

TERMS OF SERVICE

Thermacell Repellents, Inc. (“Thermacell”) provides (1) the Thermacell website located at www.Thermacell.com, and all associated sites linked to www.Thermacell.com (each a “Site”), (2) services accessible through the Sites (“Web Apps”), and (3) software that may be downloaded to your smartphone or tablet to access services (“Mobile Apps”), all for use in conjunction with Thermacell hardware products (“Products”) and in other ways that Thermacell provides. Some Thermacell Products and Services can be used together or in ways that integrate with products and services from third parties. The term “Services” means the Sites, Web Apps, and Mobile Apps.

These Terms of Service (“Terms” or “Agreement”) govern your access to, and use of, the Services and Products. Please read these Terms carefully. The term “you”, as used in these Terms, means any person or entity who accesses or uses the Services or Products 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. In addition, you may also have other legal rights which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, limitations of liability, indemnification, waiver of jury trial, and waiver of punitive damages 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.

THESE TERMS ARE A LEGAL AGREEMENT. BY ACCEPTING THESE TERMS THROUGH A SITE, WEB APP OR MOBILE APP, OR BY ACCESSING AND USING THE SERVICES (INCLUDING THE SITES) OR PRODUCTS, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT IN CONNECTION WITH THE ACCESS AND USE. 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 THAT 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 PRODUCTS 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 AND PRODUCTS.

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 AND PRODUCTS.

AS DESCRIBED BELOW, SECTIONS 4 AND 5 DESCRIBE IMPORTANT LIMITATIONS OF THE SERVICES AND PRODUCTS. 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, Products and Product Software. Your purchase of any Product is governed by the limited warranty provided with that Product (“Limited Warranty”). The software embedded in the

Product (and any updates thereto) (“Product Software”) is licensed and governed by these Terms. Certain features of the Services may be subject to additional guidelines, terms or rules, which will be posted on the Services in connection with such features. All additional guidelines, terms or rules and the [Website Privacy Policy](#) (“Website Privacy Policy”) and the Privacy Statement (“Privacy Statement”) are incorporated by reference into these Terms and you are agreeing to accept and abide by them by using the Services, Products and Product Software.

- (b) Eligibility. (i) You may use the Services and Products only if you have the legal capacity to form a binding contract with Thermacell (except subject to the provisions of clause (1)(b)(ii) below), you accept these Terms through a Site, Web App or Mobile App, or by accessing or using the Services or Products, 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 aged 18 and older are permitted to act as Owners of Thermacell Accounts. (ii) If you are an Authorized User, you represent and warrant that you are over the age of 13 (or equivalent minimum age in the jurisdiction where you reside), and in the event you are between the age of 13 (or equivalent minimum age in the jurisdiction where you reside) and the age of majority in the jurisdiction where you reside, that you will only use the Services and Products under the supervision of a parent or legal guardian who agrees to be bound by these Terms on your behalf. Any use or access to the Services and Products by individuals under the age of 13 (or the equivalent minimum age in the jurisdiction where you reside) is strictly prohibited and is a violation of these Terms. The Services and Products are not available to any users previously prohibited from using the Services and Products by Thermacell.
- (c) Customer Service. If you have any questions or concerns regarding the Product Software, the Products, the Services or these Terms, please contact Thermacell.
- (d) Term and Termination. These Terms will remain in full force and effect as long as you continue to access or use the Services, Products or Product Software, or until terminated in accordance with the provisions of these Terms. At any time, Thermacell may (i) suspend or terminate your rights to access or use the Services, or (ii) terminate these Terms with respect to your use of the Products, Product Software and Services if Thermacell, in good faith, believes that you have used the Services, Products or Product Software 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 and Product Software with respect to that Product automatically terminates and the new owner will have no right to use the Product, Product Software or Services under your Account (as described below) and will need to register for a separate Account with Thermacell and accept these Terms.
- (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 certain Services and Products, you must register for a user account (“Account”) and provide certain information about yourself, as prompted by the applicable registration form. You represent and warrant that: (a) all required registration information that you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Services and Products will not violate any US or other applicable law or regulation. 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 use “strong” passwords (passwords that use a combination of

upper- and lower-case letters, numbers and symbols) with your Account and to maintain your password securely to prevent others from gaining access. You agree to immediately notify Thermacell of any unauthorized use or suspected unauthorized use of your Account, or any other breach of security. Thermacell is not liable for any loss or damage arising from your failure to comply with the above requirements.

- (b) The individual who creates an Account is the “Owner” of that Account and is the Owner of the Products associated with that Account. Individuals who are authorized to access an Owner’s Products and Services are “Authorized Users”. 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 an Owner’s Products and Services with Thermacell connections (for example, an Authorized User will receive mobile alerts). Authorized Users are responsible for their own actions in connection with the Products and Services, but the Owner also hereby agrees to be fully responsible for all actions taken by Authorized Users relating to the Owner’s Products, Services and Account. If you are an Owner who invites or enables an Authorized User, you acknowledge and agree that said 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 only authorize those individuals whom you trust to access your Account, Products and Services.

3. Access to Services

- (a) Access and Use. Subject to these Terms, Thermacell grants you a non-transferable, non-exclusive right (without the right to sub-license) 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 provided by Thermacell for your use (the “Permitted Purpose”), (ii) installing and using the Mobile Apps solely on your own handheld mobile device (e.g., iPhone, iPad or Android smartphone) and solely for the Permitted Purpose, and (iii) accessing the Sites solely for the Permitted Purpose.
- (b) Product Software License. Subject to these Terms, Thermacell grants you a limited and non-exclusive license (without the right to sub-license) to execute one (1) copy of the Product Software, in executable object code form only, solely on the Product that you own or control and solely for use in conjunction with the Product for your personal, non-commercial purposes.
- (c) Automatic Software Updates. Thermacell may, from time to time, develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Services and/or the Product Software (“Updates”). 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 Products. 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 Products and you agree to install any Updates that Thermacell provides promptly. Your continued use of the Services, Products and/or Product Software is your agreement (i) to these Terms with respect to the Services, Products and Product Software, and (ii) any change or updates that Thermacell may make to these Terms over time.
- (d) Thermacell-provided Interface to Third-Party Products and Services. Over time, Thermacell 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 (“Third-Party Products and Services”). You decide whether you want to interface, and with which Third-Party 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 Thermacell may exchange information and control data regarding you and your products, including your personal information, in order to enable the interface that 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 Thermacell’s privacy documentation. You acknowledge and agree that Thermacell makes no representation or warranty about the quality or safety of any Third-Party Products or Services or the interface with Product and Services. Accordingly, Thermacell 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.

- (e) Certain materials may be displayed or performed on the Services (including, but not limited to, text, graphics, articles, photographs, video, images and illustrations (“Content”)) and are protected by copyright and other intellectual property laws. The Content also includes information that you and other users provide us with in the course of using the Services (collectively, “User Submissions”), which we may use to provide, maintain and improve the Services. You may also post feedback, comments, questions or other information on the Sites. In addition, the Product Software will provide Thermacell with information about use of your Products and your interaction with the Services (such as operational status and system errors, usage frequency, and IP location data) (“Information”). Information provided to Thermacell may be accessed by third parties and/or stored on servers outside the country in which you live. We will handle any Information we receive in accordance with the Privacy Statement. By using the Services, Products and/or Product Software, you consent to such access of the Information. If you do not consent to such access, you should discontinue use of the Services, Products and/or Product Software immediately and inform Thermacell in writing of your objection.
- (f) 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, Products or Product Software; (ii) you agree not to modify, make derivative works of, disassemble, reverse-compile or reverse-engineer any part of the Services, Products or Product Software; (iii) you agree not to access the Services or Products in order to build a similar or competitive service or product; (iv) except as expressly stated herein, no part of the Services, Products or Product Software 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 communications network, computer, handheld mobile device, data, the Services, the Products, 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 Thermacell; (viii) you agree not to use any portion of the Product Software on any device or computer other than the Product that you own or control; and (ix) you agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) that may be contained in, or displayed in connection with, the Services, Products or Product Software. Any future release, update or other addition to functionality of the Services shall be subject to these Terms.

- (g) **Third-Party Licensed Software.** The Services, Products and/or Product Software may contain software that is subject to a separate license agreement ("Third-Party Software"). The applicable licensor retains all rights to such Third-Party Software, and a limited license is granted to you solely for use with the Services, Products and/or Product Software. You will use the Third-Party Software that is incorporated or embedded in a manner unmodified from the form provided to you. You will not modify, adapt, translate or create derivative works based on, or decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of the Third-Party Software. You will not disseminate or transmit viruses, worms, Trojan horses, time bombs, spyware, malware, cancelbots, passive collection mechanisms, robots, data mining software, or any other malicious or invasive code or program. THERE ARE NO WARRANTIES WITH RESPECT TO THE THIRD-PARTY SOFTWARE, INCLUDING THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. There are no special, indirect, incidental, consequential or punitive damages available from the Third-Party Software licensor. The licensor(s) of the Third-Party Software are express third-party beneficiaries of these Terms.
- (h) **Open Source.** Certain items of independent, third-party code or software may be included in the Web Apps, Mobile Apps and/or Product Software that are subject to the GNU General Public License ("GPL") or other open-source licenses ("Open-Source Software"). The Open-Source Software is 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.
- (i) **Privacy.** Please review the Privacy Policy for Thermacell websites and the Privacy Statement for Thermacell Products and Services. These documents describe practices regarding the information that you or Thermacell may collect from users of the Products and Services, including any Content or User Submissions.
- (j) **Security.** Thermacell cares about the integrity and security of your personal information. We endeavor to implement appropriate security measures. However, Thermacell 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.
- (k) **Modification.** Thermacell reserves the right, at any time, to modify, suspend or discontinue the Services or any part thereof with or without notice. You agree that Thermacell will not be liable to you or to any third party for any modification, suspension or discontinuance of the Services or any part thereof.
- (l) **Access Outside Certain Countries.** Although the Mobile App may be accessible worldwide, the Products and Services provided or accessed through or on the Mobile App are not available to all persons or in all countries. If you choose to access the Mobile App from

outside a country in which Thermacell supports the Product and Services (“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 Services are not designed for use in a non-Target Country and that some, or all, of the features of the Services may not work or be appropriate for use in such a country. To the extent permissible by law, Thermacell accepts no responsibility or liability for any damage or loss caused by your access or use of the Services or Thermacell Products in a non-Target Country. You will be bound by these Terms wherever you access or use the Sites or the Services.

4. Agreed Usage and Limitations of Thermacell Services and Products

- (a) **Intended Use of Thermacell Services.** The Services are intended to be accessed and used for non-time-critical information and control of Thermacell 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 to sporadic interruptions and failures for a variety of reasons beyond Thermacell’s control, including Wi-Fi intermittency, service provider uptime, mobile notifications and operators, among others. You acknowledge these limitations and agree that Thermacell is not responsible for any damages allegedly caused by the failure or delay of the Services.
- (b) **Reliability of Services.** You acknowledge that the Services, including remote access and mobile notifications, are not error-free or 100% reliable and 100% available. Proper functioning of the Services relies and is dependent on, among other things, the transmission of data through your wi-fi network, enabled wireless device (such as a phone or tablet) and broadband internet access, for which neither Thermacell nor any wireless or data carrier is responsible, and may be interrupted, delayed, refused, or otherwise limited for a variety of reasons, including insufficient coverage, power outages, termination of service and access, environmental conditions, interference, non-payment of applicable fees and charges, unavailability of radio frequency channels, system capacity, upgrades, repairs or relocations, and priority access by emergency responders in the event of a disaster or emergency (collectively, “Service Interruptions”). You understand that Service Interruptions may result in the Services being unreliable or unavailable for the duration of the Service Interruption. We cannot and do not guarantee that you will receive notifications within any given time, or at all.
- (c) **Service Interruptions; No Refund or Rebate.** The Services may be suspended temporarily, without notice, for security reasons, systems failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions. Thermacell does not offer any specific uptime guarantee for the Services.
- (d) **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) an enabled and supported wireless device, such as a phone or tablet (required for some features and functionalities of the Service); (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 Thermacell. 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. If you modify, substitute, move, or otherwise change any of the required system elements, it is your sole duty and responsibility to be sure they are compatible and properly configured to work with the

Products and Services. In addition, you acknowledge that Thermacell 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 Thermacell Products connected to the same Thermacell account and enable certain features.

- (e) The Services provide you with information (“Product Information”) regarding the Products in your home and their connection with other products and services. All Product Information is provided “as is” and “as available”. We cannot 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.
- (f) You warrant, represent and agree that you will not contribute any Content or otherwise use the Services, Products or Product Software 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 or is otherwise illegal; (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 Thermacell; (v) contains a virus, Trojan Horse, worm, time bomb or other harmful computer code, file or program; (vi) jeopardizes the security of your Thermacell Account or anyone else’s Account (such as allowing someone else to log into the Services as you); (vii) attempts, in any manner, to obtain or access the password, account, products, devices, systems, or other security information from any other user or third party; (viii) violates the security of any computer network or cracks any passwords or security encryption codes; (ix) runs any form of auto-responder or “spam” on the Services or any processes that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services’ infrastructure); (x) copies or stores any significant portion of the Content; (xi) decompiles, reverse-engineers or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services or Product Software; or (xii) denigrates or disrupts any network capacity or functionality.
- (g) Installation, Test and Use. It is your responsibility to install and use the Products and Services pursuant to the applicable manual and instructions. IF A PRODUCT IS NOT PROPERLY INSTALLED, OR IF A PRODUCT IS OUTSIDE THE DETECTION RANGE OR HINDERED OR OBSTRUCTED BY WALLS, FURNITURE, PERSONAL PROPERTY OR OTHER THINGS, YOU MAY EXPERIENCE DETECTION OR PERFORMANCE FAILURES. It is your responsibility to test the Products once installed to be sure the Products (and any related components and peripherals) are functioning and communicating as intended and designed, and then regularly test and maintain the Products after installation.
- (h) Check Batteries Regularly. It is your responsibility to replace any batteries for the Products, when necessary. YOU UNDERSTAND AND AGREE THAT THE PRODUCTS MAY NOT FUNCTION OR PROPERLY FUNCTION IF BATTERIES NEED REPLACEMENT; PLEASE CHECK THEM REGULARLY.
- (i) Smart Device Standards/Use Only Thermacell Certified Third-Party Products or Services. The Products may use various open or commonly available standards or means to communicate and work with smart or connected devices that are also similarly used by other systems or services not manufactured by Thermacell, including Wi-Fi, Bluetooth, and IP devices. HOWEVER, SMART, CONNECTED OR OTHER DEVICES AND RELATED SERVICES (“THIRD-PARTY PRODUCTS AND SERVICES”) THAT ARE

NOT DESIGNATED BY THERMACELL AS COMPATIBLE WITH THE PRODUCTS AND SERVICE MAY NOT WORK WITH THE PRODUCTS AND SERVICES, OR MAY HAVE LIMITED FEATURES OR FUNCTIONALITY, EVEN IF DESIGNED, SPECIFIED OR MARKETED TO OPERATE USING THE SAME OR SIMILAR STANDARDS OR MEANS OF COMMUNICATION. YOU AGREE ONLY TO USE THIRD-PARTY PRODUCTS AND SERVICES DESIGNATED BY THERMACELL AS COMPATIBLE WITH THE PRODUCTS AND SERVICES. FURTHER, YOU AGREE THAT THERMACELL IS NOT RESPONSIBLE FOR, AND YOU HEREBY RELEASE AND HOLD THERMACELL HARMLESS FROM AND AGAINST, ALL LIABILITY AND DAMAGES, INJURIES OR LOSS OF LIFE ARISING FROM, RELATED TO, OR CAUSED BY, ANY ATTEMPT BY YOU TO CONNECT, OR YOUR CONNECTION AND USE OF, THIRD-PARTY PRODUCTS OR SERVICES THAT ARE NOT CERTIFIED BY THERMACELL AS COMPATIBLE WITH THE PRODUCTS AND SERVICES.

5. Limitations of Thermacell Services Due to Third Parties

- (a) General. Thermacell Services rely on or inter-operate with third-party products and services. These third-party products and services are beyond Thermacell's control, but their operation may impact on, or be impacted by, the use and reliability of the Thermacell 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 on the way that the Thermacell Services operate, and (iii) Thermacell 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 Thermacell. You acknowledge that Thermacell uses third-party service providers to enable some aspects of the Services – such as, for example, data storage, synchronization and communication through Amazon Web Services and mobile device notifications through mobile operating system vendors and mobile operators. YOU AGREE NOT TO RELY ON THE SERVICES FOR ANY SAFETY OR TIME-CRITICAL PURPOSES. FURTHER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO RELEASE AND HOLD HARMLESS THIRD-PARTY SERVICE PROVIDERS FROM ALL LIABILITY, DAMAGES OR LOSSES OF ANY KIND OR SORT, PERSONAL INJURY OR LOSS OF LIFE ARISING FROM YOUR USE OF THE PRODUCTS AND SERVICES.
- (c) Equipment, ISP and Operator. 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 (“Equipment”), (ii) your Internet service provider (“ISP”) and (iii) your mobile device operator (“Operator”). You acknowledge that you are responsible for all fees charged by your ISP and Operator 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 Operator.
- (d) 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 Google Play Store from Google or the App Store from Apple (each an “App Store”). You acknowledge that these Terms are between you and Thermacell 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 such App Store terms

and conditions, and your license to use the Mobile Apps is conditioned upon your compliance with such App Store terms and conditions. To the extent that 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.

- (e) **Third-Party Website Links and Referrals.** The Sites may contain links to other websites operated by third parties (“Third-Party Sites”) and referrals to third-party vendors (“Referred Vendors”). Such Third-Party Sites and Referred Vendors are not under our control. Thermacell 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.
- (f) **Authorized Users.** Thermacell is not responsible for any Authorized User’s behavior, or 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.
- (g) **Release Regarding Third Parties.** Thermacell 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, and ISP. Thermacell hereby disclaims, and you hereby discharge, waive and release Thermacell 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.

6. Ownership and Intellectual Property

- (a) **Thermacell 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 Thermacell or its affiliates or our licensors. Your possession, access to 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. Thermacell, 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.
- (b) **Feedback.** You may choose to or Thermacell may invite you to submit comments, suggestions or ideas about the Products or Services, including how to improve the Products or Services (“Ideas”). By submitting any Ideas, you agree that your submissions are voluntary, gratuitous, unsolicited and without restriction, and will not place Thermacell under any fiduciary or other obligation. Thermacell 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 Thermacell does not waive any rights to use similar or related ideas previously known to Thermacell, developed by its employees or obtained from other sources.
- (c) **User Submissions.** You hereby grant us a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, sub-licensable and transferable right to access, display or otherwise use your User Submissions (including all related intellectual property rights) solely in connection with providing you with the Services and as directed by you. 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 Thermacell 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 FOR THIRD PARTY ACTIONS

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO INDEMNIFY, DEFEND, RELEASE AND HOLD THERMACELL AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY, THE "THERMACELL PARTIES") HARMLESS FROM AND AGAINST (I) ALL CLAIMS, ACTIONS, LAWSUITS AND ANY OTHER LEGAL ACTION BROUGHT BY ANY THIRD PARTY AGAINST ANY OF THE THERMACELL PARTIES ARISING FROM OR RELATING TO (A) YOUR USE AND EACH AUTHORIZED USER'S USE OF THE PRODUCTS, PRODUCT SOFTWARE OR SERVICES; (B) YOUR OR YOUR AUTHORIZED USERS' VIOLATION OF THESE TERMS; (C) ANY USER SUBMISSIONS OR FEEDBACK YOU PROVIDE; OR (D) YOUR OR YOUR AUTHORIZED USERS' VIOLATION OF ANY LAW OR THE RIGHTS OF ANY THIRD-PARTY (COLLECTIVELY, "THIRD PARTY ACTIONS"); AND (II) ANY AND ALL RELATED LOSSES, DAMAGES, SETTLEMENTS AND JUDGEMENTS (INCLUDING PAYMENT OF THE THERMACELL PARTIES' ATTORNEYS' FEES AND COSTS) INCURRED BY ANY OF THE THERMACELL PARTIES, ASSESSED OR FOUND AGAINST ANY OF THE THERMACELL PARTIES, OR MADE BY ANY OF THE THERMACELL PARTIES, RELATING TO OR ARISING FROM ANY SUCH THIRD PARTY ACTION ("THIRD PARTY RELATED LOSSES"). YOU UNDERSTAND AND AGREE THAT YOUR INDEMNIFICATION OBLIGATION TO THE THERMACELL PARTIES APPLIES EVEN IF SUCH THIRD-PARTY ACTION AND THIRD PARTY RELATED LOSSES ARISE FROM THE NEGLIGENCE OF ANY KIND OR DEGREE, BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NON-COMPLIANCE WITH APPLICABLE LAW, OR OTHER FAULT OR WRONGDOING OF ANY OF THE THERMACELL PARTIES. HOWEVER, NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO REQUIRE ANY INDEMNIFICATION WHICH WOULD RENDER OR MAKE THIS CLAUSE, IN WHOLE OR IN PART, VOID AND/OR UNENFORCEABLE UNDER APPLICABLE LAW. FURTHER, YOUR INDEMNIFICATION OBLIGATION SHALL NOT APPLY TO ANY WILLFUL, WANTON, INTENTIONAL OR RECKLESS MISCONDUCT OF THE THERMACELL PARTIES, OR GROSS NEGLIGENCE OF THE THERMACELL PARTIES IN THOSE STATES THAT DO NOT PERMIT INDEMNIFICATION FOR GROSS NEGLIGENCE. "THIRD PARTY" IS DEFINED HEREIN TO INCLUDE, AMONG OTHERS, AN AUTHORIZED USER, AN UNAUTHORIZED USER, A SPOUSE, PARTNER, FAMILY MEMBER, GUEST, NEIGHBOUR, TENANT, EMPLOYEE OR INSURANCE COMPANY. Thermacell reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Thermacell, and you agree to cooperate with our defense of such claims. You agree not to settle any such claim without Thermacell's prior written consent. Thermacell will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

8. Warranty Disclaimers

- (a) THE WARRANTIES FOR THE PRODUCT AND PRODUCT SOFTWARE ARE SET FORTH IN THE LIMITED WARRANTY.
- (b) THE SERVICES ARE PROVIDED FOR YOUR CONVENIENCE, "AS IS" AND "AS AVAILABLE", AND THERMACELL, AND OUR LICENSORS AND SUPPLIERS, 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) THERMACELL, 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 THERMACELL OR THROUGH THE SERVICES, SHALL CREATE ANY WARRANTY.
- (d) THERMACELL DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY 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 THERMACELL PLATFORM), OR ANY HYPERLINKED WEBSITE OR SERVICE, AND THERMACELL 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) THERMACELL MAKES NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES, AND THERMACELL WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES. THERMACELL MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SUGGESTIONS OR RECOMMENDATIONS OF SERVICES OR PRODUCTS OFFERED OR PURCHASED THROUGH THE SERVICES.
- (f) THE SERVICES MAY PROVIDE YOU INFORMATION REGARDING YOUR PRODUCTS (“PRODUCT INFORMATION”) OR OTHER PERIPHERALS CONNECTED TO YOUR PRODUCTS (“PRODUCT PERIPHERALS”). THE TYPE OF PRODUCT PERIPHERALS THAT MAY BE CONNECTED TO YOUR PRODUCT MAY CHANGE FROM TIME TO TIME. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS ABOVE, ALL PRODUCT INFORMATION IS PROVIDED FOR YOUR CONVENIENCE, “AS IS” AND “AS AVAILABLE”. THERMACELL DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT PRODUCT INFORMATION WILL BE AVAILABLE, ACCURATE, OR RELIABLE.

9. Waiver of Subrogation

You should protect against any risk of loss with the appropriate insurance coverage, and you are responsible for obtaining all insurance coverage you believe is necessary. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE APPLICABLE POLICY OR POLICIES OF INSURANCE YOU OBTAIN AND MAINTAIN, YOU RELEASE THERMACELL AND ITS LICENSORS AND SUPPLIERS FROM ALL LIABILITY FOR ANY LOSS, OCCURRENCE, EVENT OR CONDITION COVERED BY YOUR INSURANCE.

10. Limitation of Liability

1. Nothing in these Terms and, in particular, within this “Limitation of Liability” clause, shall be interpreted or construed to limit or exclude liability that cannot be so limited or excluded under applicable law.
2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE WARRANTY AND OTHER DISCLAIMERS IN THESE TERMS, IN NO EVENT WILL (A) THERMACELL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOST DATA OR LOST PROFITS ARISING FROM OR RELATING TO THE SERVICES OR THE PRODUCTS, EVEN IF THERMACELL KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) THERMACELL’S TOTAL CUMULATIVE LIABILITY FOR ANY DIRECT DAMAGES, PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF LIFE OR ANY OTHER DAMAGES NOT EXCLUDED OR PRECLUDED PURSUANT TO (A) ABOVE, ARISING FROM OR RELATED TO THE SERVICES OR THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT NEVER TO EXCEED THE FEES ACTUALLY PAID BY YOU TO THERMACELL OR THERMACELL’S AUTHORIZED RESELLER FOR THE SERVICES OR THE PRODUCT AT ISSUE IN THE PRIOR 12 MONTHS (IF ANY). THERMACELL DISCLAIMS ALL LIABILITY OF ANY KIND OF THERMACELL’S LICENSORS AND SUPPLIERS. UNDER NO CIRCUMSTANCES WILL THERMACELL 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.
3. YOU UNDERSTAND AND AGREE THAT THIS LIMITATION OF LIABILITY IN THIS SECTION 10 SHALL APPLY EVEN IF THERMACELL IS FOUND LIABLE FOR ANY LOSS OR DAMAGE DUE TO BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED OR LIMITED WARRANTY, NEGLIGENCE OF ANY KIND OR DEGREE, STRICT PRODUCT LIABILITY, SUBROGATION, INDEMNIFICATION OR CONTRIBUTION, OR ANY OTHER THEORY OF LIABILITY. HOWEVER, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY WILFUL, WANTON, INTENTIONAL OR RECKLESS MISCONDUCT OF THERMACELL OR GROSS NEGLIGENCE OF THERMACELL IN THOSE STATES THAT DO NOT PERMIT LIMITATION OF LIABILITY FOR GROSS NEGLIGENCE.

11. General

- (a) Changes to These Terms. Thermacell reserves the right to make changes to these Terms. Thermacell will post notice of changes to any one or more of the following: this page, a Site, Web Apps, or Mobile Apps. You should ensure that you have read and agree with the most recent Terms when you use the Services, Products and Product Software. Continued use of the Services, Products and Product Software following notice of such changes shall indicate your acknowledgment of such changes and agreement to be bound by the revised Terms. IF YOU DO NOT AGREE WITH ANY OF THE CHANGES TO ANY OF THE TERMS, YOU SHOULD DISCONNECT YOUR PRODUCTS FROM YOUR ACCOUNT AND CEASE ACCESSING OR USING THE SERVICES, PRODUCTS AND PRODUCT SOFTWARE.

- (b) Governing Law. 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. The courts in some states and countries may not apply Massachusetts law to some types of dispute. If you reside in one of those states or countries, then where Massachusetts law is excluded from applying, your state's or country's laws will apply. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO SUBMIT TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS IN OR FOR MIDDLESEX COUNTY, MASSACHUSETTS FOR THE PURPOSE OF LITIGATING ALL SUCH CLAIMS OR DISPUTES.
- (c) Waiver of Jury Trial. YOU HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THESE TERMS, YOUR USE OF THE PRODUCTS AND SERVICES, AND THE MATTERS CONTEMPLATED HEREBY.
- (d) Protection of Confidentiality and Intellectual Property Rights. Notwithstanding the foregoing, Thermacell 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.
- (e) Entire Agreement/Severability. These Terms constitute the entire agreement between you and Thermacell regarding the use of the Services and purchase of the Products. Any failure by Thermacell 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.
- (f) Survivability. The obligations in Sections 3(e) and (f), 4, 6, 7, 8, 9, 10 and 11 will survive any expiration or termination of these Terms.
- (g) Assignment. These Terms, and any associated rights or obligations, may not be assigned or otherwise transferred by you without Thermacell's prior written consent. These Terms may be assigned by Thermacell without restriction. These Terms are binding upon any permitted assignee.
- (h) Notifications. Thermacell 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.Thermacell.com. Thermacell is not responsible for any automatic filtering that you or your network provider may apply to email notifications. Thermacell recommends adding [@Thermacell.net](mailto:) email addresses to your email address book to help ensure that you receive email notifications from Thermacell.