

## END USER TERMS AND CONDITIONS FOR HEALTH GORILLA

Altera may terminate the Health Gorilla Products and Services for End User by providing written notice to the End User if the Agreement between Altera and Health Gorilla terminates or is scheduled to terminate or Health Gorilla has provided notice of termination to Altera. Altera is a third party beneficiary of Health Gorilla with respect to these End User Terms and Conditions. In addition to any fee increases permitted in the agreement between End User and Altera, Altera may increase the fees for the Health Gorilla Products and Services to End User to reflect any increase in fees to Altera from Health Gorilla. The following additional End User Terms and Conditions shall apply to the Health Gorilla Products and Services.

1. **DEFINITIONS.** Certain capitalized terms, if not otherwise defined in this Agreement (including the Health Gorilla Products and Services Documentation), shall have the meanings set forth below in this Section.

- 1.1 **“Authorized Systems”** shall mean, collectively, the hardware on which the End User is authorized to access the Services.
- 1.2 **“Confidential Information”** means any material or information relating to a Party’s research, development, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software, and any databases (including any data models, structures, non-customer specific data and aggregated statistical data contained therein) of Health Gorilla shall constitute Confidential Information of Health Gorilla.
- 1.3 **“Documentation”** shall mean Health Gorilla’s standard user manuals associated with the Services, training materials, and/or related documentation, technical specifications or written material generally made available to End User and/ or Eligible Users of the Health Gorilla Technology.
- 1.4 **“Eligible User”** means any employee, contractor, or agent of End User or End User affiliates who has been authorized in writing by Health Gorilla to use the Services and Health Gorilla Technology.
- 1.5 **“Health Gorilla Services”** or **“Services”** means the Health Gorilla’s proprietary services (including any content therein) that Health Gorilla provides to End User and its Eligible Users by means of online access and use of the Health Gorilla Technology pursuant to this Agreement.
- 1.6 **“Health Gorilla Technology”** means Health Gorilla’s products. Services and/ or materials provided by or created by or on behalf of Health Gorilla (such as the Trademarks, the links, template for the “look and feel” of the files, data, and formulae) and Health Gorilla’s products and/ or Services individually and/or severally operating on the Platform, which includes but is not limited to proprietary software described in the Agreement, and including the applicable documentation, and any related updates, upgrades, support, maintenance as well as any modified, updated or enhanced versions of such software that Health Gorilla may provide to End User. **“Intellectual Property Rights”** means all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights.
- 1.7 **“Pass Through Terms and Conditions”** are the additional terms that can be found at <https://healthgorilla.com/home/additional-terms>, and that collectively contain the additional third-party terms and conditions that End User is obligated to follow and are incorporated by reference herein.
- 1.8 **“Platform”** shall mean the provision to Authorized Systems, by means of the Access Protocols, to the generally available features and functions of the Health Gorilla Technology as hosted and operated by Health Gorilla upon computers, networks and systems owned, operated and/or under Health Gorilla’s control or direction. Platform shall include storage of the End User and Eligible User Data, and provision of access to the same pursuant to the Access Protocols herein.
- 1.9 **“Product”** means the products and other Health Gorilla Technology licensed under the first page of this Agreement.
- 1.10 **“Trademark”** means all Health Gorilla trademarks, service marks, logos, and trade names.

## 2. ACCESS AND USAGE OF SOFTWARE.

- 2.1 Access Grant.** Subject to the End User's compliance with the Agreement and Implementer's compliance with the Master Agreement, End User and Eligible Users may during the Term pursuant to a sublicense from the Implementer access and use the Platform and Products stated in this Agreement in the United States of America ("**Sublicense**"). Such access grant under the Sublicense is on a limited, nontransferable, revocable, and nonexclusive basis solely for End User's internal business purposes.
- 2.2 Third-Party Software.** The Health Gorilla Technology may contain software that originated with third parties. Without limiting the general applicability of the other provisions of this Agreement, End User agrees that: (i) the right, title and interest to any third-party software incorporated in the Health Gorilla Technology remains with the third-party that supplied the software; and (ii) it will not distribute, disseminate, or otherwise provide any such third-party software available with the Health Gorilla Technology, in any manner, outside the scope set forth in this Agreement. Health Gorilla represents and warrants that it has obtained all appropriate third-party software licenses necessary to grant the access and use rights to End User for the products and services licensed pursuant to this Agreement.
- 2.3 Use of End User Data.** (a) **Performance of Services.** Except as otherwise explicitly set forth herein, End User grants Health Gorilla the rights and permissions to use, copy, distribute, display, provide, modify, store, and otherwise process End User Data for the sole and exclusive purpose of providing the Services or Health Gorilla Technology to End User contemplated under this Agreement. As used herein, "**End User Data**" means all data, and information that End User and Eligible User provides, authorizes access, or inputs, to the Services or Health Gorilla Technology. (b) **Patient Record.** Notwithstanding anything to the contrary in Section 2.3(a), the inclusion of End User Data in a complete medical record for each patient is fundamental to the Health Gorilla Technology and to Health Gorilla's compliance with contractual obligations to third parties, including data sharing networks. Accordingly, End User grants Health Gorilla a worldwide, nonexclusive, perpetual, royalty-free right to use, copy, distribute, display, modify, store, and incorporate End User Data into the Health Gorilla Technology, combined with data contributed by other Health Gorilla customers "Combined Data", and may be used by Health Gorilla in any form and manner internally for any lawful purpose. Additionally, and with respect to third parties, the Combined Data will be used and provided to third parties for any lawful purpose and as agreed herein, including but not limited to PHI (Protected Health Information as defined by HIPAA) and PII (Personally Identifiable Information) from the Services. Health Gorilla agrees to comply with applicable privacy and other laws and regulations in connection with End User Data and Combined Data. The provisions of this Section shall apply to all the End User Data and Combined Data and uses set forth related to End User's use of the Services.
- 2.4 Usage Restrictions.** End User will not make the Services or Health Gorilla Technology available or accessible to any third-party or person other than Eligible Users, and will not authorize any Eligible User to: (a) copy or duplicate the Health Gorilla Technology in any manner; (b) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Health Gorilla Technology is compiled or interpreted; (c) modify the Health Gorilla Technology or the Documentation, or create any derivative work from any of the foregoing, except with the prior written consent of Health Gorilla; (d) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, End User's rights in the Health Gorilla Technology or Services; (e) defraud or deceive any third-party through the Health Gorilla Technology; (f) access or use the Services or Health Gorilla Technology in order to build a similar or competitive product or service to the Health Gorilla Technology; (g) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber End User's access rights granted in Section 2; (h) use the Health Gorilla Technology in any time-sharing or service bureau arrangement; (i) combine or integrate the Health Gorilla Technology or Platform with hardware, software or technology not provided, or otherwise authorized, by Health Gorilla hereunder, except as expressly contemplated in the Documentation; or (j) intentionally damage, interfere with or disrupt the integrity, performance or use of the Health Gorilla Technology. Further, End User hereby acknowledges that nothing in this Agreement shall be construed to grant End User any right to obtain or use such source code. Additionally, End User will not conceal, remove, or alter any proprietary notice

or legend regarding Health Gorilla's proprietary rights in the Services and/ or Health Gorilla Technology.

- 2.5 Intellectual Property.** All right, title, and interest in and to the Health Gorilla Technology, including, but not limited to, all Intellectual Property Rights therein, will remain with Health Gorilla. End User's sole interest in the Health Gorilla Technology is the access and use of the Health Gorilla Technology by End User and its Eligible Users. End User will acquire no rights to any Intellectual Property Rights in the Health Gorilla Technology by reason of End User's use of the same. End User and/ or its Eligible Users may from time to time provide to Health Gorilla suggested improvements, feedback or comments regarding the functions, features, performance, and other characteristics of the Health Gorilla Technology (collectively, "**Suggested Improvements**"). End User hereby grants to Health Gorilla a non-exclusive, perpetual, irrevocable, worldwide, sublicensable, and royalty-free right to use and otherwise exploit Suggested Improvements in any manner. Notwithstanding the foregoing, nothing herein is to be construed as granting Health Gorilla any right, title, or interest in End User's Intellectual Property Rights.
- 2.6 Security and Business Continuity.** Health Gorilla shall employ commercially reasonable efforts to ensure that all Services are free from any known cyberattack, including but not limited to bots, viruses, worms, Trojan horses, spyware, adware, and other malicious code. Health Gorilla will not knowingly use the Services to disrupt End Users computer systems or network equipment and/ or other hardware. Health Gorilla shall maintain and keep current a disaster recovery plan.
- 2.7 Pass Through Terms and Conditions.** End User shall comply with the Pass-Through Terms and Conditions if the Services include Health Gorilla's Patient360 offering.

**3. OWNERSHIP.** End User acknowledges that Health Gorilla and its contributors own all Intellectual Property Rights in and to the Health Gorilla Technology (including all components thereof), the Platform and the Documentation, and Health Gorilla expressly reserves all rights not expressly granted to End User in this Agreement.

#### **4. HEALTH GORILLA OBLIGATIONS.**

- 4.1 Procedures and Technical Protocols.** Health Gorilla will specify to Implementer the procedures by which the End User may establish and obtain access to, and use of, the features and functions of the Services, including, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable the Authorized Systems to obtain access to the Platform via the Internet (together with relevant portions of the Documentation, the "**Access Protocols**"). End User shall obtain Access Protocols from Implementer.
- 4.2 Data Retention.** End User acknowledges and understands that use of the Platform will permit or require End User to provide certain aspects of End User Data to Health Gorilla for purposes of processing or storage using the features and functions of the Platform. During the term of this Agreement, Health Gorilla will make such End User Data available to End User through online access to the Service.

#### **5. GENERAL USAGE RESTRICTIONS.**

- 5.1 Third-Party Restrictions.** End User shall use the Health Gorilla Technology and the Documentation in compliance with the terms and conditions set forth herein. End User shall not enter any contractual relationship or other legally binding obligation with any third-party which shall have the purpose or effect of encumbering the use by Health Gorilla of the Health Gorilla Technology, Platform or Documentation.
- 5.2 Compliance with Laws.**
- (a) **Export Compliance.** Health Gorilla Technology, Services, Platform, and other technology shall only be used within the United States of America, including its territories. Both Parties acknowledge that Health Gorilla Technology, Services, Platform, and other technology made available to End User (or any derivatives thereof), may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. End

User shall not permit users to access or use any Health Gorilla Technology or Platform in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

- (b) **Anti-Corruption.** End User agrees that End User has not received, been offered, solicited, or accepted any illegal (in accordance with applicable state and federal law) or improper bribe, kickback, payment, gift, or thing of value from any of Health Gorilla employees or agents in connection with the Agreement.

- 5.3 Proprietary Notices.** End User shall duplicate all proprietary notices and legends of Health Gorilla and its suppliers or contributors upon all copies of the Documentation made by End User. End User shall not remove, alter, or obscure any such proprietary notice or legend.

## 6. CONFIDENTIALITY

- 6.1 Confidential Information.** Both Parties agree to hold in confidence all information not in the public domain exchanged prior to and during the Term, such as but not limited to proprietary information regarding the each Party's products and services (including third-party software licensed by Health Gorilla), non-public technical, financial and business information, including customer lists, current or planned products and services, and other information identified by a Party as confidential (collectively, "**Confidential Information**"). The Parties further agree that the terms and conditions of this Agreement are also considered to be Confidential Information.

- 6.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third-party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, or those of End User's affiliates, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement. The recipient of Confidential Information shall not disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement. The receiving party shall protect the confidentiality of the disclosing party's Confidential Information in the same manner that it protects the confidentiality of its own Confidential Information but in no event using less than reasonable care. The recipient of Confidential Information shall promptly notify the disclosing party if it becomes aware of any actual or reasonably suspected breach of confidentiality of the disclosing party's Confidential Information.

- 6.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of this confidentiality sections shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (b) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

- 6.4 Injunctive Relief.** If a Party discloses (or threatens to disclose) any Confidential Information of the disclosing party in breach of confidentiality protections hereunder, the disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies may be inadequate.

## 7. WARRANTIES

### 7.1 Representations and Warranties.

- (a) Each Party represents and warrants to the other that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument to which it is a party, or which is binding upon it.
- (b) Health Gorilla warrants that it will use commercially reasonable efforts to furnish the information contained in the Services as accurately as reasonably possible, however End User acknowledges that the information supplied by Health Gorilla is based on data believed to be reliable but is neither all-inclusive nor guaranteed by Health Gorilla.
- (c) End User represents and warrants that (i) End User Data used in connection with the Services or Health Gorilla Technology do not and will not infringe, misappropriate or violate any copyright, trademark, trade secret right, privacy right or other right of a third-party or violate any applicable federal, state or other law, rule or regulation, (ii) its use of the Health Gorilla Technology will comply with all applicable state and federal laws, rules and regulations, and (iii) it has all necessary rights to use and license the End User Data, and satisfy End User's obligations, under this Agreement.

**7.2 End User Data Disclaimer.** The Parties specifically understand and agree that in providing the Services and Health Gorilla Technology, Health Gorilla assumes no responsibility or liability for the accuracy, completeness, propriety, necessity, or advisability of the medical or other information that is provided to Health Gorilla by the End User and/ or the Eligible Users, or of the medical services or advice to which such information may relate when accessing the Services and Health Gorilla Technology.

**7.3 No Conflict.** Each party warrants to the other that there are no outstanding agreements, understandings, or other restrictions that would prevent it from performing under this Agreement.

**7.4 Warranty Limitations and Disclaimer.** Except as otherwise required by law, the warranties set forth in this Section are exclusive and in lieu of all other warranties whether statutory, express, or implied and Health Gorilla specifically disclaims any warranty of merchantability or fitness for a particular purpose and all other warranties arising from course of dealing or usage of trade are hereby excluded. End User agrees not to make any representations or warranties with respect to the Health Gorilla Technology other than the limited warranties made by Health Gorilla in this Agreement.

**7.5 No Other Warranties.** EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THIS AGREEMENT, THE HEALTH GORILLA TECHNOLOGY, SERVICES, PLATFORM AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY HEALTH GORILLA ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND HEALTH GORILLA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY HEALTH GORILLA ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. HEALTH GORILLA DOES NOT WARRANT THAT THE HEALTH GORILLA TECHNOLOGY, PLATFORM OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET END USER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. END USER ACKNOWLEDGES THAT HEALTH GORILLA'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF END USER ONLY.

## 8. LIMITATION OF LIABILITY

**8.1 Limitations.** IN NO EVENT SHALL HEALTH GORILLA BE LIABLE TO END USER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF HEALTH GORILLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE



BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**8.2 Cap on Liability.** EXCEPT WITH RESPECT TO LIABILITY ARISING FROM HEALTH GORILLA'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, THE CUMULATIVE LIABILITY OF HEALTH GORILLA TO END USER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED FIVE HUNDRED DOLLARS (\$500). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

## 9. INDEMNIFICATION

### 9.1 Indemnification by Health Gorilla.

- (a) Health Gorilla shall defend, indemnify, and hold End User and its directors, officers, employees, and agents harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any third-party claim that any use of, or access to, the Health Gorilla Technology expressly authorized under this Agreement infringes or misappropriates, as applicable, any U.S. patent or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States; provided that End User gives Health Gorilla (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Health Gorilla may reasonably request, at Health Gorilla's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Health Gorilla shall not settle any third-party claim against End User unless such settlement completely and forever releases End User with respect thereto or unless End User provides its prior written consent to such settlement. In any action for which Health Gorilla provides defense on behalf of End User, End User may participate in such defense at its own expense by counsel of its choice.
- (b) Notwithstanding the foregoing, Health Gorilla shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Health Gorilla Technology or Platform with products, services, information, materials, technologies, business methods or processes not furnished or authorized by Health Gorilla or otherwise contemplated by this Agreement; (2) modifications to the Health Gorilla Technology or Platform, which modifications are not made or authorized by Health Gorilla; (3) failure to use updates to the Health Gorilla Technology or Platform provided by Health Gorilla; or (4) use of the Health Gorilla Technology and/or Platform except in accordance with any applicable Documentation.
- (c) Upon the occurrence of any claim for which indemnity is or may be due under this Section, or in the event that Health Gorilla believes that such a claim is likely, Health Gorilla may, at its option (i) modify the Health Gorilla Technology and/or Platform so that they become non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or, if neither (i) nor (ii) are feasible, (iii) terminate this Agreement on written notice to End User and refund to Implementer all prepaid, but unearned amounts for the Health Gorilla Technology and/or Platform received by Health Gorilla attributable to the End User. The obligations set forth in this Section shall constitute Health Gorilla's entire liability and End User's sole remedy for any actual or alleged infringement or misappropriation.

**9.2 Indemnification by End User.** End User shall defend, indemnify, and hold Health Gorilla and its directors, officers, employees and agents harmless against all losses, costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any third-party claim arising from or in connection with End User's (i) use of the Services and Health Gorilla Technology or (ii) breach of Section 7.1(c) (certain End User representations); provided that Health Gorilla gives End User: (i) prompt written notice of such Claim; (ii) authority to control and direct the defense and/or settlement of such Claim; and (iii) such information and assistance as End User may reasonably request, at End User's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, End User shall not settle any third-party claim against Health Gorilla unless such settlement completely and forever releases Health Gorilla with respect thereto or unless Health Gorilla provides its prior written consent to such settlement. In any action for which End User provides defense on behalf of Health

Gorilla, Health Gorilla may participate in such defense at its own expense by counsel of its choice.

## 10. TERMINATION

- 10.1 Termination for Cause.** Either Party may terminate this Agreement immediately upon written notice in the event that the other Party materially breaches this Agreement and thereafter has failed to cure any other material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof. Health Gorilla may terminate this Agreement immediately upon written notice in the event the Implementer materially breaches the Master Agreement.
- 10.2 Termination Upon Bankruptcy, Insolvency, Etc.** Either Party may terminate this Agreement immediately upon written notice after the other Party or Implementer has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws, or in the event that a receiver has been appointed for the other Party or any of its assets or properties, or an involuntary petition in bankruptcy has been filed against such other Party, which proceeding or petition has not been dismissed, vacated, or stayed within 30 days.
- 10.3 Suspension.** Health Gorilla may suspend End User's access to the Services in whole or in part if End User materially breaches this Agreement, if Implementer breaches the Master Agreement, or if End User's or Implementer's actions risk harm to Health Gorilla or other customers or the security, availability or integrity of the Services or the Health Gorilla Technology. Where practicable, Health Gorilla will use reasonable efforts to provide End User with prior notice of the suspension. Once End User resolves the issue requiring suspension, Health Gorilla will promptly restore End User's access to the Services in accordance with this Agreement.
- 10.4 Accrued Obligations.** Termination of this Agreement shall not release the Parties from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement to survive termination. Notwithstanding the foregoing, the Party terminating and/or being suspended pursuant to this Agreement as permitted by any provision in this Section 10 shall incur no additional liability merely by virtue of such termination.
- 10.5 Effect of Termination.** Upon any termination of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession. Upon any termination of this Agreement, End User shall immediately discontinue all use of the Health Gorilla Technology and Documentation,
- 10.6 Survival of Obligations.** The provisions of Sections 1, 2.3-2.5, 7-11 shall survive termination or expiration of this Agreement.

## 11. MISCELLANEOUS

- 11.1 Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ITS RULES REGARDING CONFLICTS OF LAWS. END USER AGREES THAT ANY AND ALL CAUSES OF ACTION BETWEEN THE PARTIES ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS LOCATED WITHIN THE STATE OF CALIFORNIA.
- 11.2 Force Majeure.** Health Gorilla shall be excused from performance of its obligations under this Agreement if such a failure to perform results from causes beyond the reasonable control of Health Gorilla, including acts of God, fire, strike, embargo, terrorist attack, war, insurrection, cyber-attack, pandemic, or riot. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

**11.3 Causes of Action.** No action arising from or related to this Agreement may be brought by either Party more than one

**11.4 (1) year after the cause of action has accrued.**

**11.5 U.S. Government End-Users.** Each of the components that constitute the Health Gorilla Technology is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Health Gorilla Technology with only those rights set forth herein.

**11.6 Other.** All notices required by or relating to this Agreement shall be in writing and shall be sent via electronic mail: (i) for the End User, to the email address set forth above, and (ii) to Health Gorilla: [legal@healthgorilla.com](mailto:legal@healthgorilla.com). Neither Party shall assign its rights or delegate its obligations under this Agreement without the other Party's prior written consent. End User and Health Gorilla acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement. No amendment to this Agreement shall be valid unless such amendment is made in writing and is signed by the authorized representatives of the Parties. This Agreement may be executed electronically, and in any number of counterparts each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein. Termination and/ or suspension of this Agreement, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.