

## MESSAGING TERMS & CONDITIONS

**PLEASE READ THESE MESSAGING TERMS & CONDITIONS CAREFULLY. THIS DOCUMENT CONTAINS A BINDING ARBITRATION REQUIREMENT AND CLASS ACTION WAIVER.**

Zing Health of Michigan, Inc. (“Zing”) may make automated calls and/or SMS (Short Message Service)/MMS (Multimedia Message Service) (collectively “text messages”) to individuals relating to managed care Medicare Advantage plans, wellness-related information, and/or other information about Zing’s products and services. These calls may be made on behalf of Zing’s subsidiaries or affiliated companies, including but not limited to Zing Health Consolidator, Inc., Zing Health, Inc., Zing Health MSO, LLC and Zing Health Holdings, Inc., regarding their products and services. You are not required to consent to Zing’s messaging services in order to receive goods or services from Zing.

### ZING’S MESSAGING SERVICE

**Opting In To Zing’s Messaging Service.** By providing your phone number to Zing or any of its subsidiaries/affiliates, you agree to receive automated text messages and/or prerecorded/artificial voice calls to the phone number you have provided. Please also note that message and data rates may apply and you are responsible for those charges and that message frequency varies per user.

By opting in to Zing’s messaging services, you agree to the following:

- You agree to be bound by all terms and conditions set forth in this Agreement;
- You represent and warrant that you are at least eighteen (18) years of age;
- You certify, warrant and represent that the telephone number you have provided to Zing is your contact number and not someone else’s;
- You represent that you are permitted to receive calls and text messages at the telephone number you have provided to Zing;
- You agree to promptly alert us whenever you deactivate or change your telephone number;
- You agree Zing may send automated text messages and/or automated, artificial/prerecorded calls to the phone number(s) you provided, regardless of whether it is characterized as marketing/non-marketing;
- You agree to receive communications from Zing regardless of whether your phone number is on the National Do-Not-Call registry or similar state/federal lists;
- You acknowledge that messages from Zing may include limited protected health information; and
- You acknowledge that messages from Zing are not secure or encrypted methods of communications and by choosing to receive communications from Zing, you accept these risks and consent to such communications.

We take your privacy seriously. Visit our [Privacy Policy](#) for more information.

**How to Opt Out of Text Messages.** To stop receiving text messages from Zing, you agree to reply STOP to the number sending the message. After replying STOP, you may receive a message from Zing confirming that you have been unsubscribed. Zing will process your opt out request within the timeframe specified by federal law.

You may contact Zing at 1-866-946-4458 if you have any questions.

Zing may, in its sole discretion, terminate or suspend your participation in its messaging services at any time for any reason.

**Carriers.** Zing does not guarantee the successful delivery of calls or text messages by your wireless provider. Neither Zing nor your wireless carrier(s) will be liable for any delayed or undelivered messages.

## **ARBITRATION AND CLASS ACTION WAIVER**

PLEASE READ THIS SECTION CAREFULLY - IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR BINDING ARBITRATION AND A CLASS ACTION WAIVER.

**Arbitration.** Any and all disputes, claims, or controversies arising out of or relating to these Messaging Terms and Conditions and/or the parties' relationship is subject to binding arbitration conducted by either (1) the American Arbitration Association ("AAA") under its Consumer Arbitration Rules then in effect (available at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879); or (2) JAMS under its Comprehensive Rules then in effect (available at [www.jamsadr.com](http://www.jamsadr.com) or by calling 1-800-352-5267).

The arbitration will be conducted in the county where you reside or another mutually agreed-upon location. You may choose to have the arbitration conducted by videoconference.

Judgment upon the arbitration award may be entered in any court of competent jurisdiction. This arbitration provision shall survive the expiration or earlier termination of this Agreement. This arbitration provision shall not apply to self-help remedies or to claims brought in small claims court.

**Class Action Waiver.** Each party waives any right to bring or participate in any class action, collective action, or representative action in connection with any dispute, claim, or controversy arising out of or relating to this Agreement. All claims shall be arbitrated or litigated only on an individual basis. With respect to claims brought in California, this class action waiver shall not apply to claims by either party for public injunctive relief, which may be pursued exclusively in a court of competent jurisdiction and not in arbitration, but all other claims, including any claims for private injunctive relief, are subject to arbitration.

## **GENERAL TERMS AND CONDITIONS**

**Changes to Terms.** Zing reserves the right to update or amend these Messaging Terms and Conditions at any time without notice. Any and all updates to these Messaging Terms and Conditions will be promptly posted and made available on our website.

**Limitation of Liability.** To the fullest extent permitted by applicable law, Zing and its subsidiaries, affiliates, officers, directors, employees, and agents shall not be liable for any direct, indirect, incidental, special, consequential, or punitive damages arising out of or relating to the messaging services, including but not limited to interception or unauthorized access of messages, delays, failures, errors, interruptions in the delivery of text messages, inaccurate or incomplete content in a message, or use or reliance on the content of any message for any purpose. Zing makes no warranty, express or implied, regarding the availability, reliability, or timeliness of its messaging services.

In the event you change or deactivate your telephone number, you agree to promptly inform Zing. Zing will not be liable for any communication or transmission of confidential information, including protected health information, by message which happens because you did not report that your phone number changed.

**Indemnification.** You agree to indemnify, defend, and hold harmless Zing and its subsidiaries, affiliates, officers, directors, employees, and agents from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) your breach of any term or condition of this Agreement; (b) your misuse of the messaging services; or (c) your provision of a telephone number that is not your own or that you are not authorized to use.

**Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right to enforce it at a later time. All waivers must be in writing and signed by the waiving party to be effective.

**Severability; Entire Agreement.** This Agreement embodies the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, representations, and understandings relating thereto. It may not be modified or terminated except as provided herein or by other written agreement signed by both parties. If any provision of this Agreement is found invalid or unenforceable, it shall be deemed severed from this Agreement and shall not invalidate the remaining provisions.