

# HEALTHY BIRTH DAY, INC.

(aka COUNT THE KICKS)

## TERMS OF USE

Effective July 9, 2018.

### Introduction

The mission of the 501(c)(3) nonprofit organization Healthy Birth Day, Inc. is to dramatically reduce the number of stillbirths through the Count the Kicks public health awareness campaign. Count the Kicks educates parents-to-be on the importance of, and method for, tracking fetal movement in the third trimester. Pregnant women have the power to save their babies by getting to know their baby's movement patterns and feeling empowered to tell their doctor if they notice a change. The following Terms of Use will govern your interactions with our Count the Kicks App.

### Acceptance of the Terms of Use

These terms of use are entered into by and between You and the Company, its affiliates and subsidiaries (“**Company**” or “**we**” or “**us**”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, these “**Terms of Use**”), govern your access to and use of our Count the Kicks app (our “**App**”) including any content, functionality and services offered on or through the Count the Kicks App or Website, [www.countthekicks.org](http://www.countthekicks.org).

Please read the Terms of Use carefully before you start to use the App. By using the App or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and our Privacy Policy, [found here](#), incorporated herein by reference. If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the App.

This App is offered and available to users who are 16 years of age or older. By using this App, you represent and warrant that you meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the App.

For purposes of the General Data Protection Regulation, the Data Controller and the EU Representative is QCI of West Des Moines, Iowa, whose contact information can be found below.

Throughout these Terms of Use we use the term “**Designated Countries**” to refer to countries in the European Union (EU), European Economic Area (EEA), and Switzerland. If you reside in the Designated Countries, you have a number of rights we want you to be aware of. These rights will be indicated by reference to the Designated Countries where applicable.

### Changes to the Terms of Use

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them and apply to all access to and use of the Website thereafter. If we make material changes to these Terms of Use, we will provide you notice through our Website and

App, or by other means, to provide you the opportunity to review the changes before they become effective.

Your continued use of the App following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

## **Obligations**

Here are some promises that you make to us by your acceptance of these Terms of Use:

## **Your Account**

If you choose to create an Account on our App, you agree to the following:

- You will keep your password a secret.
- You will not share an Account with anyone else and will follow our rules, including but not limited to these Terms of Use and our Privacy Policy, and the law.
- You are responsible for anything that happens through your Account unless you close it or report misuse.
- You acknowledge that information provided within the app is for educational purposes only and is not meant for diagnosis or treatment. Use of this information should be done in accordance with your healthcare provider.

## **Notices and Messages**

By accessing our App, you agree to the following:

- You consent to us providing notices and messages to you regarding our app or services. If your contact information is out of date, you may miss out on important notices.
- You agree that we will provide notices and messages to you in the following ways: (1) within the App, or (2) sent to the contact information you provided us (e.g., email, mobile number, physical address). You agree to keep your contact information up to date.
- You agree that Healthy Birth Day, Inc., with a mission to prevent stillbirths and save babies, may use your kick-counting data in research, evaluations or studies with the goal of enhancing our programming and improving its effectiveness.

## **Rights and Limits**

### **You own your information**

You own all of the content, feedback, and personal information you provide to us. We'll honor the choices you make about how we use your information. You and the Company agree that if any of your information includes personal data, it is subject to our Privacy Policy.

You and the Company agree that we may access, store, process and use any information and personal data that you provide in accordance with the terms of our Privacy Policy.

You agree to only provide information that does not violate the law nor anyone's rights (including intellectual property rights). You also agree that information you provide will be truthful. The Company may be required by law to remove certain information.

### **Other Content, Sites and Apps**

By using our App or services, you may encounter content or information that might be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise harmful. We cannot always prevent this misuse of our services, and you agree that we are not responsible for any such misuse.

You are responsible for deciding if you want to access or use third-party apps or websites that may link from our Website or services. If you allow a third-party app or website to authenticate you, that app or website may be able to access information related to you. Third-party apps and websites have their own legal terms and privacy policies, and you may be giving others permission to use your information in ways we would not. Except to the limited extent it may be required by applicable law, the Company is not responsible for these other websites and apps—use these at your own risk. Please see our Privacy Policy.

### **Limits**

The Company reserves the right to limit your use of our App or services, including the number of your connections. The Company reserves the right to restrict, suspend, or terminate your Account if the Company believes that you may be in breach of these Terms of Use, our Privacy Policy, or law or are misusing the Website or our services.

### **Intellectual Property Rights**

The Company reserves all of its intellectual property rights in our App and services. Using the App or services does not give you any ownership in our services or the content or information made available through our App or services. Trademarks and logos used in connection with the App or services are the trademarks of their respective owners.

### **Automated Processing**

We will use the information and data that you provide and that we obtain about you to make recommendations for connections, content and features that may be useful to you. For example, we may use data and information about you to recommend products to you. Keeping your information accurate and up-to-date helps us to make these recommendations more accurate and relevant.

### **Disclaimer and Limit of Liability**

### **No Warranty**

TO THE EXTENT ALLOWED UNDER LAW, THE COMPANY AND ITS AFFILIATES (AND THOSE THAT THE COMPANY WORKS WITH TO PROVIDE THE SERVICES) (A) DISCLAIM ALL IMPLIED WARRANTIES AND REPRESENTATIONS (E.G. WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, AND NONINFRINGEMENT); (B) DO NOT GUARANTEE THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS, AND (C) PROVIDE THE SERVICE (INCLUDING CONTENT AND INFORMATION) ON AN “AS IS” AND “AS AVAILABLE” BASIS.

SOME LAWS DO NOT ALLOW CERTAIN DISCLAIMERS, SO SOME OR ALL OF THESE DISCLAIMERS MAY NOT APPLY TO YOU.

### **Exclusion of Liability**

TO THE EXTENT PERMITTED UNDER LAW (AND UNLESS THE COMPANY HAS ENTERED INTO A SEPARATE WRITTEN AGREEMENT THAT OVERRIDES THIS CONTRACT), THE COMPANY AND ITS AFFILIATES (AND THOSE THAT THE COMPANY WORKS WITH TO PROVIDE THE SERVICES) SHALL NOT BE LIABLE TO YOU OR OTHERS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF DATA, OPPORTUNITIES, REPUTATION, PROFITS OR REVENUES, RELATED TO THE SERVICES (E.G. OFFENSIVE OR DEFAMATORY STATEMENTS, DOWN TIME OR LOSS, USE OF, OR CHANGES TO, YOUR INFORMATION OR CONTENT).

IN NO EVENT SHALL THE LIABILITY OF THE COMPANY AND ITS AFFILIATES (AND THOSE THAT THE COMPANY WORKS WITH TO PROVIDE THE SERVICES) EXCEED, IN THE AGGREGATE FOR ALL CLAIMS, AN AMOUNT THAT IS THE LESSER OF (A) FIVE TIMES THE MOST RECENT MONTHLY OR YEARLY FEE THAT YOU PAID FOR A SERVICE, IF ANY, OR (B) \$1000 USD.

THIS LIMITATION OF LIABILITY IS PART OF THE BASIS OF THE BARGAIN BETWEEN YOU AND THE COMPANY AND SHALL APPLY TO ALL CLAIMS OF LIABILITY (E.G. WARRANTY, TORT, NEGLIGENCE, CONTRACT, LAW) AND EVEN IF THE COMPANY OR ITS AFFILIATES HAS BEEN TOLD OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF THESE REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

SOME LAWS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY, SO THESE LIMITS MAY NOT APPLY TO YOU.

### **Termination**

Both you and the Company may terminate their agreement under these Terms of Use at any time with notice to the other. On termination, you lose the right to access or use the services. The following shall survive termination:

- Our rights to use and disclose your feedback;
- The following Sections of these Terms of Use: Disclaimer and Limit of Liability; Governing Law and Dispute Resolution; and General Terms;
- Any amounts owed by either party prior to termination remain owed after termination.

If you created an Account, you can contact us using our Contact Information below to close your Account.

### **Governing Law and Dispute Resolution**

In the unlikely event we end up in a legal dispute, the Company and you agree to resolve it in Iowa courts using Iowa law, or United States courts using United States law.

### **General Terms**

If a court with authority over these Terms of Use finds any part of them unenforceable, you and we agree that the court should modify the terms to make that part enforceable while still achieving its intent. If the court cannot do that, you and we agree to ask the court to remove that unenforceable part and still enforce the rest of these Terms of Use.

If we don't act to enforce a breach of these Terms of Use, that does not mean that we have waived our right to enforce these Terms of Use. You may not assign or transfer your rights under these Terms of Use to anyone without our consent. However, you agree that we may assign our rights under these Terms of Use to our affiliates or a party that buys the Company without your consent. There are no third-party beneficiaries to these Terms of Use.

You agree that the only way to provide us legal notice is at the addresses provided in the "Contact Information" section below.

### **Contact Information**

All questions, comments and requests regarding these Terms of Use should be addressed to:

Healthy Birth Day, Inc.  
Attn: Executive Director  
PO Box 71093, Clive, IA 50325 USA  
1.515.523.5666  
info@countthekicks.org

For purposes of the General Data Protection Regulation, residents of the Designated Countries may contact our EU Representative with all questions, comments and requests regarding these Terms of Use:

QCI  
Attn: Count the Kicks App Developer  
4300 Westown Pkwy Ste 150, West Des Moines, IA 50266  
1.515.440.4960  
sfinn@qci.com