

Nuheat Terms of Use

1. ACCEPTANCE OF TERMS

Welcome to this website ("Site"), owned and operated by Nuheat Industries Ltd. ("Nuheat"). Nuheat permits access to the Site subject to the following Terms of Use ("TOU"). Nuheat may, at its discretion, update the TOU at any time. You can access and review the most current version of the TOU at the URL for this page or by clicking on the "Terms of Use" link at the bottom of each page of the Site.

PLEASE REVIEW THE TOU CAREFULLY. BY REGISTERING FOR AN ACCOUNT OR ACCESSING OR OTHERWISE USING THE SITE OR ANY OF ITS COMPONENTS, YOU AGREE TO BE BOUND BY THE TOU, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU DO NOT AGREE TO BE BOUND BY THE TOU, DO NOT ACCESS OR USE THIS SITE.

2. PRIVACY POLICY

In addition to the TOU (available at www.mynuheat.com), the Nuheat Privacy Policy www.nuheat.com governs your access to and use of the Site.

3. GRANT OF RIGHTS

(a) Subject to your compliance with the TOU in all material aspects, Nuheat grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to: (i) access and view pages from the Site for your personal, non-commercial use only; and (ii) print a reasonable number of such pages for your personal, non-commercial use only.

(b) To the extent that the Site provides access to any software, application or other similar online components (each, and "Application"), then, subject to your compliance with the TOU in all material respects, Nuheat grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Applications only in executable, machine-readable, object code form within the online platform provided by Nuheat and only for your personal, non-commercial purposes.

(c) Your access to and use of the Site and Applications must further comply in all material respects with any usage guidelines posted by Nuheat and the applicable end user license agreements for mobile apps and other software provided by Nuheat.

4. REGISTRATION

(a) You may browse the Site without registering, but some features may not be accessible unless you register. In registering for the Site, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Site's registration form (the "Registration Data"); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Nuheat reasonably suspects that such information is untrue, inaccurate, not current or incomplete, Nuheat may suspend or terminate your account.

(b) You are fully responsible for all activities that occur under your account. You may not share your account or password with anyone. You agree to notify Nuheat immediately of any unauthorized use of your account or password or any other similar breach of security.

(c) You represent and warrant that you are: (i) over 18 years of age or the age of majority in your jurisdiction, whichever is greater; (ii) of legal age to form a binding contract; and (iii) not a person barred from using the Site under the laws of your country of residence or any other applicable jurisdiction.

5. RESPONSIBILITY FOR CONTENT

(a) You acknowledge and agree that all information, data, text, software, music, sounds, photographs, graphics, videos, messages, tags and/or other materials accessible through the Site, whether publicly posted or privately transmitted ("Content"), are the sole responsibility of the person from whom such Content originated. This means that you, and not Nuheat, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available through the Site ("Your Content"), and other users of the Site, and not Nuheat, are similarly responsible for all Content they upload, post, email, transmit or otherwise make available through the Site ("User Content").

(b) You acknowledge and agree that Nuheat has no obligation to pre-screen Content (including, but not limited to, Your Content and User Content), although Nuheat reserves the right in its sole discretion to pre-screen, refuse or remove any Content. Without limiting the generality of the foregoing, Nuheat shall have the right to remove any Content that violates the TOU or that it deems objectionable.

(c) To the extent that you submit any Content, you represent and warrant that: (i) you have all necessary right and authority to grant the rights set forth herein with respect to Your Content; and (ii) Your Content does not violate any copyright, trademark, right of privacy, right of publicity or any other right of any third party.

6. RIGHTS TO CONTENT

(a) Nuheat does not claim ownership of Your Content. However, you grant Nuheat and its service providers a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable, transferable license to use, distribute, transmit, reproduce, modify, adapt, create derivative works from, publicly perform and publicly display Your Content. You understand that the technical processing and transmission of data associated with the Site, including Your Content, may require: (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

(b) Except with respect to Your Content, you agree that Nuheat and its licensors own all rights, title and interest in the Site and all Content and Applications within the Site. Except with respect to Your Content or as expressly permitted by the TOU, you may not: (i) use, distribute, transmit, reproduce, modify, adapt, create derivative works from, publicly perform or publicly display any Content; (ii) frame or utilize any framing technique to enclose any Content; (iii) decompile, decode, disassemble, reverse engineer, reverse assemble or otherwise attempt to discover any source code or the architectural framework for any Applications within or associated with the Site; or (iv) access the Site for purposes of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Site or any products or services offered by Nuheat.

(c) The NUHEAT®, CHANGE THE WAY YOU HEAT®, WARMTH FOR THE SOLE® and Foot Design® names and logos are trademarks of Nuheat or its affiliates (collectively, "Nuheat Marks"). The absence of any name or logo from this list does not constitute a waiver of any intellectual property rights that Nuheat or its affiliates may have established in such name or logo. You agree not to display or use in any manner any Nuheat Mark without Nuheat's prior written consent.

7. USER CONDUCT

In connection with your access to or use of the Site, you shall not:

(a) upload, post, email, transmit or otherwise make available any Content that: (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful or otherwise objectionable; (ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part

of an employment relationship or under a non-disclosure agreement); (iii) infringes any patent, trademark, trade secret, copyright or other proprietary right of any party; (iv) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes or any other form of solicitation; or (v) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware;

(b) impersonate any person or entity, including, but not limited to, Nuheat personnel, or falsely state or otherwise misrepresent your affiliation with any person or entity;

(c) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Site;

(d) disrupt the normal flow of dialogue, cause a screen to scroll faster than other users of the Site are able to type, or otherwise act in a manner that negatively affects the ability of other users to access or use the Site;

(e) take any action that imposes an unreasonable or disproportionately heavy load on the Site or its infrastructure;

(f) interfere with or disrupt the Site or servers or networks connected to the Site, or disobey any requirements, procedures, policies or regulations of networks connected to the Site;

(g) use spiders, crawlers, robots or any other similar means to access the Site or substantially download, reproduce or archive any portion of the Site;

(h) sell, share, transfer, trade, loan or exploit for any commercial purpose any portion of the Site, including, but not limited to, your user account and password; or

(i) violate any applicable local, state, provincial, federal, national or international law or regulation.

8. SUGGESTIONS

If you elect to provide or make available to Nuheat any suggestions, comments, ideas, improvements or other feedback concerning the Site or any Applications (collectively, "Suggestions"), Nuheat shall be free to use, disclose, reproduce, modify, license, transfer and otherwise utilize and distribute your Suggestion in any manner, without credit or compensation to you.

9. RATINGS AND REVIEWS

If you submit ratings or reviews for any products or services on the Site, you agree, warrant and covenant that the ratings and reviews that you submit will: (a) be accurate and not false, misleading or deceptive; (b) not include any URL external to the Site; (c) not reference any physical address, email address, phone number or other contact information; (d) fully disclose any connection between you and a person or organization with a financial interest in the product or service, or a directly competing product or service, and not express sentiments by or on behalf of such person or organization; (e) fully disclose any connection between you and another person or organization that might materially affect the weight or credibility of any endorsement; and (f) not be submitted for any form of compensation or consideration from any party.

10. PRODUCT DESCRIPTIONS

Nuheat attempts to be as accurate as possible. However, Nuheat does not represent or warrant that product descriptions or any other Content is accurate, complete, reliable, current or error-free.

11. ENERGY SAVINGS

Nuheat may provide information concerning your energy usage and recommend steps to take for savings. Such information is provided for informational purposes only. Nuheat does not guarantee any specific level of energy savings or other monetary benefit from the use of the Site or any Nuheat products or services. Actual energy savings and monetary benefits vary according to factors beyond Nuheat's knowledge or control.

12. LISTINGS FOR INSTALLERS, DISTRIBUTORS AND DEALERS

The Site may provide listings for installers, distributors and dealers for Nuheat products or services (collectively, "Dealers"). The listings are provided for informational purposes only and do not represent any endorsement by or affiliation with Nuheat. You are solely responsible for assessing the credentials and skills of Dealers.

13. DEALINGS WITH ADVERTISERS, DEALERS AND OTHER THIRD PARTIES

Your dealings with advertisers, Dealers and other third parties who market, sell, buy or offer to sell or buy any goods or services on the Site, including payment for or delivery of such goods or services and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the advertiser, Dealer or other third party. You agree that Nuheat shall not be liable for any loss or damage of any kind incurred as a result of any such dealings.

14. LINKS AND EXTERNAL MATERIALS

The Site or users of the Site may provide links to other websites or resources. You acknowledge and agree that Nuheat does not endorse and is not responsible for any content, advertising, products, services or other materials on or available through such sites or resources (collectively, "External Materials"). These sites are subject to different terms of use and privacy policies, which you are responsible for reviewing. You further acknowledge and agree that Nuheat shall not be liable for any damage or loss caused by or resulting from use of or reliance on any External Materials.

15. MODIFICATIONS TO THE SITE AND APPLICATIONS

(a) Nuheat reserves the right at any time to modify or discontinue, temporarily or permanently, the Site (or any portion thereof) with or without notice. You agree that Nuheat shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Site (or any portion thereof).

(b) Nuheat may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of Applications or related services ("Updates"). Updates may be automatically installed without providing any additional notice to you or receiving any additional consent from you. By continuing to use any affected Application or related services, you consent to automatic installation of Updates. Nuheat may further develop Updates that require installation by you before you continue to use an Application or related services.

16. TERMINATION AND SURVIVAL

In the event that you violate the TOU, all rights granted to you under the TOU shall be terminated immediately, with or without notice, and Nuheat, in its sole discretion, may remove and discard Your Content. The provisions of the TOU that should by their nature survive termination of the TOU shall survive such termination.

17. INDEMNIFICATION

You agree to indemnify and hold Nuheat and its parents, subsidiaries, affiliates, officers, directors, employees, agents, mandataries, partners and licensors (collectively, "Nuheat Parties") harmless from and against any claim, demand, loss, damage, cost, liability and expense, including reasonable attorneys' fees, resulting from or arising out of your: (a) access to or use of the Site or Applications; (b) violation of the TOU or any law or regulation; or (c) violation of any rights of another party.

18. DISCLAIMER OF WARRANTIES

(a) YOUR ACCESS TO AND USE OF THE SITE AND APPLICATIONS IS AT YOUR SOLE RISK. THE SITE AND APPLICATIONS ARE PROVIDED ON AN "AS IS", "WHERE AS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE NUHEAT PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING, BUT, NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY QUALITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE NUHEAT PARTIES MAKE NO WARRANTY AND PROVIDE NO CONDITIONS THAT: (i) THE SITE OR APPLICATIONS WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE SITE OR APPLICATIONS WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (iii) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SITE OR APPLICATIONS WILL BE ACCURATE OR RELIABLE.

19. LIMITATION OF LIABILITY

(a) YOU ACKNOWLEDGE AND AGREE THAT THE NUHEAT PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, LOSS OF PROFIT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS, EVEN IF THE NUHEAT PARTIES OR ANY OF THEM HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL NUHEAT'S TOTAL LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THE TOU OR YOUR ACCESS TO OR USE OF THE SITE OR APPLICATIONS EXCEED THE AMOUNT (IF ANY) PAID BY YOU TO NUHEAT FOR ACCESS TO OR USE OF THE SITE OR APPLICATIONS IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH ANY SUCH CLAIM AROSE.

(b) IF ANY STATE OR PROVINCIAL LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES AND YOU RESIDE IN SUCH STATE OR PROVINCE, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

20. GOVERNING LAW

For Canadian Residents: The TOU shall be governed by and construed and enforced in accordance with the laws of British Columbia and the laws of Canada applicable therein, without regard to conflict of laws principles. Applicable laws may require that the laws of the Canadian jurisdiction in which you reside apply, in which case the laws of such jurisdiction will apply.

For All Others: The TOU shall be governed by and construed and enforced in accordance with the United States Federal Arbitration Act, other applicable federal laws and the laws of the State of Washington, without regard to conflict of laws principles.

For All Users: The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the TOU.

21. AGREEMENT TO ARBITRATE DISPUTES

ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THE TOU OR YOUR ACCESS TO OR USE OF THE SITE OR APPLICATIONS WILL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF YOUR CLAIMS QUALIFY. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS RELATING IN ANY WAY TO THE TOU OR YOUR ACCESS TO OR USE OF THE SITE OR APPLICATIONS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.

Notwithstanding anything to the contrary, you and Nuheat may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect our intellectual property rights, whether in aid of, pending or independently of the resolution of any dispute pursuant to the arbitration procedures set forth above.

You agree that, except as otherwise expressly provided in the TOU, there shall be no third-party beneficiaries to the TOU.

For Canadian Residents:

Any disputes with respect to this Agreement shall be resolved by arbitration and any party may demand by written notice to the other party that the matter be submitted to arbitration under the International Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre. The notice shall set out the reasons for the dispute and reasonable details to support the dispute. You and Nuheat shall cooperate in completing any arbitration as expeditiously as possible. The appointing authority shall be the British Columbia International Commercial Arbitration Centre. The case shall be administered by the British Columbia International Commercial Arbitration Centre in accordance with its Rules. The place of arbitration shall be Richmond, British Columbia, Canada. All of the costs and expenses of the arbitration shall be borne equally by you and Nuheat. Any award rendered by the arbitrator shall be final and binding on the parties.

For All Others:

The arbitration will be conducted by the American Arbitration Association (AAA) under its then-applicable rules, including its Supplementary Procedures for Consumer-Related Disputes. The AAA's rules are available at <http://www.adr.org/> or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. Nuheat will reimburse those fees for claims totaling less than US\$10,000 unless the arbitrator determines that the claims are frivolous. Nuheat will not seek attorneys' fees and costs in arbitration unless the arbitrator determines that the claims are frivolous.

The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. You may choose to have the arbitration conducted by telephone, based on written submissions or in person. However, you agree that the arbitration will be conducted by telephone if your claim totals less than US\$10,000. If your claim totals more than US\$10,000 and you choose to have the arbitration conducted in person, you agree that the arbitration will be conducted in King County, Washington, or the county within the United States in which you reside.

The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

22. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

If you believe that your work has been made available through the Site in a way that constitutes copyright infringement, please provide Nuheat's Agent for Notice of Copyright Claims the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) a description of the material that you claim is infringing and where that material may be accessed within the Site; (d) your address, telephone number and email address; (e) a statement by you 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 (f) a statement from you 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. Nuheat's Agent for Notice of Copyright Claims can be reached as follows:

Agent for Notice of Copyright Claims
Nuheat Industries Ltd.
3105 – 6900 Graybar Road
Richmond, BC V6W 0A5
Canada

Phone: 1-800-778-9276
Email: copyright@nuheat.com

23. U.S. GOVERNMENT ENTITIES

This section applies to access to or use of Applications by a branch or agency of the United States Government. The Applications consist of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualify as "commercial items" as defined in 48 C.F.R. 2.101. The Applications are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in the TOU with respect to the Applications, and any use of the Applications by the United States Government constitutes: (i) agreement by the United States Government that the Applications are "commercial computer software" and "commercial computer software documentation" as defined in this section; and (ii) acceptance of the rights and obligations herein.

24. GENERAL PROVISIONS

The TOU constitutes the entire agreement between you and Nuheat concerning your access to and use of the Site and Applications. It supersedes any prior or contemporaneous agreements between you and Nuheat with respect to such subject matter. The TOU may not be amended except in a writing executed by an authorized representative of each party. The failure of Nuheat to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any provision of the TOU shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of the TOU. It is the express wish of the parties that the TOU and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que tous les documents y afférents soient rédigés en anglais.