

NUHEAT IOS END USER LICENSE AGREEMENT

THIS IS AN END USER LICENSE AGREEMENT (THIS "AGREEMENT") MADE BY AND BETWEEN YOU AND NUHEAT INDUSTRIES LTD. ("NUHEAT") CONCERNING YOUR USE OF THIS APPLICATION (THE "SOFTWARE"). PLEASE READ THIS AGREEMENT CAREFULLY. BY USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE, YOU MAY NOT USE THE SOFTWARE, AND YOU MUST UNINSTALL THE SOFTWARE FROM ANY DEVICE OWNED OR CONTROLLED BY YOU.

1. Governing Documents. This Agreement incorporates by reference: (a) the Terms of Use for the Nuheat website at www.mynuheat.com; (b) the Nuheat Privacy Policy at www.nuheat.com (the "Nuheat Privacy Policy"); and (c) any usage guidelines posted by Nuheat (collectively, "Governing Documents"). By using the Software, you agree to be bound by the Governing Documents. Your purchase and use of any product (the "Product") which is monitored or controlled by the Software in any manner is governed by Nuheat's limited warranty, the terms of which are provided with such Product. This Agreement does not govern your purchase of the Product.

2. License. Subject to your compliance in all material respects with the terms and conditions of this Agreement, and the Usage Rules set forth in the iTunes App Store Terms of Service, Nuheat grants you a restricted, non-exclusive, non-transferable, revocable license to install and use the Software in machine executable object code form only on one or more personal mobile devices using the iOS mobile operating system, which are owned and controlled by you, such license being granted solely for personal, non-commercial purposes.

3. Restrictions. You may not: (a) use, copy, print, modify, adapt, create derivative works from, market, deliver, rent, lease, sublicense, make, have made, assign, pledge, transfer, sell, offer to sell, import, reproduce, distribute, publicly perform, publicly display or otherwise grant rights to the Software, or any copy thereof, in whole or in part, except as expressly permitted under this Agreement; (b) reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code, structural framework or the data records of the Software, or authorize any third party to do any of the foregoing; (c) access the Software for purposes of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Software; (d) loan, resell or distribute the Software, or any part thereof, in any way; or (e) use the Software in any way that does not comply with all applicable laws and regulations.

4. Ownership. Nuheat or its licensors and suppliers own all rights, title and interest in the Software (including, but not limited, to all copyrights, patents, patent applications, trade secrets, trademarks, source code, text and any images, photographs, icons, graphics, animations, video, audio, music, and all other materials incorporated within the Software), and the Software is protected by US, Canadian and international copyright and other intellectual property laws and treaties. The Software is licensed, not sold, to you for use only under the terms and conditions of this Agreement. Nuheat reserves all rights not expressly granted to you.

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

6. Personal Information. You acknowledge and agree that by using the Software, Nuheat may receive certain information about you, including personal information, and Nuheat may collect, use and disclose such information in accordance with the Nuheat Privacy Policy.

(a) NO WARRANTY. YOUR USE OF THE SOFTWARE IS AT YOUR SOLE RISK. THE SOFTWARE IS PROVIDED ON AN "AS IS", "WHERE IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NUHEAT AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, MANDATARIES, PARTNERS AND LICENSORS (COLLECTIVELY, "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, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NUHEAT PARTIES MAKE NO WARRANTY AND PROVIDE NO CONDITIONS THAT: (i) THE SOFTWARE WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE WILL BE ACCURATE OR RELIABLE, OR (iv) THE SOFTWARE DOES NOT INFRINGE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

(b) LIMITATION OF LIABILITY. 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 THIS AGREEMENT OR YOUR USE OF THE SOFTWARE EXCEED THE AMOUNT (IF ANY) PAID BY YOU TO NUHEAT FOR USE OF THE SOFTWARE. CERTAIN STATE AND 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 AND YOU MAY HAVE ADDITIONAL RIGHTS.

7. Indemnification. You agree to indemnify and hold the Nuheat Parties harmless from and against any claim, demand, loss, damage, cost, liability and expense, including reasonable legal fees and disbursements, resulting from or arising out of your: (a) use of the Software; (b) violation of this Agreement or any law or regulation; or (c) violation of any rights of another party.

8. Termination. This Agreement is effective until terminated by you or Nuheat. Your rights under this Agreement shall terminate automatically without notice from Nuheat if you violate any of the terms of this Agreement. Upon termination of this Agreement, all rights granted to you under this Agreement shall immediately terminate, but all other provisions shall survive termination.

9. Changes to Software. Nuheat reserves the right to modify or discontinue, temporarily or permanently, the Software or any product or service to which it connects, with or without notice and without liability to you. Nuheat may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Software or related services ("Updates"). Nuheat may further develop Updates that require installation by you before you continue to use an Application or related services.

10. Legal Compliance. You represent and warrant that you are not: (a) located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) listed on any U.S. Government list of prohibited or restricted parties, including, but not limited to, the Specially Designated Nationals List.

11. U.S. Government Entities. This section applies to access to or use of the Software by a branch or agency of the United States Government. The Software consists of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. The Software is 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 this Agreement with respect to the Software, and any use of the Software by the United States Government constitutes: (i) agreement by the United States Government that that the Software is "commercial computer software" and "commercial computer software documentation" as defined in this section; and (ii) acceptance of the rights and obligations herein.

12. Governing Law.

For Canadian Residents: This Agreement 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: This Agreement 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 this Agreement.

13. Agreement to Arbitrate Disputes. ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE SOFTWARE 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 THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE SOFTWARE 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.

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 of America 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.

14. **General.** This Agreement constitutes the entire agreement between you and Nuheat concerning your access to and use of the Software. It supersedes any prior or contemporaneous agreements between you and Nuheat with respect to such subject matter. This Agreement may not be amended except in a writing executed by an authorized representative of each party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. You may not assign any of your rights or obligations under this agreement to another party without the express written consent of Nuheat. The failure of Nuheat to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement 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 this Agreement. It is the express wish of the parties that this Agreement 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. The parties acknowledge that this Agreement is concluded between you and Nuheat only, and not with Apple, and Apple is not responsible for the Software and the Contents thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Software. Nuheat, not Apple, is responsible for addressing any claims from you or any third party relating to the Software or your possession and/or use of the Software, including, but not limited to, product liability claims, any claim that the Software fails to conform to any applicable legal or regulatory requirement and claims arising under consumer protection or similar legislation. Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement, and Apple shall have the right (and will be deemed to

have accepted the right) to enforce the Agreement against you as a third-party beneficiary hereof. Nuheat, not Apple, shall be solely responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claim attributable to the Software.