license to CSM all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms. You shall abide by all copyright notices, trademark rules, information, and restrictions contained in any Content accessed through the Services, and shall not use, copy, reproduce, modify,

translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purposes whatsoever any Content or third party submissions or other proprietary rights not owned by you: (i) without the express prior written consent of the respective owners, and (ii) in any way that violates any third party right. CSM reserves the right to remove any Content from the Services at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have breached the immediately preceding sentence), or for no reason at all.

(e) Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: (i) you agree not to license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services; (ii) you agree not to modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services; (iii) you agree not to access the Services in order to build a similar or competitive service; (iv) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means; (v) you agree not to upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer or communication network, computer, handheld mobile device, data, the Services, the Product, the Product Software, or any other system, device or property; (vi) you agree not to interfere with, disrupt, or attempt to gain unauthorized access to, the servers or networks connected to the Services or violate the regulations, policies, or procedures of such networks; (vii) you agree not to access (or attempt to access) any of the Services by means other than through the interface that is provided by CSM; and (viii) you agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) which may be contained in or displayed in connection with the Services. Any future release, update, or other addition to functionality of the Services shall be subject to these Terms.

(f) Open Source. Certain items of independent, third party code may be included in the Web Apps and/or Mobile Apps that are subject to the GNU

s licensed under the terms of the license that accompanies such Open Source Software. Nothing in these Terms limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software. In particular, nothing in these Terms restricts your right to copy,

modify, and distribute such Open Source Software that is subject to the terms of the GPL.

(g) Privacy. Please review the Privacy Policy for CSM Web Sites and the Privacy Statement for CSM Products and Services. These documents describe practices regarding the information that CSM may collect from users of the Products and Services, including any Content or User Submissions.

(h) Security. CSM cares about the integrity and security of your personal information. However, CSM cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

(i) Modification. CSM reserves the right, at any time, to modify, suspend, or discontinue the Services or any part thereof with or without notice. You agree that CSM will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services or any part thereof.

(j) Access Outside Certain Countries. Although the Sites are accessible worldwide, the Products and Services provided or accessed through or on the Sites are not available to all persons or in all countries. If you choose to access the Sites from outside a country in which CSM supports the Product and Services listed here ("Target Country"), you do so on your own initiative and you are solely responsible for complying with applicable local laws in your country. You understand and accept that the Sites are not designed for use in a non-Target Country and some or all of the features of the Sites may not work or be appropriate for use in such a country. To the extent permissible by law, CSM accepts no responsibility or liability for any damage or loss caused by your accessing or use of the Sites or Nightingale Products in a non-Target Country. You will be bound by these Terms wherever you access or use the Sites or use the Services.

#### 4. Agreed Usage and Limitations Of CSM Services

(a) Intended Use of CSM Services. The Services are intended to be accessed and used for non-time-critical information and control of Nightingale Products. While we aim for the Services to be highly reliable and available, they are not intended to be reliable or available 100% of the time. The Services are subject

control, including Wi-Fi intermittency, service provider uptime, mobile notifications and carriers, among others. You acknowledge these limitations

and agree that CSM is not responsible for any damages allegedly caused by the failure or delay of the Services.

(b) No Life-Safety or Critical Uses of the Services. You acknowledge and agree that the Products and Services, whether standing alone or when interfaced with third-party products or services are not certified for emergency response. CSM makes no warranty or representation that use of the Products or Services with any third-party product or service will affect or increase any level of safety. YOU UNDERSTAND THAT THE PRODUCTS AND SERVICES, WHETHER STANDING ALONE OR INTERFACED WITH THIRD-PARTY PRODUCTS OR SERVICES, ARE NOT A THIRD-PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM -- CSM WILL NOT DISPATCH EMERGENCY AUTHORITIES TO YOUR HOME IN THE EVENT OF AN EMERGENCY. In addition, the Nightingale Customer Care and Support contacts cannot be considered a lifesaving solution for people at risk in the home, and they are no substitute for emergency services. All life threatening and emergency events should be directed to the appropriate response services.

(c) Reliability of Notifications. You acknowledge that the Services, including remote access and mobile notifications, are not intended to be 100% reliable and 100% available. We cannot and do not guarantee that you will receive notifications in any given time or at all. YOU AGREE THAT YOU WILL NOT RELY ON THE SERVICES FOR ANY LIFE SAFETY OR CRITICAL PURPOSES. MOBILE NOTIFICATIONS REGARDING THE STATUS AND ALARMS ON YOUR NIGHTINGALE PRODUCTS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY THEY ARE NOT A SUBSTITUTE FOR A THIRD-PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM. The information provided by CSM on what to do in an emergency is based on authoritative safety sources, but there is no way for CSM to provide specific information relating to a situation in your home or elsewhere. You acknowledge that it is your responsibility to educate yourself on how to respond to an emergency and to respond according to the specifics of your situation.

(d) Temporary Suspension. The Services may be suspended temporarily without notice for security reasons, system failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions. CSM does not offer any specific uptime guarantee for the Services.

(e) System Requirements. The Services will not be accessible without: (i) a working Wi-Fi network in your home that is positioned to communicate reliably with the Products; (ii) an Account; (iii) mobile clients such as a supported phone or tablet (required from some functionality); (iv) always-on broadband Internet access in your home with bandwidth sufficient to support the Products you use; and (v) other system elements that may be specified by CSM. It is your responsibility to ensure that you have all required system elements and that they are compatible and properly configured. You acknowledge that the Services may not work as described when the requirements and compatibility have not been met. In addition, you acknowledge that Nightingale may activate Bluetooth on your smartphone or tablet, with or without prior notification, in order to facilitate proper operation of the Services, enable communication with Nightingale Products connected to the same Nightingale account, and enable certain features.

Products in your home and their connection with other products and services.

AI

guarantee that it is correct or up to date. In cases where it is critical, accessing Product Information through the Services is not a substitute for direct access of the information in the home.

(h) All information publicly posted or privately transmitted through the Services is the sole responsibility of the person from which (or from whose account) such Content originated and CSM will not be liable for any errors or omissions in any Content. CSM cannot guarantee the identity of any other users with whom you may interact in the course of using the Services. Additionally, we cannot guarantee the authenticity of any data that users or merchants may provide about themselves. You acknowledge that all Content accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services.

(i) You warrant, represent and agree that you will not contribute any Content or otherwise use the Services in a manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any law, statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise

objectionable; (iv) impersonates any person or entity, including without limitation any employee or representative of CSM; (v) contains a virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program; (vi)

(such as allowing someone else to log in to the Services as you); (vii) attempts, in any manner, to obtain the password, account, or other security information from any other user; (viii) violates the security of any computer network, or cracks any passwords or security encryption codes; (ix) runs Maillist, Listserv, or any form of auto-any processes that otherwise interfere with the proper working of the Services

copies or stores any significant portion of the Content; or (xi) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

(j) Data protection and privacy laws where you live may impose certain responsibilities on you and your use of the Products and Services. You agree that you (and not CSM) are responsible for ensuring that you comply with any applicable laws when you use the Products and Services, including but not limited to (i) any laws relating to the recording or sharing of video or audio content that includes third parties, or (ii) any laws requiring notice to or consent of third parties with respect to your use of Nightingale. 5. Limitations Of Nightingale Services Due to Third Parties.

(a) General. Nightingale Services rely on or interoperate with third party products and services. These third party products and services are beyond

reliability of the Nightingale Services. You acknowledge and agree that: (i) the use and availability of the Services is dependent on third party product vendors and service providers, (ii) these third party products and services may not operate in a reliable manner 100% of the time, and they may impact the way that the Nightingale Services operate, and (iii) CSM is not responsible for damages and losses due to the operation of these third party products and services.

(b) Third Party Service Providers Used By CSM. You acknowledge that CSM uses third party service providers to enable some aspects of the Services such as, for example, data storage, synchronization, and communication, and mobile device notifications through mobile operating system vendors and mobile carriers. **YOU AGREE NOT TO RELY ON THE SERVICES FOR ANY LIFE SAFETY OR TIME-CRITICAL PURPOSES.**

(c) Equipment, ISP, and Carrier. You acknowledge that the availability of the Services is dependent on (i) your computer, mobile device, home wiring, home Wi-Fi network, Bluetooth connection, and other related equipment

fees charged by your ISP and Carrier in connection with your use of the Services. You also acknowledge that you are responsible for compliance with all applicable agreements, terms of use/service, and other policies of your ISP and Carrier.

(d) Third Party Products and Services. CSM may provide the opportunity for you to interface to Third Party Products and Services, for example through the IFTTT platform. You acknowledge that Third Party Products and Services that you connect to your account or interface with are not Nightingale products and services and you acknowledge and agree that CSM does not control, and that these Terms do not apply to, any Third Party Products and Services. Use of any Third Party Products and Services is governed by separate terms and conditions provided by the operator(s) of the applicable Third Party Products and Services. You acknowledge and agree that CSM makes no representation or warranty about the operation, reliability, or safety of any Third Party Products or Services. Accordingly, CSM is not responsible for your use of any Third Party Product or Service or any personal injury, death, property damage (including, without limitation, to your home), interruption of service, downtime, data loss, or other harm or losses arising from or relating to your use of any Third Party Products or Services. You should contact the Third Party with any questions about their Products and Services.

(e) App Stores. You acknowledge and agree that the availability of the Mobile Apps is dependent on the third party websites from which you download the Mobile Apps, e.g., the App Store from Apple or the Android app market from

between you and CSM and not with an App Store. Each App Store may have its own terms and conditions to which you must agree before downloading Mobile Apps from it. You agree to comply with, and your license to use the Mobile Apps is conditioned upon your compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than, or otherwise conflict with, the terms and conditions of these Terms, the more restrictive or conflicting terms and conditions in these Terms apply.

(f) Third Party Website Links and Referrals. The Sites may contain links to

Vendors are not under our control. CSM provides these links and referrals only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to such Third Party Sites or Referred Vendors. Your use of these Third Party Sites is at your own risk.

(g) Authorized Users. CSM is not responsible for any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to their use of the Services.

(h) Release Regarding Third Parties. CSM is not responsible for third parties or their products and services, including, without limitation, the App Stores, Third Party Products and Services, Third Party Sites, Referred Vendors, Equipment, ISPs, and Carriers. CSM hereby disclaims and you hereby discharge, waive and release CSM and its licensors and suppliers from any past, present, and future claims, liabilities, and damages, known or unknown, arising out of or relating to your interactions with such third parties and their products and services. YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH

THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR

SIMILAR PROVISION IN ANY OTHER JURISDICTION.

## 6. Ownership and Intellectual Property

(a) Nightingale Property. You acknowledge that all intellectual property rights, including without limitation copyrights, patents, trademarks, and trade secrets, in the Product, Product Software, and Services (i.e., the Sites, Web Apps, and Mobile Apps) are owned by CSM or its affiliates or our licensors. Your possession, access, and use of the Product, Product Software, and Services do not transfer to you or any third party any rights, title, or interest in or to such intellectual property rights. CSM and its affiliates and licensors and suppliers reserve all rights not granted in these Terms. The Services are licensed to you, not sold, under these Terms. You may only copy parts of the Services (including this Site) on to your own computer for your own personal use. You may not use the content of the Services in any other public or commercial way nor may you copy or incorporate any of the content of the Services into any other work, including your own web site without the written

consent of CSM. You must have a license from us before you can post or redistribute any portion of the Services. Other than with respect to User Submissions, CSM retains full and complete title to all content on the Services, including any downloadable software and all data that accompanies it. You must not copy, modify or in any way reproduce or damage the structure or presentation of the Services or any content therein.

(b) Feedback. You may choose to, or CSM may invite you to submit comments, suggestions, or ideas about the Products or Services, including how to improve the Products o  
you agree that your submissions are voluntary, gratuitous, unsolicited, and without restriction and will not place CSM under any fiduciary or other obligation. CSM may use, copy, modify, publish, or redistribute the submission and its contents for any purpose and in any way without any compensation to you. You also agree that CSM does not waive any rights to use similar or related ideas previously known to CSM, developed by its employees, or obtained from other sources.

(c) User Submissions. You hereby grant us with a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicenseable and transferable right to access, display, or otherwise use your User Submissions (including all related intellectual property rights) solely in connection with providing you the Services and as directed by you. You also hereby do and shall grant each user of the Services a non-exclusive license to access and use your User Submissions through the Services and as permitted through the functionality of the Services and under these Terms. Furthermore, you understand that we retain the right to reformat, modify, create derivative works of, excerpt, and translate any User Submissions submitted by you. For clarity, the foregoing license grant to CSM does not affect your ownership of or right to grant additional licenses to the material in your User Submissions, unless otherwise agreed in writing.

## 7. Indemnity

You agree to defend, indemnify and hold CSM and its licensors and suppliers harmless from any damages, liabilities, claims or demands (including costs

use and each Authorized Us

law or the rights of any third party. CSM reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are

required to indemnify CSM and you agree to cooperate with our defense of written consent. CSM will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## 8. Warranty Disclaimers

(a) THE WARRANTY FOR THE PRODUCT AND PRODUCT SOFTWARE ARE SET FORTH IN THE LIMITED WARRANTY AND THE EULA, RESPECTIVELY.

EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT.

(c) CSM AND OUR LICENSORS AND SUPPLIERS MAKE NO WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES: (I) WILL MEET YOUR REQUIREMENTS; (II) WILL BE COMPATIBLE WITH YOUR HOME NETWORK, COMPUTER OR MOBILE DEVICE; (III) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (IV) WILL BE ACCURATE OR RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CSM OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY.

(d) CSM DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH OR IN CONNECTION WITH THE PRODUCTS OR SERVICES (INCLUDING, BUT NOT LIMITED TO, THIRD PARTY PRODUCTS AND SERVICES CONNECTED THROUGH THE IFTTT PLATFORM) OR ANY HYPERLINKED WEBSITE OR SERVICE, AND CSM WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF SUCH PRODUCTS OR SERVICES.

(e) WHEN YOU INSTALL, SETUP OR USE PRODUCTS AND SERVICES LIKE THOSE PROVIDED BY CSM YOU ARE GIVEN THE OPPORTUNITY TO ALTER DEFAULTS OR CHOOSE PARTICULAR SETTINGS. THE CHOICES YOU MAKE CAN CAUSE DAMAGE OR LEAD TO NON-

RECOMMENDED OPERATION OF YOUR CONNECTED EQUIPMENT OR SYSTEMS. YOU ASSUME ALL LIABILITY FOR SUCH DAMAGE WHEN YOU CHOOSE PARTICULAR SETTINGS OR SET OR ADJUST DEFAULTS.

(f) CSM MAKES NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES, AND CSM WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES. CSM MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SUGGESTIONS OR RECOMMENDATIONS OF SERVICES OR PRODUCTS OFFERED OR PURCHASED THROUGH THE SERVICES.

## 9. Limitation of Liability

Nothing in these Terms and in particular within this "Limitation of Liability" clause shall attempt to exclude liability that cannot be excluded under applicable law. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) CSM BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE SERVICES OR THE PRODUCTS, EVEN IF CSM KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES,

RELATED TO THE SERVICES AND THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY

SERVICES OR THE PRODUCT AT ISSUE IN THE PRIOR 12 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. CSM

DI

SUPPLIERS. UNDER NO CIRCUMSTANCES WILL CSM BE LIABLE IN ANY WAY FOR ANY CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED IN CONNECTION WITH USE OF OR EXPOSURE TO ANY CONTENT POSTED, EMAILED, ACCESSED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES.

## 10. Fees and Payment

Certain Services may be provided for a fee. You shall pay all applicable fees in connection with the Services selected by you in accordance with the Terms of Sale.

## 11. Dispute Resolution and Arbitration

PLEASE READ THIS SECTION CAREFULLY. FOLLOW THE INSTRUCTIONS BELOW IF YOU WISH TO OPT OUT OF THE REQUIREMENT OF ARBITRATION ON AN INDIVIDUAL BASIS.

(a) Arbitration. CSM and you agree to arbitrate all disputes and claims that arise from or relate to these Terms or the Services in any way, except for claims arising from bodily injury. This agreement to arbitrate is intended to be broadly interpreted, including, for example:

-

commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision.

(b) Notice of disputes. If either of us intends to seek arbitration of a dispute, that party must provide the other with notice in writing. The notice to CSM should be sent to: CSM Legal Department, 404 Wyman Street, Waltham MA 02451 USA. CSM will send notice to you at the e-mail and/or mailing addresses associated with your account. Your notice to CSM must (a) provide your name, mailing address, and email address; (b) describe the dispute; and (c) state the relief you are requesting. If we are unable to reach an agreement to resolve the dispute within 60 days after the notice is received, you or we may commence arbitration.

(c) Arbitration procedures. The arbitration will be governed by the Consumer Arbitration Rules ("AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. If the AAA is unavailable, the parties shall agree to another arbitration provider or the court shall appoint a substitute. Unless you and we agree otherwise, any arbitration hearings will take place in the county (or parish) where you are receiving Nightingale Services. If the value of your claim is \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, by telephone, or by an in-person hearing. If the value of your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of this arbitration provision or the arbitrability of disputes are for the court to decide. The arbitrator may consider but is not bound by rulings in other arbitrations between CSM and Nightingale users. The arbitrator can award the same individualized damages and relief that a court can award. Judgment on the award may be entered by any court having jurisdiction.

be found in the AAA Rules (available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879). CSM will pay all AAA filing, administrative, and arbitrator fees for any arbitration that CSM commences. If you provided CSM

AAA fees will be governed by the AAA Rules (unless the law of your state requires CSM to pay all such fees). If, however, the arbitrator finds that either the substance of your claim or the relief sought is frivolous or brought for an improper purpose (as measured by the standards in Federal Rule of Civil Procedure 11(b)), then the payment of all AAA fees shall be governed by the AAA Rules. In such cases, the arbitrator may direct you to reimburse CSM for amounts that CSM paid on your behalf.

(e) No class arbitration. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND CSM AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.** Further, unless all affected parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If a court decides that itations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

(f) 30-Day Opt-Out Period. If you do not wish to be bound by the arbitration and class-action waiver provisions in this section 11, you must notify CSM in writing within 30 days of the date that you first accept these Terms (unless a longer period is required by applicable law). Your written notification must be mailed to CSM at the following address: CSM Legal Department, 404 Wyman Street, Waltham MA 02451 USA. Subject to section 11(g) below, if you do not notify CSM in accordance with this section 11(f), you agree to be bound by the arbitration and class-action waiver provisions of these Terms, including such provisions in any Terms revised after the date of your first acceptance. Such notification must include: (a) your name, (b) your Nightingale account number, (c) your mailing address, and (d) a statement that you do not wish to resolve disputes with CSM through arbitration. This notification affects these Terms only; if you previously entered into other arbitration agreements with CSM or enter into other such agreements in the future, your notification that you are opting out of the arbitration provision in these Terms shall not affect the other arbitration agreements between you and CSM.

(g) Future changes to arbitration provision. If CSM makes any changes to the Dispute Resolution and Arbitration section of these Terms (other than a change to the address at which CSM will receive notices of dispute, opt-out

notices, or rejections of future changes to the Dispute Resolution and Arbitration section), you may reject any such change by sending us written notice within 30 days of the change to CSM Legal Department, 404 Wyman Street, Waltham MA 02451 USA. It is not necessary to send us a rejection of a future change to the Dispute Resolution and Arbitration section of these Terms if you had properly opted out of the arbitration and class-action waiver provisions in this section 11 within the first 30 days after you first accepted these Terms. If you have not properly opted out of the arbitration and class-action waiver provisions in this section 11, by rejecting a future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this arbitration provision, as modified by any changes you did not reject.

## 12. Digital Millennium Copyright Act

(a) If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail): (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material; (iv) Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail; (v) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(b) CSM's designated Copyright Agent to receive notifications of claimed infringement is Copyright Agent Attention Legal 404 Wyman Street, Waltham MA 02451. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to Nightingale customer service through [meetnightingale.com/support](https://meetnightingale.com/support). You acknowledge

that if you fail to comply with all of the requirements of this Section 12(b), your DMCA notice may not be valid.

(c) Counter-Notice. If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent: (i) Your physical or electronic signature; (ii) Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled; (iii) A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and (iv) Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in Boston, Massachusetts, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

(d) If a counter-notice is received by the Copyright Agent, CSM may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at CSM's sole discretion.

### 13. General

(a) Changes to these Terms. CSM reserves the right to make changes to these Terms. We'll post notice of modifications to these Terms on this page. You should ensure that you have read and agree with our most recent Terms when you use the Services. Continued use of the Services following notice of such changes shall indicate your acknowledgment of such changes and agreement to be bound by the revised Terms.

(b) Governing Law. The courts in some countries will not apply Massachusetts law to some types of disputes. If you reside in one of those countries, then where Massachusetts law is excluded from applying, your country's laws will apply to such disputes related to these terms. Otherwise, you agree that these Terms, and any claim, dispute, action, cause of action, issue, or request for relief arising out of or relating to these Terms or your use of the Products and Services shall be governed by the laws of the State of Massachusetts without

giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You agree to submit to the personal jurisdiction of the state and federal courts in or for Boston, Massachusetts such claims or disputes, unless such claim or dispute is required to be arbitrated as set forth in an above section.

(c) Protection of Confidentiality and Intellectual Property Rights.

Notwithstanding the foregoing, CSM may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.

(d) Entire Agreement/Severability. These Terms constitute the entire agreement between you and CSM regarding the use of the Services. Any failure by CSM to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Neither party is an agent or partner of the other party.

(e) Survivability. The obligations in Sections 3(d), 4, 6, 7, 8, 9, 11, and 13 will survive any expiration or termination of these Terms.

(f) Assignment. These Terms, and any associated rights or obligations, may consent. These Terms may be assigned by CSM without restriction. These Terms are binding upon any permitted assignee.

(g) Notifications. CSM may provide notifications to you as required by law or for marketing or other purposes via (at its option) email to the primary email associated with your Account, mobile notifications, hard copy, or posting of such notice on [www.meetnightingale.com](http://www.meetnightingale.com). CSM is not responsible for any automatic filtering you or your network provider may apply to email notifications.

(h) Disclosures. Please see

(i) Copyright/Trademark Information. Copyright © 2016, Cambridge Sound Management, Inc. All rights reserved. All trademarks, logos, and service

respective holders. You are not permitted to use any of the Marks without the applicable prior written consent of CSM or such respective holders. CSM reserves the right to alter product and services offerings, specifications, and pricing at any time without notice, and is not responsible for typographical or graphical errors that may appear in this or in related documents.

## **Contact Us**

CSM welcomes your questions or comments regarding the Terms:

Cambridge Sound Management, Inc.  
404 Wyman Street  
Waltham, MA, Massachusetts 02451

Email Address:  
[nightingaleSupport@cambridgesound.com](mailto:nightingaleSupport@cambridgesound.com)  
Telephone number: 800.219.8199

Effective as of June 01, 2016