



# Terms of Use

## User Agreement (Effective: May 15, 2017)

**THIS IS A LEGALLY BINDING AGREEMENT** between Health Gorilla, Inc., a Delaware Corporation (“we” or “us”) and you, as a user of our on-line diagnostic test system (the “System”). BY CLICKING “SIGN UP” OR THROUGH THE CONTINUED USE OF THE SYSTEM, YOU ARE UNDERTAKING LEGAL OBLIGATIONS AND CONFERRING LEGAL RIGHTS. Please read this agreement carefully, and do not click “Sign up” or continue use of the System unless you agree fully with its terms. 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 have the meanings assigned to them below. Terms not defined below (whether or not capitalized) have the definitions given them in HIPAA, unless the context requires otherwise:

**“Authorized Workforce”** means those members of your Workforce who are individually authorized by you and us to have access to the System to assist you in providing treatment and obtaining payment for treatment, and to whom we have assigned a unique identifier for access to the System.

**“Record Share”** means the feature of the System through which we make Your Health Information available to other users of the System with your consent, or make Health Information of other users of the System available to you with their consent.

**“Confidential Information”** means any information concerning 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 shall 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.

**“De-identified Health Information”** means health information that has been de-identified in accordance with the provisions of the Privacy Rule, and “De-Identify,” with respect to health information, means make it into De Identified Health Information.

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



**“De-Identified Personal Information”** means personal information from which a user’s name and other unique identifiers have been removed, and from which the user cannot reasonably be identified; and “De-Identify,” with respect to Personal Information, means to make it into De-Identified Personal 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.

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

**“Personal Information”** means information that identifies you personally as a user of the System, and all information concerning you and your use of the System that is not Protected Health Information.

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

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

**“Protected Health Information”** has the meaning given it in the Privacy Rule and includes all individually identifiable health information concerning your patients that you provide to the System.

**“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.

**“Services”** means the services to which you have been granted access.

**“System”** means the electronic communication network from time to time operated by us, including all hardware provided by us, all software used or provided by us, and all such hardware and software installed at or accessed from your site, and all documentation provided by us in connection with the System, paper or electronic.

**“Term”** means the initial term and all renewal terms of this Agreement as provided in Section 16.

**“User”** means you and any other user of the System.

**“User ID”** means a unique user identification assigned to an individual User pursuant to Section 3.7.



“**Workforce**” means employees, agents and independent contractors.

“**Your Health Information**” means Protected Health Information that you or your Workforce enter into the System.

“**Your Site**” means the location you provided us upon registration, and such other location or locations as we may approve from time to time.

## 2. Grant of Right to Use Services

**2.1** We grant to you and you accept a non-exclusive, personal, nontransferable, limited right to have access to and to use the System, and a non-exclusive, personal, nontransferable, limited license to use any computer software furnished by us for access to or use of the System, for the purpose of obtaining 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 System for time-sharing, rental or service bureau purposes; (b) make the System, in whole or in part, available to any other person, entity or business; (c) copy, reverse engineer, decompile or disassemble the System, in whole or in part, or otherwise attempt to discover the source code to the software used in the System; or (d) modify the Services or the System or associated software or combine the Services or the System with any other software or services not provided or approved by us. You will obtain no rights to the System except for the limited rights to use the System expressly granted by this Agreement.

**2.2** The System includes certain third-party software and services, which may require that you enter into separate subscription or licensing agreements with third-party vendors. We may also make available optional services provided by third parties, such as billing, electronic ordering and clinical laboratory reporting services. You agree to comply with, and upon request to execute, such agreements as may be required for the use of such software or services, and to comply with the terms of any license or other agreement relating to third-party products included in the System or made accessible to you through the System. Your use of the System 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 System

**3.1 Verification.** You agree that your use of the System is subject to verification by us of your identity and credentials as a health care practitioner, and to your ongoing qualification as such. You agree that we may use and disclose your Personal Information for such purposes, including (without limitation) 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. You agree that we may terminate your access to or use of the System at any time if we are unable at any time to determine or verify your qualifications or credentials.

**3.2 Permitted Uses.** Subject to the terms of this Agreement, you may use Your Health Information for any purpose expressly permitted by applicable law. If you are granted access rights to another users Protected Health Information, 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. You agree that you will not access the System or use the Services for any other purposes. In particular:

**3.2.1.1** You will not reproduce, publish, or distribute content in connection with the System that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy, or other personal or proprietary right;

**3.2.1.2** You will comply with all applicable laws, including laws relating to maintenance of privacy, security, and confidentiality of patient and other health information and the prohibition on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing, or offensive messages, or otherwise unlawful material;

**3.2.1.3** You will not: (a) abuse or misuse the System or the Services, including gaining or attempting to gain unauthorized access to the System, or altering or destroying information in the System except in accordance with accepted practices; (b) using the System or Services in a manner that interferes with other Users' use of the System; or (c) using the System or the Services in any manner that violates our Policies and Procedures; (d) or use any ad blocking mechanism, device, or tool to prevent the placement of advertisements in the System or the Service.

**3.3 Clinical Support Information.** We may provide information to assist you in clinical decision-making. This may include information and reminders concerning lab test results, drug interactions, allergies, dosages, as well as general health-care related information and resources. We may also provide forums for our users to exchange information. The information and materials available through this site 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 on our Internet site by us and by third parties beyond our control. We are not responsible for the accuracy or completeness of information available from or through our site. You are not permitted to use our site to advise, diagnose, or otherwise treat users of this site. You assume full risk and responsibility for the use of information you obtain from or through this site, and you agree that Health Gorilla, Inc. is not responsible or liable for any claim, loss, or liability arising from the 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 on this site relating to any such products, items or services is not an endorsement or recommendation of them. You agree to review the definitions, functionality, and limitations of the System, 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 System for any purpose.

### **3.4 Safeguards.**

**3.4.1** You will implement and maintain appropriate administrative, physical and technical safeguards to protect information within the System from access, use or alteration from Your Site or using a User ID assigned to you or a member of your Workforce. 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 System.

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

**3.5 Location of Access.** You and your Authorized Workforce are authorized to access the System solely from Your Site, and from other sites from which you have received approval from us to access the System.

**3.6 Compliance.** You will comply with the terms of this Agreement, our Policies and Procedures, and all applicable laws and regulations. You will be solely responsible for the use of the System by you and your Workforce, and shall indemnify us and hold us harmless from any claim, cost or liability arising from such use, including reasonable attorneys' fees.

**3.7 User Identification.** We authorize you and your Authorized Workforce to use the User IDs assigned to you by us. You acquire no ownership rights in any User ID, and User IDs may be revoked or changed at any time in our sole discretion. You will adopt and maintain reasonable and appropriate security precautions for User IDs 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 use your best efforts to ensure that no member of your Workforce uses a User ID assigned to another person.

**3.8 No Third-Party Access.** Except as required by law, you will not permit any third party (other than your Authorized Workforce) to have access to the System or to use the Services without our prior written agreement. 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



System. You will cooperate fully with us in connection with any such demand.

### **3.9 Your Workforce.**

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

**3.9.1.1** obtain a unique User ID from us for each member of your Authorized Workforce;

**3.9.1.2** 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 System and the Services, and ensure that they comply with such requirements;

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

**3.9.1.4** ensure that only you and your Authorized Workforce access the System from Your Site;

**3.9.1.5** 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 System.

**3.10 Patient Portal.** You may make health information available to your patients through our Patient portal. You are solely responsible for the information that you make available through the Patient portal, for granting access rights to your patients, and for revoking access rights. You agree that you will not use the Patient portal to make available the health information of any person under the age of 18 years. You acknowledge and agree that, if a patient of yours authorizes the disclosure of his or her health information to Health Gorilla Inc. for inclusion in his or her personal health record, Health Gorilla may, from time to time for as long as the authorization is in effect, transfer the patients health information from the health record Health Gorilla maintains for you to a personal health record maintained separately by Health Gorilla for the patient. Information in the separate personal health record is distinct from your patient health record, and is not subject to this User Agreement, or to our obligations to you as your business associate. Personal health record information of patients who do not authorize the disclosure of their health information to Health Gorilla for inclusion in a separate personal health record will be held as part of the health record that Health Gorilla maintains for you, and will be subject to the terms of this User Agreement and our business associate obligations.

**3.11 Forums.** We may offer forums for the exchange of information among our users. You agree to comply with all applicable forum rules. In particular, you understand that we do not assure the accuracy, reliability, confidentiality or security of information made available through the use of such forums. You acknowledge that any information you post in a forum or discussion group is available to the public, and may result in your receiving communications from others outside our site. You are responsible for safeguarding the



privacy of your and your patients' personal information when you participate in forums, discussion groups and the like. You agree not to disclose individually identifiable health information through such forums.

**3.12 Compliance with Law.** Subject to the provisions of section 17, you are solely responsible for ensuring that your use of the System and the Services (including making health information available through the System) complies with applicable law. You will not undertake or permit any unlawful use of the System, or take any action that would render the operation or use of the System by us or any other User unlawful. We offer no assurance that your use of the System and the Services under the terms of this Agreement will not violate any law or regulation applicable to you.

**3.13 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 System, or concerning the qualifications or competence of individuals who placed it there. We have no liability for the consequences to you or your patients of your use of the System or the Services.

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

**3.15 Indemnification.** You agree to indemnify, defend, and hold harmless us and other Users, and our and their affiliates, officers, directors, and agents, from and against any claim, cost or liability, including reasonable attorneys' fees, arising out of: (a) the use of the System 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 System under a User ID assigned to you or a member of your Workforce; (d) the actions of anyone using a User ID, password or other unique identifier assigned to you or any member of your Workforce that adversely affects the System or any information accessed through the System; and (e) your negligent or willful misconduct, or that of any member of your Workforce.

## 4. Use of Information

**4.1 Purpose of System.** The purpose of the System is to facilitate the ordering of lab tests and the viewing and analysis of the results, the analysis of data from other health monitoring and other devices and other data as integrated from time to time, and (i) to make it available to you and your Authorized Workforce; (ii) to facilitate the sharing of individuals' health information among Users, and (iii) to make health information available to your patients through the Patient portal. You may make Your Health Information accessible to other Users and to your patients through the System for these purposes. You authorize us, as your business associate, to use and disclose Your Health Information as follows, subject to the recipient's agreement to comply with our Policies and Procedures and with applicable



laws and regulations relating to the use and disclosure of health information, and subject also to the provisions of section 9:

**4.1.1** We will permit unrestricted access to Your Health Information to you and your Authorized Workforce.

**4.1.2** We will permit access to Your Health Information to your patients to whom you have agreed to grant access through our Patient portal.

**4.1.3** We will permit access to Your Health Information by health care providers and their business associates to whom you have consented to provide access for treatment and payment through the sharing/referral features of the System. We will obtain your consent before we make Your Health Information available to other providers. You acknowledge that once we have granted access rights to another provider, we have no control over the uses and disclosures that the provider makes of Your Health Information.

**4.1.4** We may disclose or permit access to Your Health Information to health plans, health care clearinghouses, medical groups, independent practice associations and other parties responsible for payment and their business associates for the purpose of obtaining payment for services you provide, unless you advise us in writing that the patient has paid out of pocket in full for the service to which the Health Information relates, and has requested that it not be disclosed to his or her health plan.

**4.1.5** We may De-Identify Your Health Information and Your Personal Information, and use and disclose De-Identified Information 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 Health Information in order to prepare analyses and reports, such as activity or quality-metrics reports, or any other reports the System makes available, in order to render these reports to You. 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 Health Information for the proper management and administration of the System and our business, and to carry out our legal responsibilities. We may also disclose Your Health Information for such purposes if the disclosure is required by law, or we obtain reasonable assurances from the recipient that it will be held confidentially and used or further disclosed only as required by law or 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 to contact your patients on your behalf for any purpose for which you would be permitted to contact them, including, without limitation:

- (a) For treatment, including sending appointment and requisition reminders;
- (b) For case management and care coordination, or to direct or recommend alternative treatments, therapies, health care providers or settings of care;
- (c) To request 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 purposes. You agree that we may also use and disclose your patient's health information as permitted by any such authorization; and
- (d) 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** 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. Except as provided in subsection 4.1.7 and subsection 4.1.8, and notwithstanding any other provision of this section, we will not use or disclose Your Health Information in any manner that would violate the requirements of the Privacy Rule if done by you.

**4.2 Responsibility for Misuse by Other Users.** You acknowledge that in granting access to the System 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 System will contain certain technical safeguards against misuse of the System, it will rely to a substantial extent on the representations and undertakings of Users. 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 System. 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 only to the restrictions of the Privacy Rule. In particular, you will:

**4.3.1** not make available through the System any information subject to any restriction on use or disclosure (whether arising from your agreement with the individual or under law), other than the general restrictions contained in the Privacy Rule;

**4.3.2** obtain any necessary consents, authorizations or releases from individuals required for making their health information available through the System for the purpose 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 System;

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

**4.4 Share.** With your consent, we will make your on-line health record for any patient you designate accessible to any other user of the System whom you approve. 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 and edit 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 to 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 for you. You and your Workforce are fully responsible for the information in any chart that you share. You and/or your Workforce should not share patient information that violates any state and/or federal laws, such as a positive HIV test result. In the future, Health Gorilla may allow you to share only subsections of a patient chart or may allow a referee to share the patient chart with others, in either case, Health Gorilla will obtain your consent before using allowing the use of such features. In any event, but especially in cases of potential fraud, misuse and/or abuse of the System, Health Gorilla reserves the right, in its sole judgment, to revoke, remove, cancel or deny continued access to any health record or any Share request.

## 5. Providing Physician Data to Payers

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 (without limitation) aggregate data concerning your patients, diagnoses, procedures, orders and the like.

## 6. Product and Service Notifications.

As expressly permitted by this Agreement or by our Policies and Procedures, unless we obtain your consent, we will not disclose to any third party any information that identifies you to enable the third party to market products or services to you directly.

## 7. Intellectual Property Rights



As expressly permitted by this Agreement or by our Policies and Procedures, unless we obtain your consent, we will not disclose to any third party any information that identifies you to enable the third party to market products or services to you directly.

**7.1 Individually Identifiable Health Information.** Except as provided in Section 7.2 (De-Identified Information), you retain all rights with regard to your Protected Health Information.

**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 Health Information or Your Personal Information pursuant to Section 4.1.5. You agree that we may use, disclose, market, license and sell 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 agree that any information, material or work product you provide to this site, other than Protected Health Information and Personal Information which has not been De-Identified, is the exclusive property of Health Gorilla, and by submitting such content or material you assign to Health Gorilla, all intellectual property rights in such content or material. 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 System, and information (other than Protected Health Information or Personal Information which 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 Health Gorilla 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 on 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 shall be solely responsible for affording individuals their rights with respect to 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 System other than Your Health Information.

## 9. Business Associate Provisions



You shall be solely responsible for affording individuals their rights with respect to 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 System other than Your Health Information.

In maintaining, using and affording access to Your Health Information in accordance with this Agreement, we will:

**9.1** Not use or further disclose the information except as permitted or required by this Agreement or as required by law;

**9.2** Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Agreement, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the information;

**9.3** Report to you any use or disclosure of the information not provided for by this Agreement of which we become aware, or any security incident as a result of which we determines that unauthorized access has been obtained to Your Health Information;

**9.4** Ensure that any of our agents or subcontractors to whom we provide Your Health Information for purposes of assisting us in providing the System or the Services, agrees to the same restrictions and conditions that apply to us with respect to such information, including the obligation to implement reasonable and appropriate safeguards to protect it (it being understood that other Users of the System are not our agents or subcontractors);

**9.5** Make available protected health information in accordance with § 164.524 of the Privacy Rule;

**9.6** Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with Sect 164.526 of the Privacy Rule;

**9.7** Make available the information required to provide an accounting of disclosures in accordance with Sect; 164.528 of the Privacy Rule;

**9.8** 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 the United States Department of Health and Human Services for purposes of determining your compliance with the Privacy Rule; and

**9.9** At termination of this Agreement we will provide you 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, 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 it will likely be infeasible to segregate Your Health Information for removal from the System, and that if you have approved another user to have access to any of your on-line records through Universal Chart or Record Share, we will maintain a version of those records through the time you withdraw your approval, and we will continue to make those records available to the approved (or formerly approved) user. You acknowledge that you may have to purchase proprietary software in order to access such information.

**9.10 HITECH Act.** As required by the HITECH Act:

(a) We will comply with the provisions of the HIPAA Security Rule that are made applicable to business associates by section 13401(a) of the HITECH Act, with the additional provisions of the HITECH Act relating to security that are made applicable to business associates and incorporated into business associate contracts by section 13401(a) of the HITECH Act, and with the additional provisions of the HITECH Act relating to privacy that are made applicable to business associates and incorporated into business associate contracts by section 13404(a) of the HITECH Act.

(b) We will report to you the discovery of any breach of unsecured Protected Health Information that we access, maintain, retain, modify, record, store destroy or otherwise hold, use or disclose on your behalf, in compliance with the requirements of Section 13402 of the HITECH Act and the regulations promulgated thereunder (45 CFR Parts 160 and 164, Subpart D), and we will cooperate reasonably with you to investigate and mitigate any such breach, and to provide you with information you need to make any legally required notification to individuals.

## 10. Computer Systems

**10.1 Your Systems.** You will acquire, install, configure and maintain all hardware, software and communications systems necessary to access the System (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 System and Services. If we notify you that your Implementation is incompatible with the System, you will eliminate the incompatibility, and we may suspend Services to you until you do so.

**10.2 Assistance.** Upon request, we may provide goods or services in connection with your Implementation. You will pay our then standard charges for such assistance, and our out-of-pocket costs.

## 11. Third-Party Sites and Service Providers



**11.1 Third-Party Sites.** The System may contain hyperlinks to Internet web sites operated by third parties, or to materials or information made available by third parties. Such third parties may offer goods or services for sale to you. Such links do not constitute or imply our endorsement of such third parties, or of the content of their sites, the quality or efficacy of their goods or services, or their information privacy or security practices, and we have no responsibility for information, goods or services offered or provided by such third parties, or for the manner in which they conduct their operations. Your use of third-party sites and the materials, 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. You should assume that any Internet page or other material that does not bear the Health Gorilla logo is provided by a third party.

## **11.2 Health Gorilla.**

**11.2.1 Access and Uses.** Health Gorilla facilitates the transmission of electronic ordering information between participants in the Health Gorilla Clinical Network, through which requisition benefit and history information, including eligibility, insurance coverage, and other information, is transmitted electronically between participants in the Health Gorilla Marketplace from a Data Source (as described below) to a practitioner at the point of ordering, and through which ordering messages are routed electronically from a practitioner to the vendor of a patient's choice. Practitioner hereby agrees and acknowledges that Health Gorilla will use the services of Health Gorilla to facilitate various features in the Product. Furthermore, Practitioner agrees to access and utilize the Health Gorilla network only in accordance with the terms and conditions of this Agreement and in addition to the terms and conditions set forth in this section. Data Source shall mean (a) health benefit payor or ACO Group Administrator, or other similar entity which has entered into a written agreement with Health Gorilla to allow access through the Health Gorilla Clinical Network to information in its possession; and (b) a diagnostic laboratory, diagnostic laboratory chain, an entity that has contracted with Health Gorilla to become either a vendor or practitioner aggregator and is designated as such by Health Gorilla or other similar entity which has entered into a written agreement with Health Gorilla to allow access through the Health Gorilla Clinical Network to information in its possession.

**11.2.2 Confidentiality.** You agree to keep confidential any and all of Health Gorilla confidential information, as well as the confidential information of all entities that have contracted with Health Gorilla to become either a vendor or practitioner aggregator and is designated as such by Health Gorilla (certified aggregators), entities that have been designated by Health Gorilla as a value-added reseller of the Health Gorilla Services and connectivity to other entities that aggregate practitioners and/or vendors (certified VAR), Data Sources, practitioners, health care providers, or facilities, technology vendors, and other entities or individuals that have entered into a written agreement with Health Gorilla either directly or indirectly, in order to access, provide, or communicate through the Health Gorilla Clinical Network, whether explicitly marked confidential or reasonably believed to be confidential.

**11.2.3 Compliance with Applicable Law.** You are required to and must certify that you



have obtained any and all necessary patient consents and authorizations required by applicable law including, without limitation, all federal, state, local, common law, rules, regulations, directives, and guidelines prior to using any of Health Gorilla services, including, without limitation, its electronic ordering service. You hereby agree and provide assurances that all messages transmitted via the Health Gorilla network originate from legally authorized locations. Health Gorilla reserves the right to terminate use of the Health Gorilla Clinical Network for any reason with or without notice.

**11.2.4 Disclaimer.** HEALTH GORILLA MAKES NO REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH THE HEALTH GORILLA CLINICAL NETWORK OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT IN THE HEALTH GORILLA CLINICAL NETWORK AT ANY TIME, DATA SOURCES AND OTHER PARTICIPANTS IN THE HEALTH GORILLA CLINICAL NETWORK MAY BE ADDED OR DELETED WITHOUT PRIOR NOTICE. YOU ACKNOWLEDGE AND AGREE THAT AT ANY TIME AND WITHOUT PRIOR NOTICE, A DATA SOURCE (AS DESCRIBED ABOVE) MAY ELECT NOT TO RECEIVE REQUISITIONS AND/OR OTHER MESSAGES. YOU FURTHER AGREE THAT AS THE TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER, YOU HAVE VERIFIED REQUISITION BENEFIT OR REQUISITION HISTORY INFORMATION WITH EACH PATIENT AND/OR THE PATIENT'S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. HEALTH GORILLA DOES NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED THROUGH THE HEALTH GORILLA CLINICAL NETWORK FOR ACCURACY AND COMPLETENESS. THE HEALTH GORILLA CLINICAL NETWORK IS NOT INTENDED TO SERVE AS A REPLACEMENT FOR A WRITTEN REQUISITION WHERE NOT APPROVED AS SUCH BY THE APPROPRIATE GOVERNMENTAL AUTHORITIES OR WHERE SUCH WRITTEN REQUISITION IS REQUIRED FOR RECORD KEEPING PURPOSES, OR APPLICABLE REQUISITION DOCUMENTATION. USE OF THE HEALTH GORILLA CLINICAL NETWORK IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER'S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISION WITH REGARD TO THE APPROPRIATENESS OF TREATMENT, OR THE VALIDITY OR RELIABILITY OF INFORMATION, IS SOLELY YOUR RESPONSIBILITY.

**11.2.5 No Warranty.** THE HEALTH GORILLA MARKETPLACE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES, EXCEPT AS SET FORTH BELOW. ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE HEALTH GORILLA CLINICAL NETWORK ARE HEREBY DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HEALTH GORILLA DOES NOT WARRANT THAT ITS NETWORK WILL MEET ANY REQUIREMENTS OR THAT IT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. Health Gorilla agrees to use commercially reasonable efforts at all times to provide prompt and efficient service and to maintain its own equipment, proprietary systems and programs; Health Gorilla however, makes no warranties or representations regarding the Health Gorilla Clinical Network except as specifically stated in this Section 11.2. Health Gorilla shall use all due care in processing all work submitted to it by Health Gorilla and agrees that it will, at its expense, use commercially reasonable efforts to correct, as



promptly as practicable, any errors to the extent that such errors are due to the malfunction of Health Gorilla computers, operating systems, or programs or errors by Health Gorilla employees or agents. Correction shall be limited to identifying errors and retransmitting the message or messages affected by any errors. Health Gorilla shall not be responsible in any manner for errors or failures of proprietary systems and programs of third parties, nor shall Health Gorilla be liable for errors or failures of Health Gorilla's software or operational systems not caused by the Health Gorilla Marketplace. Should there be any failure in performance or errors or omissions with respect to the information being transmitted, Health Gorilla responsibility shall be limited to using commercially reasonable efforts to correct such failure in performance or errors or omissions.

**11.2.6 Indemnification.** Except to the extent arising solely from the gross negligence or willful misconduct of Health Gorilla and subject to the limitations set forth below, you shall indemnify and save harmless Health Gorilla from and against any and all loss, damage, or expense (or claims of damage or liability) asserted against Health Gorilla by third parties and arising directly out of any breach of this Agreement, any loss of connectivity to the Health Gorilla Clinical Network due to acts or omissions inconsistent with the terms and conditions hereof, or information provided to Health Gorilla, you or to other third persons.

**11.2.7 Force Majeure.** Neither Party shall be liable or deemed in default for failure to fulfill any obligation under this Agreement due to causes beyond its reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunication or internet backbone outages, failure of an internet access provider or other similar causes beyond the Parties' control, and neither Party shall be liable for losses, expenses or damages, ordinary, special or consequential, resulting directly or indirectly from such causes.

**11.2.8 Audit.** You authorize Health Gorilla to access, inspect, and/or audit your records relating to the use of the Health Gorilla Clinical Network, Health Gorilla data, and data or information provided by you.

**11.2.9 Survey.** By using Health Gorilla and/or consenting to its terms, You authorize Health Gorilla to contact you for survey and/or statistical purposes. You also agree that Health Gorilla shall be entitled to disclose information received from You for the purpose of (and only to the extent necessary for) operating Health Gorilla business and providing the Health Gorilla services, including, without limitation, sharing Your information and/or data with other Data Sources to the extent necessary to fulfill the terms of this Agreement, but only in accordance with all applicable law, or pursuant to a valid order issued by a duly authorized court or Government authority.

**11.2.10 HIPAA Compliance.** Health Gorilla may utilize, transfer, or disclose aggregated information, including, but not limited to, summary statistics, which has been de-identified in accordance with HIPAA at 45 CFR 164.514 such that it does not identify an individual and





cannot be used to identify an individual for any purpose. Notwithstanding the foregoing, Health Gorilla's use of de-identified data shall be in accordance with its Notice of Privacy Policy at [www.healthgorilla.com](http://www.healthgorilla.com).

## 12. Fees and Charges

**12.1 Service Fees.** You will pay us a Service Fee for the use of our System, as described in Plans and Pricing section of this website.. You also agree to pay, at our then current rates, for all goods or services that you 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 to which a Miscellaneous Charge will apply. The Service Fee and Miscellaneous Charges may change from time to time.

**12.2 Payment.** The Service Fee and any Miscellaneous Charges shall be paid on receipt or within twenty (20) days of date of invoice at the address set forth under our name below, 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 (1/2%) 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 System 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.

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

## 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 or use Confidential Information for its own benefit or for the purposes or benefit of any other person. You agree to 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 its obligations set forth in this Section 13, 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.

**13.3** This Section 13 will survive the termination or expiration of this Agreement for any reason.

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

**14.1 Carrier Lines.** YOU ACKNOWLEDGE THAT ACCESS TO THE SYSTEM 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 SYSTEM AND THE INFORMATION CONTAINED ON THE SYSTEM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN



RELIANCE ON THE SYSTEM OR THE INFORMATION IN THE SYSTEM, 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, 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 OCCURRING. WE DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SYSTEM.

**14.3 Conditions for Breach.** We will not be deemed to be in violation of this Agreement unless you have first have 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 THE SYSTEM AND ARE RECEIVING OUR SERVICES. SUCH OTHER USERS HAVE COMMITTED TO COMPLY WITH OUR POLICIES AND PROCEDURES CONCERNING USE OF THE SYSTEM; HOWEVER, 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 SYSTEM 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 INDIVIDUALS OR ENTITIES USING THE SYSTEM OR FOR UNAUTHORIZED ACCESS TO, ALTERATION, THEFT, CORRUPTION, LOSS OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SYSTEM, 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, INCLUDING ROUTINE BACKUP PROCEDURES. 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 Effective Date and continue for a period of one (1) year, and thereafter until terminated as provided in this Section.

**16.2 Termination upon Notice.** 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 and/or the terms set forth in this Agreement from time to time and 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 System or 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 System by you or the member of your Workforce may jeopardize the System or the confidentiality, privacy, security, integrity or availability of information within the System, 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 System with any User ID 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 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 cease to use the System and we may terminate your access to the System. You will pay to us the Access Fee for the balance of the Term upon termination. Upon termination for any reason, you will remove all software provided under this Agreement from your computer systems, you will cease to have access to the System, and you will return to us all hardware, software and documentation provided by or on behalf of us.

## 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. 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 City and County of San Francisco, California.

## 18. ARBITRATION

ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS NOTICE OR THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION OR VALIDITY THEREOF, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, OR TO YOUR USE OF THIS SITE OR THE SYSTEMS OR INFORMATION TO WHICH IT GIVES ACCESS, SHALL BE DETERMINED BY ARBITRATION IN SAN FRANCISCO, CALIFORNIA, BEFORE A SINGLE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION.



## 19. Non-Assignability

This Agreement may not be assigned or transferred by you without our prior written consent.

## 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

## 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



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. Except as otherwise provided in this Agreement (including Section 16.3), all modifications or amendments to this Agreement shall be in writing and signed by all Parties.

## 25. No Third-Party Beneficiaries

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. Advice of Counsel

Each Party acknowledges: (a) having fully read this Agreement in its entirety; (b) having had full opportunity to study and review this Agreement; (c) having been advised that counsel for us has acted solely on our behalf in connection with the negotiation, preparation, and execution of this Agreement; (d) having been advised that all parties have the right to consult and should consult independent counsel respecting their rights and duties under this Agreement; and (e) having had access to all such information as has been requested.

## 27. Authority

The individuals entering into this Agreement represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to enter into this Agreement on behalf of the Parties.