



# Healthcare Provider User Agreement

**This Healthcare Provider User Agreement only applies to users of Health Gorilla Clinical Network for Providers and related Services.**

THIS IS A LEGALLY BINDING AGREEMENT between Health Gorilla, Inc., a Delaware corporation (together with its subsidiaries, “Health Gorilla,” “we” or “us”), and you. BY CLICKING “I AGREE,” OR BY OTHERWISE SIGNING-UP OR FOR AN ACCOUNT, OR BY ACCESSING OR USING THE SERVICES (DEFINED BELOW), YOU ARE ENTERING INTO THIS HEALTHCARE PROVIDER USER AGREEMENT (THIS “AGREEMENT”) AND YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. Please read this Agreement carefully, and do not sign-up for an account or use the Services if you are unwilling or unable to be bound by this Agreement. You and we are collectively referred to as the “Parties.”

## 1. Definitions

For the purposes of this Agreement, the terms set forth in this Section 1 have the meanings assigned to them below. Terms not defined below or in the body of this Agreement (whether or not capitalized) have the definitions given to them in HIPAA.

**“Administrative Rights”** means the rights to administer and direct the use of a Provider’s account, including the authority to provide, request, issue, administer and limit the access rights to other User accounts issued to such Provider’s Authorized Workforce, as well as the rights to integrate, connect, or otherwise share Your Information with, or receive Protected Health Information from, third parties through the Services.

**“Authorized Workforce”** means those natural persons who are members of your Workforce who you have identified (by their legal names, and the legal names of their employers) in your account as authorized to access the Services on your behalf.

**“Universal Chart”** means the feature of the Services through which we make Your Health Information available to other users of the Services with your Consent, or make Protected Health Information of other users of the Services available to you with their Consent.

**“Clinical Data Exchange”** means the exchange, with your Consent, of Protected Health Information (and Your Personal Information as necessary) between You and covered entities (and their business associates) for any permitted purpose, including, to the extent applicable, care coordination, performance or quality measurement programs (such as



HEDIS), and risk adjustment, and other treatment, payment or health care operations purposes.

**“Confidential Information”** means any information relating to our business, financial affairs, current or future products or technology, trade secrets, workforce, customers, or any other information that is treated or designated by us as confidential or proprietary, or would reasonably be viewed as confidential or as having value to our competitors. “Confidential Information” does not include information that we make publicly available or that becomes known to the general public other than as a result of a breach of an obligation by you. “Confidential Information” does not include individuals’ health information.

**“Consent”** means consent or authorization by a user of the Services allowing us to take actions described under this Agreement, which the user of the Services may give in an electronic communication to us or by use of the features of the Services (such as “share,” “transmit,” “refer,” “authorize,” “opt-in,” “agree” or toggling or selecting an action through a settings or activation page located within the Service, and the like). Such Consent may apply to an individual case or situation, or may apply globally or programmatically based on variables that apply to an overall situation or circumstance (whether through a settings or preference page, a global “opt-in” or otherwise).

**“Credentials”** means any unique identifier, password, token, credential, any combination thereof, or other means we may utilize from time to time for authorizing access to all, or any portion of, the Services.

**“De-Identified Health Information”** means health information that has been de-identified in accordance with the provisions of the Privacy Rule.

**“De-Identified Information”** means De-Identified Health Information and De-Identified Personal Information.

**“De-Identified Personal Information”** means Personal Information from which all identifiers that could reasonably be anticipated to identify an individual by an anticipated recipient – such as an individual’s name, contact information, or government identifiers – have been removed.

**“De-Identify,”** means (i) with respect to Personal Information, to make such information into De-Identified Personal Information, and (ii) with respect to health information, means to make such health information into De-Identified Health Information.

**“HIPAA”** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder, including the Privacy Rule and the Security Rule, as amended.

**“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act of 2009, and regulations promulgated thereunder.



**“Personal Information”** means information that includes an individual’s name, contact information, government identifiers, or includes identifiers that could reasonably be anticipated to identify an individual personally by an anticipated recipient.

**“Policies and Procedures”** means our rules, regulations, policies and procedures for access to and use of the Services, as changed from time to time and as posted electronically on our Internet website.

**“Privacy Rule”** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended.

**“Protected Health Information”** has the meaning given it in the Privacy Rule.

**“Provider”** has the same meaning as “health care provider” given in 45 CFR §160.103.

**“Provider of Record”** has the meaning given in Section 3.1.1.

**“Security Rule”** means the Security Standards for the Protection of electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C, as amended.

**“Services”** means our electronic health record services, including our electronic medical record services, universal charts, medical services ordering, messaging and other operations workflow solutions and other services provided by us to you.

**“Term”** means the initial term and all renewal terms of this Agreement as provided in Section 16.1.

**“User”** (capitalized) means a natural person who has been authorized, pursuant to this Agreement, to access the Services on your behalf; a “user” (un-capitalized) shall mean any user of the Services.

**“Workforce”** means a Provider’s employees, volunteers, trainees, and other persons whose conduct, in the performance of work for Provider, is under the direct control of such Provider, whether or not they are paid by the Provider.

**“Your Health Information”** means Protected Health Information that you or your Workforce input or upload onto the Services, or that we receive on your behalf from your patients, authorized service providers, or our third party partners pursuant to this Agreement (including Section 4.1.10).

**“Your Information”** means information that you or your Workforce input or upload onto the Services, including Your Personal Information and Your Health Information.

**“Your Personal Information”** means Personal Information that you or your Workforce enter or upload onto the Services.



In addition, the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” The word “or” shall be construed to have the same meaning and effect as “and/or.” The words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to these Terms of Use. The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

## 2. Grant of Right to Use the Services

**2.1** We grant to you and you accept a non-exclusive, personal, non-transferable (except as expressly permitted in Section 19.2), limited right to access and use the Services, and a non-exclusive, personal, non-transferable, limited license to use any computer software or data furnished by us for access to or use of or in connection with the Services during the Term, subject to your full compliance with the terms and conditions set forth in this Agreement and with our Policies and Procedures. You will not: (a) use the Services for time-sharing, rental or service bureau purposes; (b) make the Services, in whole or in part, available to any other person, entity or business; (c) copy, reverse engineer, decompile or disassemble the Services, in whole or in part, or otherwise attempt to discover the source code to the software used by the Services; or (d) modify, combine, integrate, render interoperable, or otherwise access for purposes of automating data conversion or transfer, the Services or associated software with any other software or services not provided or approved by us. You will obtain no rights to the Services except for the limited rights to use the Services expressly granted by this Agreement.

**2.2** The Services include certain third-party software, services, data or applications that may require that you enter into separate agreements with third parties. We may also make available optional services, either directly or through integrations with the Services, provided by third parties, such as billing, electronic prescribing, and clinical laboratory reporting services. You will comply with and, upon request, execute, any agreements or acknowledgments that may be required for the use of such software or services, and hereby agree to comply with the terms of any license or other agreement relating to third-party products included in the Services or made accessible to you through the Services. Additionally, your use of the Services or of such third-party products or services will constitute your agreement to be bound by the terms of all licensing, subscription and similar agreements relating to such use.

## 3. Access to the Services

### **3.1 Access Rights of Providers and their Authorized Workforce.**

**3.1.1 Provider of Record.** We offer the Services to Providers and to natural persons who are members of such Providers’ Authorized Workforce, as more fully described in this Section 3.1. All persons who sign up for an account on behalf of a Provider must furnish,



among other things, that Provider's full legal name and fictitious business name(s) (i.e., trade name, d/b/a or "doing business as") as part of the sign-up process. We treat the Provider in whose name the account is established as the owner of all User accounts associated with such Provider, and we call this Provider the "Provider of Record." The Provider of Record may be changed in accordance with Section 19.1.

The Provider of Record is a party to this Agreement for all purposes and shall be subject to all of the provisions that are applicable to the person addressed as "you" in this Agreement. Although a member of a Provider of Record's Authorized Workforce may have signed-up for an account or electronically entered into this Agreement, or may continue to administer Administrative Rights on the Provider of Record's behalf, only the Provider of Record is entitled to any of the rights, remedies or benefits under this Agreement and control over the Administrative Rights. The Provider of Record is likewise subject to, and we may enforce against it, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations, warranties, waivers and releases included in this Agreement. The Provider of Record may delegate Administrative Rights to one or more members of the Provider of Record's Authorized Workforce, but the Provider of Record remains responsible for all activity occurring thereunder.

(a) **Incomplete or Inaccurate Registration Information.** A Provider that has failed to complete the registration information sufficient to establish itself as the Provider of Record may not be able to access all of the Services. In addition, until such Provider completes such registration information, such Provider agrees and acknowledges that it is subject to, and we may enforce against it, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations, warranties, waivers and releases set forth in this Agreement that are applicable to the person addressed as "you" in this Agreement, and such Provider hereby grants and makes all rights, waivers and releases set forth in this Agreement that are granted and made by the person addressed as "you" in this Agreement, but such Provider is entitled to none of, and hereby waives and agrees not to assert any of, the rights, remedies or benefits under this Agreement (other than our assurances and obligations under Section 9 below, which such Provider shall have the right to enforce). Once a Provider's registration has been submitted sufficient to establish its status as the Provider of Record, this provision shall cease to apply.

**3.1.2 Authorized Representatives.** An authorized representative of a Provider may obtain an account on behalf of such Provider, and may have administrative privileges on the account. We call the person(s) authorized to act on behalf of a Provider the "Authorized Representative(s)" of such Provider. The Provider and Authorized Representative may be the same person. If you are establishing an account or taking any action with respect to a Provider's account, you represent and warrant that (a) you have the authority to act on such Provider's behalf either as owner/principal or as a member of such Provider's Authorized Workforce, (b) the information you submit is complete and accurate, and (c) you have the authority to enter into this Agreement on behalf of such Provider and bind such Provider to the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations, warranties, grants, waivers and releases contained in this Agreement. If you are an Authorized Representative, you recognize that you have no personal rights with



respect to such Provider's account, and that such Provider may change the Authorized Representative at any time, for any or no reason, with or without notice.

**3.1.3 Authorized Workforce.** If you are a member of a Provider's Authorized Workforce, and such Provider has authorized you to access the Services on its behalf by authorizing a Credential for you, then you are authorized under this Agreement to access the Services solely on behalf and at the direction of such Provider. As such, you may sign in and use the functionality of the Services solely on behalf and at the direction of such Provider. You consent to and authorize the disclosure to such Provider any content related to, or otherwise generated by your use of the Services, including secure messages. You hereby agree and acknowledge that you are subject to, and we may enforce against you, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations and warranties set forth in this Agreement that are applicable to the person addressed as "you" in this Agreement, and you hereby grant and make all rights, waivers and releases set forth in this Agreement that are granted and made by the person addressed as "you" in this Agreement, but you are entitled to none of, and hereby waive and agree not to exercise or assert any of, the rights, remedies or benefits under this Agreement other than the limited, non-exclusive, non-transferable, personal right under this Section 3.1.3 to sign in and use the functionality of the Services solely on behalf and direction of such Provider. Notwithstanding the applicable provisions at Section 16, you acknowledge that your access to the Services may be terminated by the Provider or us at any time, for any reason or no reason at all, with or without notice. By (i) accessing any of the Services under a Provider's account(s), or (ii) contacting us by any means and requesting or directing us to take any action with respect to any Provider's account(s) or data held by such account(s), or (iii) asserting any right or authority with respect to such account(s) or data, you represent and warrant that you have the authority to act on such Provider's behalf and that you are not using the Services, or otherwise engaging in the activities described in clauses (i) through (iii) above, for the benefit or at the direction, of any person or entity other than such Provider, including yourself.

### **3.2 Trial Use.**

We also offer the Services on a limited basis to trial users under this Section 3.2. If you have signed-up for an account for the purpose of evaluating the Services or to use the Services for academic coursework (collectively, "Trial Use"), you may use the Services only in connection with such Trial Use. As such, you hereby agree and acknowledge that you are subject to, and we may enforce against you, all of the covenants, obligations, restrictions, limitations, acknowledgements, Consents, representations and warranties set forth in this Agreement that are applicable to the person addressed as "you" in this Agreement, and you hereby grant and make all rights, waivers and release set forth in this Agreement that are granted and made by the person addressed as "you" in this Agreement, but you are entitled to none of, and hereby waive and agree not to exercise or assert any of, the rights, remedies or benefits under this Agreement other than the limited, non-exclusive, non-transferable, personal right under this Section 3.2 to sign-in and make Trial Use of the functionality of the Services. Notwithstanding the applicable provisions at Section 16, you acknowledge that your access to the Services may be terminated by us at any time, for any



reason or no reason at all, with or without notice. You also hereby acknowledge and agree that in the event that you at any time use the Services in the course of providing healthcare services to any individual or you enter any health information of any Individual, (a) your Trial Use license will immediately convert, without further action by either Party, to the relevant license described in Section 3.1 if the circumstances described in Section 3.1.1, Section 3.1.2 or Section 3.1.3 apply, or (b) if none of those sections applies, you are not authorized to access or use the Services, and must immediately cease such access or use.

### **3.3 Verification.**

You agree that your use of the Services, or certain features or functionality of the Services, may be subject to verification by us of your identity and credentials as a health care provider or health care professional, and to your ongoing qualification as such. You agree that we may use and disclose Your Personal Information for such purposes, including making inquiry of third parties concerning your identity and professional and practice credentials. You authorize such third parties to disclose to us such information as we may request for such purposes, and you agree to hold them and us harmless from any claim or liability arising from the request for or disclosure of such information. Notwithstanding the applicable provisions at Section 16, you agree that we may terminate your access to or use of the Services at any time if we are unable at any time to determine or verify your identity, qualifications or credentials.

### **3.4 Permitted Uses.**

**3.4.1** Subject to the terms of this Agreement, you may use Your Health Information for any purpose expressly permitted by applicable law, including treatment, payment and health care operations.

**3.4.2** If you are granted access rights to another user of the Services' Protected Health Information through Instant Message or Universal Chart or another component of the Service, you may use such information for treatment and for obtaining payment for treatment; provided that, except as expressly authorized in our Policies and Procedures, (i) you may access only information pertaining to individuals with whom you have a treatment relationship or for whom a provider who has a treatment relationship with the individual has requested a professional consultation from you, or from whom you have received authorization to use their health information; and (ii) you may use only the minimum necessary information for payment purposes.

**3.4.3** You will not use the Services for any purposes other than those described in Section 3.4.1 or Section 3.4.2. In particular, you will not:

- (a) reproduce, publish, or distribute content in connection with the Services that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy, or other personal or proprietary right; nor
- (b) use the Services to transmit illegal, obscene, threatening, libelous, harassing, or offensive messages, or otherwise unlawful material.



- In addition, to further safeguard the confidentiality, integrity and availability of the information and other elements housed in the Services, as well as the stability of the Services, you agree you will not, nor attempt to, or authorize anyone to, or attempt to:
- (c) (i) Abuse or misuse the Services, including gaining or attempting to gain unauthorized access to the Services, or altering or destroying information housed in the Services; (ii) use the Services in a manner that interferes with other users' use of the Services; (iii) use the Services in any manner that violates our Policies and Procedures; or (iv) use any ad blocking mechanism, device, or tool to prevent the placement of advertisements in the Services;
- (d) Circumvent any technical measures we have put in place to safeguard the Services or the confidentiality, integrity or accessibility of any information housed thereon, or any technical measures we have put in place to restrict access to the Services solely to the class of persons expressly so authorized pursuant to Sections 3.1.1 through 3.1.3; and
- (e) Access any portion of the Services other than with a commercial browser (such as Internet Explorer, Mozilla Firefox, Safari or Chrome) or mobile applications developed and operated by us.

### **3.5 Clinical Support Information; Information Exchange.**

We may provide information to assist you in clinical decision-making. This may include information and reminders concerning drug interactions, allergies, dosages, as well as general health-care related information and resources. You agree that the information and materials available through the Services are for informational and educational purposes only and are not intended to constitute professional advice, diagnosis or treatment, or to substitute for your professional judgment. Information may be placed in the Services by us and by third parties beyond our control, including by funding sources of such information. We are not responsible for the accuracy or completeness of information available from or through the Services. You assume full risk and responsibility for the use of information you obtain from or through the Services, and neither we nor any of our licensors or data providers are responsible or liable for any claim, loss, or liability arising from use of the information. We do not recommend or endorse any provider of health care or health-related products, items or services, and the appearance of materials in the Services relating to any such products, items or services is not an endorsement or recommendation of them. You will review the definitions, functionality, and limitations of the Services, and to make an independent determination of their suitability for your use. We and our suppliers and licensors disclaim all warranties, whether expressed or implied, including any warranty as to the quality, accuracy, and suitability of the information provided by the Services for any purpose.

### **3.6 Safeguards.**

**3.6.1** You will implement and maintain appropriate administrative, physical and technical safeguards to protect information within the Services. Such safeguards shall comply with federal, state, and local requirements, including the Privacy Rule and the Security Rule,





whether or not you are otherwise subject to HIPAA. You will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your Workforce to transmit, store and process electronic health information through the use of the Services.

**3.6.2** You will immediately notify us of any breach or suspected breach of the security of the Services of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Services, and you will take such actions to mitigate the breach, suspected breach, or unauthorized use or disclosure of information within or obtained from the Services as we may direct, and will cooperate with us in investigating and mitigating the same.

### **3.7 User Identification.**

We authorize you and your Authorized Workforce to use the Credentials uniquely assigned to, or selected by, each such individual User. You acquire no ownership rights in any such Credentials, and such Credentials may be revoked, reset or changed at any time in the discretion of us or the Provider of Record. You will adopt and maintain reasonable and appropriate security precautions for your Credentials to prevent their disclosure to or use by unauthorized persons. Each member of your Authorized Workforce shall have and use a unique identifier. You will ensure that no member of your Workforce uses Credentials assigned to another Workforce member.

### **3.8 No Third-Party Access.**

Except as required by law, you will not permit any third party (other than persons who satisfy the definition of Authorized Workforce and meet the requirements of Section 3.1.3) to use or access the Services without our prior written agreement. Nor will you authorize or assist any person or entity in accessing, or attempting to access, any portion of the Services via any means other than a commercial browser (such as Internet Explorer, Mozilla Firefox, Safari or Chrome) or a mobile app that we have authored and provided to you. You will promptly notify us of any order or demand for compulsory disclosure of health information if the disclosure requires access to or use of the Services. You will cooperate fully with us in connection with any such demand. You will also notify us in the event that any person or entity, whether or not a member of your Authorized Workforce, (a) attempts to access the Services by any means other than a commercial browser, (b) claims to offer a service or system that “integrates with” our Services or (c) requests to use your Credentials or requests that you obtain Credentials in order to access the Services in a manner that would violate this Agreement if you engaged in such activity.

### **3.9 Your Workforce.**

You may permit your Authorized Workforce to use the Services on your behalf, subject to the terms of this Agreement. You will:



3.9.1 require each member of your Authorized Workforce to have unique Credentials, and will provide the legal name(s) of each such member for which you are seeking Credentials;

3.9.2 train all members of your Authorized Workforce in the requirements of this Agreement and the Policies and Procedures relating to their access to and use of the Services, and ensure that they comply with such requirements;

3.9.3 take appropriate disciplinary action against any member of your Workforce who violates the terms of this Agreement or the Policies and Procedures;

3.9.4 ensure that only the person to whom a specific set of Credentials have been assigned accesses the Services with such Credentials; and

3.9.5 immediately notify us of the termination of employment of any member of your Authorized Workforce, or of your withdrawal of authorization for any such person to access the Services.

### **3.10 Personal Health Record.**

You may make available to your patients portions of their medical records through a web-based or mobile application personal health record portal that we operate on your behalf (a "Patient Portal"). You are responsible for granting Patient Portal access privileges to your patients, either on an individual basis or for your entire patient population. You are solely responsible for the information that you make available through a Patient Portal. Health information included in Patient Portal will be held and administered by us on your behalf subject to the terms of this Agreement and our business associate obligations stated in Section 9.

### **3.11 Compliance with Law.**

You are solely responsible for ensuring that your use of the Services complies with applicable law, including laws relating to the maintenance of the privacy, security, and confidentiality of patient and other health information. You will not grant any user, including members of your Authorized Workforce, any rights to access or use our Services that they would not be allowed to have under applicable laws. We offer no assurance that your use of the Services under the terms of this Agreement will not violate any law or regulation applicable to you. You acknowledge that we may share Your Information with third parties if we determine in good faith that disclosure of Your Information is necessary to (i) comply with a court order, warrant or other legal process, (ii) protect the rights, property or safety of Health Gorilla or others, (iii) investigate or enforce suspected breaches of this Agreement, or (iv) allow our third-party partners to comply with their obligations under federal or state law.

### **3.12 Professional Responsibility.**



You will be solely responsible for the professional and technical services you provide. We make no representations concerning the completeness, accuracy or utility of any information in the Services, or concerning the qualifications or competence of persons who placed it there. We have no liability for the consequences to you or your patients of your use of the Services.

### **3.13 Cooperation.**

You will cooperate with us in the administration of the Services, including providing reasonable assistance in evaluating the Services and collecting and reporting data requested by us for purposes of administering the Services.

### **3.14 Indemnification.**

You hereby agree to indemnify, defend, and hold harmless us and other users, and our and their respective affiliates, officers, directors, employees and agents, from and against any claim, cost or liability, including reasonable attorneys' fees, arising out of or relating to: (a) the use of the Services by you or your Workforce; (b) any breach by you or your Workforce of any representations, warranties or agreements contained in this Agreement; (c) the actions of any person gaining access to the Services under Credentials assigned to you or a member of your Workforce; (d) the actions of anyone using Credentials assigned to you or any member of your Workforce that adversely affects the Services or any information accessed through the Services; and (e) your negligent or willful misconduct, or that of any member of your Workforce. Your indemnification obligations in this Agreement (including this Section 3.14) are cumulative, and are not intended to, nor do they, limit your indemnification obligations elsewhere in this Agreement or at law, even if such obligations arise or are occasioned or triggered by a single assertion, claim, circumstance, action, event or transaction.

## **4. Use of Information**

### **4.1 Purpose of Services.**

The purpose of the Services is to store Your Health Information and (i) to make it available to you and your Authorized Workforce for any legal purpose, including treatment, payment and health care operations; (ii) to facilitate the sharing of individuals' health information among users and other parties with whom you or your Authorized Workforce members elect to share such information, (iii) to make health information available to your patients through the Patient Portal. You may make Your Health Information accessible to other users of the Services, other individuals and entities, or to your patients through the Services for these purposes. You authorize us, as your business associate, to use and disclose Your Information as follows:



**4.1.1** We will permit unrestricted access to Your Health Information to you and your Authorized Workforce. You are responsible for ensuring that your use of Your Health Information is consistent with the relevant legal restrictions.

**4.1.2** We will permit access to Your Health Information to your patients to whom you have enabled to receive access through our Patient Portal.

**4.1.3** We will permit access to Your Information by health care providers, covered entities and their business associates to whom you have Consented to provide access to the Services and who have otherwise agreed to integrate with our systems. We will obtain your Consent before we make Your Health Information available to other providers, covered entities and their respective business associates. You acknowledge that once we have granted access rights to another provider or covered entity (or their respective business associates), we have no control over the uses and disclosures that such person or entity makes of Your Health Information, and the recipient may be subject to its own legal or regulatory obligations (including HIPAA) to retain such information and make such information available to patients, governmental authorities and others as required by applicable law or regulation.

**4.1.4** We may disclose or permit access to Your Information to entities such as, but not limited to, health plans, medical groups, independent practice associations, accountable care organizations, health information exchanges, your authorized service providers and other parties responsible for data exchange and their business associates.

**4.1.5** We may De-Identify Your Information, and use and disclose De-Identified Information for any purpose whatsoever, including as provided by Section 5 and Section 7.2.

**4.1.6** We may create limited data sets from Your Health Information, and disclose them for any purpose for which you may disclose a limited data set; and you hereby authorize us to enter into data use agreements on your behalf for the use of limited data sets, in accordance with applicable law and regulation.

**4.1.7** We may use Your Information in order to prepare analyses and reports, such as activity or quality-metrics reports, or any other reports the Services makes available, in order to render these reports to You or for any of the purposes described in our Privacy Policy. Preparation of such analyses and reports may include the use of data aggregation services relating to your treatment and health care operations, which we may perform using Your Health Information. Such reporting will be done in a manner that does not make any disclosure of Your Health Information that you would not be permitted to make.

**4.1.8** We may use Your Information for the proper management and administration of the Services and our business, and to carry out our legal responsibilities, which may include us disclosing such information to one of our business associates that has entered into a business associate agreement in accordance with Section 9.4 below. We may also disclose Your Information for such purposes if the disclosure is required by law (as such term is defined in 45 CFR §164.103), or we obtain reasonable assurances (as such term is



interpreted or applicable in connection with or under HIPAA) from the recipient that it will be held confidentially and used or further disclosed only (a) as required by law (as such term is defined in 45 CFR §164.103), or (b) for the purpose for which it was disclosed to the recipient, and the recipient notifies us of any instances of which it is aware in which the confidentiality of the information has been breached. Without limiting the foregoing, we may permit access to the system by our contracted system developers under appropriate confidentiality agreements.

**4.1.9** We may use Your Health Information and Directory Information (defined below) to contact your patients on your behalf for any purpose for which you would be permitted to contact them, including:

- (a) For treatment and health care operations messages, including sending appointment notifications (such as appointment requests, confirmations, reminders, cancellations and the like) and messages about currently prescribed medications (including refill reminders), or post-visit treatment satisfaction surveys, invitations and administrative messages concerning Patient Portal access, and the like;
- (b) With your Consent, to request an authorization on your behalf from your patients to use or disclose their health information for any purpose for which use or disclosure may be made with an appropriate authorization, including marketing and research purposes. You agree that we may also use and disclose your patients' health information as permitted by any such authorization; and
- (c) To provide information about health-related products or services that you provide, or that we provide on your behalf as your business associate.

**4.1.10** From time to time we may incorporate information we receive from your authorized service providers (including Third-Party Applications as discussed in Section 11.2), our third party partners, or covered entities (and their business associates) who are providing or paying for medical services for one or more of your patients, into the Services we provide to you. Such information may include, without limitation, clinical information such as lab results, imaging results, eligibility information, prior authorizations and prescription history; and shall, upon incorporation into the Services, be treated as "Your Health Information" for all purposes hereunder. You hereby authorize us to request and receive such information on your behalf from such authorized service providers or our third party partners.

**4.1.11** We may use or disclose Your Health Information for other purposes, as from time to time described in our Policies and Procedures; provided that we will not make or permit any such use or disclosure that would violate applicable law or regulation if made by you or your business associate.

**4.1.12** We may use Your Information to provide you with notifications regarding Your patients' potential eligibility for certain programs, including savings programs, coupons, sampling, educational, safety, adherence or treatment support materials or other programs which you may choose to share with your patients ("Patient Support Programs") as well as to administer the Support and Assessment Resources more fully described in Section 6 below. These notifications and materials are not a substitute for your professional medical



judgment pertaining to the appropriateness of any such program for a given patient and you should discuss any such programs or materials with your patients directly. We may receive remuneration from the funding sources or sponsors for presenting you with Support and Assessment Resources or displaying their advertisements. In connection with offering or operating such Patient Support Programs or Support and Assessment Resources, we may share personally identifiable information about you for the purposes of program administration, and for assessing program eligibility, effectiveness or performance. We will only share such information with partners who are subject to confidentiality obligations. Additionally, we may disclose Personal Information about you to administrators of the Patient Support Programs or Support and Assessment Resources for recordkeeping, corporate integrity or regulatory reporting purposes.

#### **4.2 Responsibility for Misuse by Other Users.**

You acknowledge that in granting access to the Services for the purposes set forth in Section 4.1, we will rely on the assurances of the recipients of the information as to (i) their identity and credentials, (ii) the purposes for which they are accessing the system, and (iii) the nature and extent of the information to which they will have access. You acknowledge that, while the Services will contain certain technical safeguards against misuse of the Services, it will rely to a substantial extent on the representations and undertakings of users of the Services. You agree that we will not be responsible for any unlawful access to or use of Your Health Information by any user resulting from the user's misrepresentation to us, or breach of the user's user agreement or our Policies and Procedures.

#### **4.3 Specially Protected Information.**

We apply the standards of the Privacy Rule in permitting access to the Services. You acknowledge that other federal and state laws impose additional restrictions on the use and disclosure of certain types of health information, or health information pertaining to certain classes of individuals. You agree that you are solely responsible for ensuring that Your Health Information may properly be disclosed for the purposes set forth in Section 4.1, subject to the restrictions of the Privacy Rule and applicable law, including those laws that may be more restrictive than the Privacy Rule. In particular, you will:

- 4.3.1** not make available to other users through the Services any information in violation of any restriction on use or disclosure (whether arising from your agreement with such users or under law);
- 4.3.2** obtain all necessary consents, authorizations or releases from individuals required for making their health information available through the Services for the purposes set forth in Section 4.1;
- 4.3.3** include such statements (if any) in your notice of privacy practices as may be required in connection with your use of the Services; and



**4.3.4** not place in the Services any information that you know or have reason to believe is false or materially inaccurate.

#### **4.4 Universal Chart.**

With your Consent, we will make your online health record for any patient you designate accessible to any other user of the Services or any third party whom you approve. We may, from time to time, identify Your patient who may have a Universal Chart available, whereby You may elect to join Your patient's health record into Universal Chart. You may revoke your Consent with respect to any other user at any time. While your Consent is in effect, an approved user may view, edit or otherwise alter any health record you have designated for his or her use. If you revoke your Consent, the approved user will continue to have the ability to view the health record in the form in which it existed at the time you revoked your Consent, but will not be able to view changes made to the record thereafter, and will not be able to edit the record. The same rules apply to your use of another user's record who approves access by you. You and your Workforce are fully responsible for the information in any chart that you share. You or your Workforce should not share patient information that violates any state or federal laws. In any event, but especially in cases of potential fraud, misuse or abuse of the Services, we reserve the right, in our sole judgment, to revoke, remove, cancel or deny continued access to any health record or any Universal Chart request.

#### **4.5 Provider Directories.**

We may include your Directory Information (defined below) in our "Provider Directories," which are electronic directories for patients and the general public, other members of the healthcare community. Provider Directories may be made available in various electronic formats, including searchable databases, Provider landing pages, interactive reference tools, reference lists, and integrated look-up features, among others. They may also incorporate information designed to help users, such as integrated maps, and licensure confirmation tools, among others. Provider Directories may include a "contact" feature that allows users to contact other users directly through the Services. Our Provider Directory may be made available to public search engines to aid Provider discovery. Listing in the Provider Directories is subject to eligibility criteria. A Provider's "Directory Information" includes the Provider's name, name(s) of physicians or other healthcare professionals associated with a Provider, associated specialties, Provider's business telephone number(s) and physical address(es), National Provider Identifiers (or NPI), State license(s) and the Provider's available appointment slots, as each is indicated from information a Provider has inputted or imported into the Services or we imported from public databases such as NPI. The Directory Information may include additional information you input or upload into profile tools we make available in the Services (such as a profile photograph, accepted insurance, available office hours, a front desk email address, and the like), as and when such tools are available.

#### **4.6 Care Coordination and Clinical Data Exchange.**



We will enable Clinical Data Exchange between You and your business associate(s) or those covered entities (and their respective business associates), including health systems, Independent Practice Associations, Accountable Care Organizations, and payers, who desire to transmit such data to you with respect to patients they have a treatment or payment relationship or with whom you have Consented to provide such data (all third parties collectively referred herein as “Transmission Partner”). While such transmission integrations are in effect, such Transmission Partner may send and receive clinical data to and from your account on a routine and recurring basis. You may disable an integration with any Transmission Partner by contacting us, but any clinical data already received by such Transmission Partner will remain in its possession, subject to the terms of your independent agreements with such Transmission Partner, if any. You are solely responsible for ensuring that You have all necessary consents from Your patients applicable to the sharing of any of Your Health Information under applicable law with respect to each Transmission Partner with whom you have Consented to share any information under this Section 4.6.

## 5. Providing Physician Data to Payers and Others

Without limiting the provisions of Section 7.2, you agree that we may provide De-Identified Health Information and other information (including Your Personal Information and information concerning your practice) to any medical group, independent practice association of physicians, health plan or other organization with which you have a contract to provide medical services, or to whose members or enrollees you provide medical services. Such information may identify you, but will not identify any individual to whom you provide services. Such information may include aggregated data concerning your patients, diagnoses, procedures, orders and the like.

## 6. Support and Assessment Resources; Advertising

We may also present to you, through the Services or through the use of Your Information, the opportunity to utilize or engage in clinical decision support or assessment resources or informational programs (“Support and Assessment Resources,” which may also include, for the avoidance of doubt, Patient Support Programs (as previously described in Section 4.1.12)). We may also place advertisements concerning the products and services of third parties throughout the Services, so that you see them when you use the Services. Such Support or Assessment Resources or advertisements may be funded or sponsored by third parties, and may include branded or unbranded content about medical conditions, treatments and products, or safety and regulatory information resources. They may also include opportunities to participate in informational surveys or studies, or to discuss with your patients potential clinical trials or other research programs. We may receive remuneration from the funding sources or sponsors for presenting you with Support and





Assessment Resources or displaying their advertisements. In connection with offering or operating such Support and Assessment Resources or delivering advertising, we may share personally identifiable information about you for the purposes of assessing program eligibility, effectiveness or performance with partners who are subject to confidentiality obligations. Additionally, if you choose to engage or utilize one of the Support and Assessment Resources, you may be asked to provide personal information that may be used to supplement Your Information as well as information gathered as part of the program itself (e.g., responses to surveys). This information will be used to provide the content or services described in the Support and Assessment Resources or provide you with any gift or honoraria associated with the program. If you receive remuneration for participating in a sponsored survey, for example, we may be required to provide the funding source or sponsor with information about you for its recordkeeping, regulatory reporting or measurement purposes.

## 7. Intellectual Property Rights

### 7.1 Individually Identifiable Health Information.

You retain all rights with regard to Your Health Information, and we will only use such information as expressly permitted in this Agreement.

### 7.2 De-Identified Information.

In consideration of our provision of the Services, you hereby transfer and assign to us all right, title and interest in and to all De-Identified Information that we make from Your Information pursuant to Section 4.1.5. You agree that we may use, disclose, market, license and sell such De-Identified Information for any purpose without restriction, and that you have no interest in such information, or in the proceeds of any sale, license, or other commercialization thereof. You acknowledge that the rights conferred by this Section are the principal consideration for the provision of the Services, without which we would not enter into this Agreement.

### 7.3 Other Works and Information.

You hereby grant to us a nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable, worldwide and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display any information, material or work product – other than Your Information that has not been De-Identified – you provide to this site or the Services. You agree that we may use, disclose, market, license, and sell such information and works, including derivative products, without restriction. This includes, for example, custom templates that you create using the Services, and information (other than Your Information that has not been De-Identified) that you contribute to forums, discussion groups and the like. You may provide content or material to this site by participating in forums, discussion groups and the like, or by using the site to create custom templates and the like. Furthermore, you agree that we may use, disclose, market, license and sell such



material or content, and that you have no interest in the information, or in the proceeds of any sale, license, or other commercialization thereof. You warrant and agree that any material you provide will not infringe or otherwise violate the intellectual property or other rights of others, and will not be otherwise unlawful, infringing, threatening, libelous, defamatory, obscene, pornographic, or in violation of any law.

## 8. Individuals' Rights

You are solely responsible for affording individuals their rights with respect to relevant portions of Your Health Information, such as the rights of access and amendment. You will not undertake to afford an individual any rights with respect to any information in the Services other than Your Health Information.

## 9. Business Associate Provisions

In maintaining, using and affording access to Your Health Information in accordance with this Agreement, we will, in accordance with the requirements of HIPAA, as such requirements are informed by the guidance given by the United States Department of Health and Human Services (or any office, department or agency operating thereunder, "HHS"):

**9.1** Not use or disclose such information except as permitted or required by this Agreement or as required by law (as such term is defined in 45 CFR §164.103);

**9.2** Use appropriate safeguards consistent with the requirements of the Security Rule with respect to Your Health Information to prevent the use or disclosure of such information in a manner inconsistent with the provisions of this Agreement;

**9.3** Report to you any use or disclosure of Your Health Information not provided for by this Agreement of which we become aware, including breaches of Your Health Information that meets the definition of "unsecured protected health information" under HIPAA, in each case as required by §164.410 of HIPAA, and any security incident (as defined by HIPAA) involving Your Health Information of which we become aware;

**9.4** In accordance with §§164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, as applicable, ensure that any subcontractors that create, receive, maintain or transmit Your Health Information on our behalf agree to the same restrictions, conditions, and requirements that apply to us with respect to such information (as such requirement is interpreted or applicable in connection with or under HIPAA); and we obtain satisfactory assurances (as such term is interpreted or applicable in connection with or under HIPAA) that such subcontractors will appropriately safeguard such information (it being understood, for the avoidance of doubt, that other users of the Services are not our subcontractors);



**9.5** Make available to you Your Health Information in furtherance of your obligations under §164.524 of the Privacy Rule;

**9.6** Make available to you Your Health Information in furtherance of your obligations to amend and incorporate any amendments to such information in accordance with §164.526 of the Privacy Rule;

**9.7** Maintain and make available Your Health Information to provide an accounting of disclosures in accordance with §164.528 of the Privacy Rule;

**9.8** To the extent that we are to carry out your obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to you in the performance of such obligations;

**9.9** Make our internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by us on your behalf, available to the Secretary of HHS for purposes of determining your compliance with the Privacy Rule; and

**9.10** At termination of this Agreement we will provide the Provider of Record with a copy of Your Health Information in an electronic form that is accessible through commercially available hardware and software. You may have to purchase such hardware and software from third parties in order to access your data, and you may have to configure your systems in order to use your data in your practice. Upon termination we will, if feasible, return or destroy all Protected Health Information received from, or created or received by us on your behalf that we still maintain in any form, and retain no copies of such information; or, if such return or destruction is not feasible (whether for technical, legal, regulatory or operational reasons), extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. You acknowledge that if you have approved, in accordance with the terms of this Agreement, other users of our Services (such as your patients or other providers) or their respective business associates, we will continue to make such information and data available to such users pursuant to the terms of the agreements we have with them.

## 10. Computer Systems

You agree and acknowledge that you will be required to acquire, install, configure and maintain all hardware, software and communications systems necessary to access the Services (your “Implementation”). Your Implementation will comply with the specifications from time to time established by us. You will ensure that your Implementation is compatible with the Services. If we notify you that your Implementation is incompatible with the Services, you will eliminate the incompatibility, and we may suspend Services to you until you do so.



## 11. Third-Party Services

**11.1** We may also present to you, through the Services (including via emails, displays or advertisements) or through the use of Your Information, the opportunity to learn about, access, integrate with, or otherwise use services operated by third parties (each a “Third-Party Service”). If you choose to sign-up for or utilize a Third-Party Service, that Third-Party Service may be able to access Your Information. Additionally, we may allow you to access the Third-Party Services, or integrate the Services you receive from us with such Third-Party Services using your Credentials that allow you to receive services or information from such Third-Party Services. Although we may receive remuneration from the operators or sponsors of these Third-Party Services, we do not endorse any Third-Party Services and you are responsible for evaluating any Third-Party Services prior to signing-up for, accessing, or integrating them (including any information) with the Services you receive from us.

**11.2** We are not responsible for the quality or efficacy of any Third-Party Services, or their information privacy or security practices, and we have no responsibility for the information, goods or services offered or provided by the operators of such Third-Party Services, or for the manner in which they conduct their operations. Your use of Third-Party Services and the materials, information, goods and services offered by them is entirely at your own risk, and is subject to the terms of use of the third parties operating or providing them, if any. You should assume that any Internet page or other material that does not bear the official Health Gorilla logo is provided by a third party. You should review the applicable terms of any agreement, terms of use and privacy policies of any Third-Party Services, since they are subject only to the agreements you have with the operators of such Third-Party Services, and not covered by this Agreement. Further, the Third-Party Services may use Your Information in a way that we would not. You further acknowledge that your use of any Third-Party Services is on an “as-is” basis. Please see our Privacy Policy for further information regarding Third-Party Services.

## 12. Fees and Charges

### **12.1 Service Fees.**

We reserve the right to charge you a service fee (the “Service Fee”) for the Services to which you have access during the Term of this Agreement. Current Service Fee plans and subscriptions are available here. You also agree to pay, at our then current rates, for all goods, services, or features that you utilize, or otherwise request from us and that are not included in our standard services (“Miscellaneous Charges”). We will notify you of the Service Fee when you are granted access to a service, and we will notify you of the applicable Miscellaneous Charges before performing services or enabling features to which a Miscellaneous Charge will apply. We reserve the right to change the Service Fee and Miscellaneous Charges, or to add new fees or charges. In that event, we will give you notice in advance of any such changes, and an opportunity to cancel.



## **12.2 Payment.**

The Service Fees and any Miscellaneous Charges shall be paid within twenty (20) days of date of invoice at the address set forth in the invoice, or such other address as may be set forth in our Policies and Procedures.

## **12.3 Late Charges.**

Fees not paid within ten (10) business days of the due date are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of one and one-half percent (1½%) per month on the outstanding balance, or the highest amount permitted by law, whichever is lower. Failure to pay fees within ten (10) days of the due date may result in termination of access to the Services without notice. A reconnection fee equal to one (1) month's Service Fee shall be assessed to re-establish connection after termination due to non-payment.

## **12.4 Taxes.**

All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and you agree to pay any tax (excluding taxes on our net income) that we may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Agreement. The amount we charge you for a Service may include certain taxes or charges applicable thereto your purchase. If any tax or charge applicable is not charged by us, you acknowledge that you are solely responsible for paying such tax or other charge.

## **12.5 Other Charges.**

You are responsible for any charges you incur to use the Services, such as telephone and equipment charges, and fees charged by third-party vendors of products and services.

## **12.6 Payment Information; Method of Payment.**

By providing payment information to us, you hereby represent and warrant that you are authorized to use the payment method you provide, that such information is accurate, and that we are authorized to charge you for the applicable Services using the established payment method and the information you provided. You are solely responsible for notifying us of any changes to your payment information.

# **13. Confidential Information**

**13.1** You may not disclose our Confidential Information to any other person, and you may not use any Confidential Information except for the purpose of this Agreement. Except as



otherwise provided in this Agreement, you may not, without our prior written consent, at any time, during or after the Term of this Agreement, directly or indirectly, divulge or disclose Confidential Information for any purpose. In addition, except for the purposes of using the Services, you will not use Confidential Information for any other purposes. You will hold all Confidential Information in strict confidence and to take all measures necessary to prevent unauthorized copying, use, or disclosure of Confidential Information, and to keep the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain its confidentiality. You will disclose Confidential Information only to members of your Workforce who have a need to use it for the purposes of this Agreement. You will inform all such recipients of the confidential nature of Confidential Information and will instruct them to deal with Confidential Information in accordance with the terms of this Agreement. You will promptly advise us in writing of any improper disclosure, misappropriation, or misuse of the Confidential Information by any person, which may come to your attention.

**13.2** You agree that we will suffer irreparable harm if you fail to comply with your obligations set forth in Section 13.1, and you further agree that monetary damages will be inadequate to compensate us for any such breach. Accordingly, you agree that we will, in addition to any other remedies available to us at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof, immediately and without the necessity of posting a bond.

## 14. Disclaimer, Exclusion of Warranties, and Limitation of Liability

### 14.1 Carrier Lines.

YOU ACKNOWLEDGE THAT ACCESS TO THE SERVICES WILL BE PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATIONS LINES, AND INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES (COLLECTIVELY, "CARRIER LINES") OWNED, MAINTAINED, AND SERVICED BY THIRD-PARTY CARRIERS, UTILITIES, AND INTERNET SERVICE PROVIDERS, ALL OF WHICH ARE BEYOND OUR CONTROL. WE ASSUME NO LIABILITY FOR, OR RELATING TO, THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON THE CARRIER LINES, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY DATA OR OTHER INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT YOUR RISK AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL, AND INTERNATIONAL LAWS.

### 14.2 No Warranties.



ACCESS TO THE SERVICES AND THE INFORMATION CONTAINED ON THE SERVICES IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, AND WE DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE SERVICES OR THE INFORMATION IN THE SERVICES, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF GOODWILL, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF WE HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. WE DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SERVICES.

#### **14.3 Conditions for Breach.**

We will not be deemed to be in violation of this Agreement unless you have first given us written notice specifying the nature of the default, and we have failed within thirty (30) days of receipt of the notice either to cure the default or, if cure within such period is not practicable, to be diligently proceeding to cure the default.

#### **14.4 Other Users.**

YOU ACKNOWLEDGE THAT OTHER USERS HAVE ACCESS TO AND ARE USING OUR SERVICES AND THE ACTIONS OF SUCH OTHER USERS ARE BEYOND OUR CONTROL. ACCORDINGLY, WE DO NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION ON THE SERVICES RESULTING FROM ANY USER’S ACTIONS OR FAILURES TO ACT.

#### **14.5 Unauthorized Access; Lost or Corrupt Data.**

WE ARE NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO YOUR DATA, FACILITIES OR EQUIPMENT BY PERSONS USING THE SERVICES OR FOR UNAUTHORIZED ACCESS TO, ALTERATION, THEFT, CORRUPTION, LOSS OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SERVICES, WHETHER BY ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER MEANS. YOU ARE SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS, AND FOR PROTECTING YOUR DATA AND PROGRAMS FROM LOSS BY IMPLEMENTING



APPROPRIATE SECURITY MEASURES. YOU HEREBY WAIVE ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION, SECURITY VIOLATIONS, OR THE USE OF THIRD-PARTY SOFTWARE. WE ARE NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH OUR PROVISION OF THE SERVICES.

#### **14.6 Limitation of Liability.**

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AGGREGATE FEES ACTUALLY PAID BY YOU UNDER THIS AGREEMENT FOR THE SIX (6) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM.

## **15. Insurance**

You will obtain and maintain such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is usually carried by persons engaged in your business covering the term of this Agreement.

## **16. Term; Modification; Suspension; Termination**

#### **16.1 Term.**

The initial term of this Agreement shall commence on the date you “sign up” for the Services and continue for a period of one (1) year, and thereafter automatically continue until terminated as provided in this Section.

#### **16.2 Termination upon Notice.**

Notwithstanding Section 16.1, we or you may terminate this Agreement at any time without cause upon thirty (30) days’ prior written notice to the other Party.

#### **16.3 Modification.**

We may update or change the Services or the terms set forth in this Agreement from time to time. Accordingly, we recommend that you review the Agreement on a regular basis. You understand and agree that your continued use of the Services after the Agreement has been updated or changed constitutes your acceptance of the revised Agreement. Without limiting the foregoing, if we make a change to the Agreement that materially affects your





use of the Services, we may post notice or notify you via email or our website(s) of any such change.

#### **16.4 Termination, Suspension or Amendment as a Result of Government Regulation.**

Notwithstanding anything to the contrary in this Agreement, we have the right, on notice to you, immediately to terminate, suspend, or amend this Agreement, without liability: (a) to comply with any order issued or proposed to be issued by any governmental agency; (b) to comply with any provision of law, any standard of participation in any reimbursement program, or any accreditation standard; or (c) if performance of any term of this Agreement by either Party would cause it to be in violation of law, or would jeopardize its tax-exempt status.

#### **16.5 Judicial or Administrative Procedures; Credentialing.**

We may terminate this Agreement immediately upon notice to you: (a) if you are named as a defendant in a criminal proceeding for a violation of federal or state law; (b) if a finding or stipulation is made or entered into that you have violated any standard or requirement of federal or state law relating to the privacy or security of health information is made in any administrative or civil proceeding; (c) you are excluded from participation in a federal or state health care program; or (d) you cease to be qualified to provide services as a health care professional, or we are unable to verify your qualifications as such.

#### **16.6 Suspension of Access.**

We may suspend access to the Services by you or any member of your Workforce immediately pending your cure of any breach of this Agreement, or in the event we determine in our sole discretion that access to or use of the Services by you or the member of your Workforce may jeopardize the Services or the confidentiality, privacy, security, integrity or availability of information within the Services, or that you or the member of your Workforce has violated or may violate this Agreement or our Policies and Procedures, or has jeopardized or may jeopardize the rights of any third party, or that any person is or may be making unauthorized use of the Services with any Credentials assigned to you or a member of your Workforce. We may terminate the access of any member of your Authorized Workforce upon termination or change in status of his or her employment with you. Our election to suspend the Services shall not waive or affect our rights to terminate this Agreement as permitted under this Agreement.

#### **16.7 Obligations after Termination.**

Upon termination of this Agreement, you will (i) cease all use of the Services, (ii) pay the outstanding balance of any fees due to us, and (iii) remove all software provided under this Agreement from your computer systems. All provisions of the Agreement which, by their nature, should survive termination shall survive termination, including Sections 1, 3.15, 5, 7, 9.10, 11.2, 12 through 15, 16.7, 17, 18, 19.3, and 20 through 27.



## 17. Applicable Law

The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of California, without regards to its conflicts of laws provisions. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in the County of Santa Clara, California.

## 18. Arbitration

**18.1** EXCEPT FOR CLAIMS BY EITHER PARTY UNDER ANY OF THE SECTIONS OF THIS AGREEMENT LISTED IN SECTION 18.2, ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION OR VALIDITY THEREOF, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE SUBJECT TO FINAL AND BINDING ARBITRATION GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). THE ARBITRATION SHALL BE CONDUCTED BEFORE A SINGLE ARBITRATOR IN ACCORDANCE WITH THE COMMERCIAL DISPUTE RESOLUTION PROCEDURES AND THE SUPPLEMENTARY PROCEDURES FOR CONSUMER RELATED DISPUTES OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") THEN IN EFFECT, AS MODIFIED BY THIS AGREEMENT, AND WILL BE ADMINISTERED BY THE AAA. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS CLAUSE SHALL NOT PRECLUDE EITHER PARTY FROM SEEKING TEMPORARY OR PRELIMINARY INJUNCTIVE RELIEF IN CONNECTION WITH AN ARBITRABLE CONTRVRSY, BUT ONLY UPON THE GROUND THAT THE AWARD TO WHICH THAT PARTY MAY BE ENTITLED MAY BE RENDERED INEFFECTUAL WITHOUT SUCH PROVISIONAL RELIEF.

**18.2** THIS AGREEMENT TO ARBITRATE SHALL NOT APPLY TO CLAIMS BY ANY PARTY BROUGHT UNDER AND TO ENFORCE ANY ONE OR MORE OF THE FOLLOWING SECTIONS OF THIS AGREEMENT: 2.1; 3.1.2; 3.1.3; 3.2; 3.4.3(c), (d), or (e); 3.8; 3.9; or, TO THE EXTENT APPLICABLE TO THE FOREGOING SECTIONS, 16.7.

**18.3** THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, CLASS MEMBER, OR PRIVATE ATTORNEY GENERAL IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE-ATTORNEY-GENERAL PROCEEDING. BY ENTERING INTO THIS AGREEMENT, YOU AND WE ARE EACH WAIVING THE RIGHT TO A JURY TRIAL OR TO PARTICIPATE IN A CLASS ACTION. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIM WITH YOUR CLAIMS OR OUR CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY REPRESENTATIVE, CLASS, OR PRIVATE-ATTORNEY-GENERAL PROCEEDING. THE ARBITRATOR MAY AWARD DECLARATORY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY



SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM.

**18.4** Any part of this agreement to arbitrate that shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this agreement to arbitrate, and such other provisions shall remain in full force and effect.

## 19. Amending Provider Information; Assignability of this Agreement; Assurances

### 19.1 Amending Provider Information.

If you are a Provider of Record, you are required to submit to us all information necessary to confirm yourself as the Provider of Record, and maintain the accuracy of such information, in a timely fashion, during the term of this Agreement. You are also required to maintain the accuracy of all information associated with each Credential. We shall be entitled to rely on all information you submit to us under this Agreement, including pursuant to Section 3.1 or this Section 19.1. In the event that you contact us and assert that you have authority to act on behalf of a Provider or any of its account(s) or data, you hereby agree to submit to us such written certifications, assurances (which may include a written opinion of your counsel identifying us as beneficiaries entitled to rely on such opinion), instruments or judicial process as we, in our sole discretion, may request.

### 19.2 Assignments.

This Agreement may be transferred in its entirety by a Provider of Record in connection with the sale, transfer or reorganization of all or substantially all of the practice or business to which this Agreement relates; provided that each of the following conditions are satisfied in full: (a) an authorized representative of the transferor or transferee notifies us in writing of the transfer, the legal name of the transferee, and date of transfer; (b) the transferor or transferee submits to us such written certifications, assurances (which may include a written opinion of your counsel identifying us as beneficiaries entitled to rely on such opinion) or instruments as we, in our sole discretion, may request; and (c) we are satisfied, in our sole discretion, of the validity of the certifications, assurances or instruments submitted pursuant to clause (b). Upon our recognition of a transfer by a Provider of Record, the Administrative Rights and all User accounts of such Provider of Record's Authorized Workforce shall automatically transfer to such Provider of Record's recognized transferee. Except as expressly set forth in this Section 19.2, you may not assign or transfer this Agreement, in whole or in part, without our prior written consent, which may be withheld at our sole discretion. We may freely assign this Agreement in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.

### 19.3 Assurances.



By requesting or directing us to take any action described in Section 19.1 or Section 19.2 with respect to any Provider or any account(s) or data held by such account(s), you represent and warrant that (i) you have the authority to act on such Provider's behalf or to control such account(s) or data, and (ii) your request or direction is not in furtherance of any purpose or action that would violate any provision of this Agreement, applicable law or the rights of any person or entity. YOU HEREBY WAIVE AND UNCONDITIONALLY RELEASE US, OUR AFFILIATES, AND OUR AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, DEBTS, LIABILITIES, EXPENSES, ACTIONS AND CAUSES OF ACTIONS OF EVERY KIND AND NATURE, WHETHER NOW KNOWN OR UNKNOWN, ARISING OUT OF OR IN CONNECTION WITH ANY ACTION WE TAKE OR DO NOT TAKE IN RESPONSE TO ANY REQUEST, DIRECTION, INFORMATION, CERTIFICATION, ASSURANCE OR INSTRUMENTS WE RECEIVE FROM YOU IN ACCORDANCE WITH SECTION 19.1 OR SECTION 19.2. ACCORDINGLY, YOU AGREE TO WAIVE THE BENEFIT OF ANY LAW, INCLUDING, TO THE EXTENT APPLICABLE, CALIFORNIA CIVIL CODE § 1542 (OR SIMILAR PROVISIONS OF THE LAWS OF OTHER STATES), WHICH STATES,

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

You hereby agree to indemnify, defend, and hold harmless us and other users, and our and their respective affiliates, officers, directors, employees and agents, from and against any claim, cost or liability, including reasonable attorneys' fees arising from: (a) any action we take in reliance on any information, certification, assurance or instrument you provide to us, or (b) any action we take that complies with any request or direction you at any time make or made.

## 20. Supervening Circumstances

No Party to this Agreement shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control.

## 21. Severability

Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.



## 22. Notices

Any and all notices required or permitted under this Agreement shall be sent by United States mail or fax transmission to the address provided below or to such other and different addresses as the Parties may designate in writing. If you supply us with an electronic mail address, we may give notice by email message addressed to such address; provided that if we receive notice that the email message was not delivered, we will give the notice by United States mail or fax.

To us:  
Health Gorilla Inc.  
228 Hamilton Ave  
Palo Alto, CA 94301

To you, at the current contact information on file with us at the time notice is given.

## 23. Waiver

No term of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

## 24. Complete Understanding; Amendments

This Agreement contains the entire understanding of the Parties, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement.

## 25. No Third-Party Beneficiaries

Except as expressly provided for in Sections 2.2, 3.15, 14 and 19.3, nothing express or implied in this Agreement is intended to confer, nor shall confer, upon any person or entity other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

## 26. Electronic Transactions

The Services give you the ability to enter into agreements, authorizations, consents and applications; make referrals; order lab tests; prescribe medications; or engage in others



transactions electronically. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS VIA THE SERVICES IN CONNECTION WITH SUCH ACTIVITIES CONSTITUTE YOUR ACKNOWLEDGMENT THEREOF AND YOUR AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS, AND APPLIES TO ALL RECORDS RELATING TO SUCH TRANSACTIONS. You represent and warrant that you have the authority to take such actions.

## 27. Privacy Policy

The Services are provided by us under this Agreement on our website [healthgorilla.com](http://healthgorilla.com). Your use of our Services are subject to our Privacy Policy. By using the Services, you are consenting to the terms of the Privacy Policy and acknowledge that you have reviewed our Privacy Policy.