



## **Beyond Concierge Medical**

Welcome to Beyond Concierge Medical and our User Terms of Use (the "Agreement"). These User Terms of Use form a binding agreement between you as the user ("you" or "your") of the Site and Services and Beyond Concierge Medical, Inc. ("Beyond Concierge Medical", "we", "our" and "us"). Please read it carefully before proceeding.

By accessing or our website at [www.Beyond Concierge Medical.com](http://www.Beyond Concierge Medical.com) (collectively, the "Site") or any of the products and services provided through the Site (collectively, with the Site, the "Services"), you agree to be bound by the terms and conditions contained in this Agreement and all other terms incorporated herein by reference. If you do not agree to this Agreement, do not use the Site or Services.

*PLEASE NOTE THAT SECTION 15 CONTAINS AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER. BY AGREEING TO THE AGREEMENT, EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION IN SECTION 15 BELOW OR WHERE PROHIBITED BY APPLICABLE LAW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.*

### **1. Revisions or Updates to Terms; Additional Terms.**

We reserve the right, at our sole discretion, to change or modify portions of this Agreement at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date this Agreement was last revised. You may read a current, effective copy of this Agreement at any time by selecting the "Terms of Use" link on the Site. It is your sole responsibility to review the Agreement from time to time to view any such changes and you should periodically visit this page to review the current Agreement so you are aware of any revision to which you are bound. Your continued use of the Site or Services after any such changes are posted constitutes your acceptance of the new Agreement. If you do not agree to abide by this or any future Agreement, do not use or access (or continue to use or access) the Site or use the Services.

Some of the Services may be subject to additional terms and conditions we specify from time to time ("Additional Terms"); your use of such Services is subject to those Additional Terms, which are incorporated into this Agreement by reference. In the event of any conflict between the Additional Terms and this Agreement, this Agreement shall prevail.

### **2. This Site Does Not Provide Medical Advice.**

All of the material provided on the Site, such as text, treatments, dosages, outcomes, charts, patient profiles, graphics, photographs, images, advice, messages, forum postings, and any other material provided on the Site are for informational purposes only and are not a substitute for professional medical advice or treatment. Always seek the advice of your physician or other qualified health provider with any questions you may have regarding your health. Never disregard professional medical advice or delay in seeking it because of something you have read on this Site. If you think you may have a medical emergency, call your doctor or 911 immediately. Reliance on any information provided by Beyond Concierge Medical, by persons appearing on the Site at the invitation of Beyond Concierge Medical, or by other members is solely at your own risk.

### **3. Privacy Policy.**

Please refer to our Privacy Policy for information about how we collect, use, disclose and otherwise process information about you. The Privacy Policy is subject and made a part of this Agreement. By using the Site or Services, you accept and acknowledge the Privacy Policy. You further that in order for us to provide the Services, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under the law of your jurisdiction of residence.

### **4. Eligibility.**

4.1 You must be 18 years old or the age of majority in your jurisdiction of residence, whichever is older, and a resident of the United States, in order to make a purchase or use the Services on our Site. The right to access the Site is revoked where this Agreement or use of the Site is prohibited or to the extent offering, sale or provision of the Services conflicts with any applicable law, rule or regulation. You are solely responsible for ensuring that your use of the Site and Services complies with all laws, rules and regulations applicable to you. We may, in our sole discretion, refuse to offer the Services to any person or entity and change our eligibility criteria at any time.

4.2 Beyond Concierge Medical is based in the United States. We provide the Site and Services for use only by persons located in the United States. We make no claims or representations that the Site or any of its content is accessible or appropriate outside of the United States. Access to the Site may not be legal by certain persons or in certain countries. If you access the Site from outside the United States, you do so on your own initiative and are responsible for compliance with applicable local laws.

## **5. Registration.**

5.1 Subject to the eligibility restrictions outlined in Section 4, you may register for an account on the Site (an "Account"). To use certain portions of the Site, you are not required to sign up for an Account, including making purchases (which you can do as a "guest"). However, certain features of the Site, such as using our electronic health records service or submitting test kits or ordering Services, require you to register for an Account. You must provide accurate and complete information and keep your Account information updated. You can access, edit and update your Account by visiting [www.Beyond Concierge Medical.com](http://www.BeyondConciergeMedical.com). You shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as a username a name subject to any rights of a person other than you without appropriate authorization; or (iii) use as a username a name that is otherwise offensive, vulgar or obscene. You are solely responsible for the activity that occurs on your Account, and for keeping your Account password secure. We are not liable for any acts or omissions by you in connection with your Account. You may never use another person's Account or registration information for the Site without permission. You must notify us immediately at [hello@BeyondConciergeMedical.com](mailto:hello@BeyondConciergeMedical.com) of any change in your eligibility to use the Site, or if you know or have reason to suspect a breach of security or unauthorized use of your Account. You should never publish, distribute or post login information for your Account. We reserve the right to terminate Accounts without prior notice and with or without cause.

## **6. Use of the Site.**

6.1 The Site contains material, including but not limited to software, text, graphics, and images, proprietary content, information, trademarks, logos, service marks, features, functions, and the compilation and organization thereof (collectively referred to as the "Content"). We may own the Content, or portions of the Content may be made available to us through arrangements that we have with third parties. We do not guarantee that any Content you access on or through the Site is or will continue to be accurate. We reserve the right to correct any errors, inaccuracies or omissions (including after an order has been submitted) with respect to Content or otherwise and to change or update information at any time without prior notice.

6.2 The Content is protected by United States and foreign intellectual property laws. We and our licensors reserve all rights in connection with the Site and Content (other than User Content), including, without limitation, the exclusive right to create derivative works. Unauthorized use of the Content may result in violation of copyright, trademark, and other laws. You may not sell, transfer, assign, license, sublicense, or modify the Content or any aspects of the Site or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Site or Content in any way for any public or commercial purpose. If you violate any part of this Agreement, your right to access and/or use the Content and Site shall automatically terminate and you shall immediately destroy any copies you have made of the Content.

6.3 Subject to your compliance with this Agreement, we hereby grants you a personal, worldwide, royalty-free, non assignable, non-sublicensable, non-transferrable, and non-exclusive right to access and make personal use of the Site or the Content for your personal, non-commercial use only.

6.4 The trademarks, service marks, and logos of Beyond Concierge Medical (the "Beyond Concierge Medical Trademarks") used and displayed in connection with the Services are registered and unregistered trademarks or service marks of Beyond Concierge Medical. Other company, product, and service names located on the Site or otherwise used in connection with the Services may be trademarks or service marks owned by third parties (the "Third Party Trademarks", and, collectively with the Beyond Concierge Medical Trademarks, the "Trademarks"). Nothing on the Site, in the Services or in this Agreement should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed on the Site or otherwise used in connection with the Services without our prior written consent specific for each such use.

6.5 You agree not to: (a) take any action that imposes an unreasonable load on the Site's infrastructure; (b) use any device, software or routine to attempt to gain unauthorized access to the Site or interfere or attempt to interfere with the proper working of the Site or any activity being conducted on the Site; (c) attempt to decipher, decompile, disassemble or reverse engineer any of the software comprising or making up the Site; (d) delete or alter any material we or any other person or entity posts on the Site; (e) circumvent, remove, alter, deactivate, degrade or thwart any technological measure or content protections of the Site; (f) use any robot, spider, crawlers or other automatic device, process, software or queries that intercepts, "mines," scrapes or

otherwise accesses the Site to monitor, extract, copy or collect information or data from or through the Site, or engage in any manual process to do the same; (g) introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful; (h) use the Site for illegal, harassing, unethical, or disruptive purposes; or (i) otherwise take any action in violation of this Agreement or our guidelines and policies. Any unauthorized use by you of the Site or any of our Content automatically terminates the limited licenses set forth in Section 6.3 without prejudice to any other remedy provided by applicable law or this Agreement.

## **7. Third Party Sites.**

7.1 The Site may contain links to third party websites, services or other resources on the Internet ("External Sites"). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. If you decide to access any External Sites, you do so at your own risk. You acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any content, goods or services available on or through any External Sites.

## **8. Electronic Health Records and Other User Content.**

8.1 The Site and Services may allow you to upload your electronic health records ("EHR") directly or through your physicians and health care providers ("Providers") as well as other information, content, material, videos, photos and submissions (together with EHR, "User Content"). You grant us all necessary rights and permissions to access your EHR and any account with your Providers to the extent necessary to upload your User Content and that such access to your account and EHR does not violate any rights of any Provider or any applicable agreement between you and any such Provider.

8.2 You represent and warrant that you own all right, title and interest in and to User Content, including, without limitation, all copyrights and rights of publicity contained therein, that you have the right to license all rights in the User Content specified in Section 8.3, and that all User Content provided by you is accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations. You shall not (and shall not permit any third party to) take any action or upload, post, or otherwise distribute any User Content that infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty. You shall not (and shall not permit any third party to) take any action or upload, post, or otherwise distribute any User Content that you know is false, misleading, untruthful or inaccurate, or is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, or is otherwise inappropriate as determined by us in our sole discretion. You are entirely responsible for your User Content.

8.3 You hereby grant and will grant Beyond Concierge Medical and its affiliated companies, successors, licensees and assigns, and any of its service providers, a nonexclusive, worldwide, royalty free, fully paid up, transferable, sub-licensable, perpetual, irrevocable license to access, reproduce, adapt, publish, create derivative works from, copy, display, upload, publicly perform, distribute, cache, store, modify and otherwise use your User Content and any name, username, likeness, voice or photograph provided in connection with your User Content, without compensation to you, in connection with the operation of the Site or Services, or the promotion, advertising or marketing of the Services, in any form, medium or technology now known or later developed, and including after your termination of your Account or the Services. As part of the foregoing license grant you agree that we have the right to make any of your User Content available to third parties, so that those third parties can distribute, make derivative works of, comment on and/or analyze your User Content on other media and services (either alone or as part of a collective work) to the extent permitted by applicable law.

8.4 Except where prohibited by applicable law, by submitting User Content through the Site or Services, you are waiving and agreeing not to assert any copyrights or "moral" rights or claim resulting from our alteration of the User Content. You are also agreeing to appoint Beyond Concierge Medical as your irrevocable attorney-in-fact with respect to the User Content, with the right to execute

and deliver any documents, in your name and on your behalf, to ensure that we can use the User Content that you are licensing in any way we see fit, own and protect the rights in any derivative works created from your User Content, and have the User Content removed from any other website or forum.

8.5 You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Services (collectively, "Submissions") that you provide to us are non-confidential and we will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without your acknowledgment or compensation to you.

8.6 You acknowledge and agree that we may preserve User Content and may also disclose User Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws or government requests; (b) enforce this Agreement; (c) respond to claims that any User Content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Beyond Concierge Medical, our users and the public. You understand that the technical processing and transmission of the Site, including your User Content, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

## 9. Health Care Providers.

9.1 Our Services may include the ability for you to provide access to your health and medical records to your Providers and for your Providers to upload health and medical records to the Services. We treat such information that your Providers upload as "protected health information" or PHI subject to the protections of the Health Insurance Portability and Accountability Act ("HIPAA") and applicable state medical privacy laws. We store and process your PHI as a business associate to your Provider. If you have any questions about your PHI, you should contact your Provider in the first instance.

9.2 Even though the Services are designed to facilitate communication between you and your Providers, we are not providing medical or other health care, and you should not change your health behaviors solely on the basis of your use of the Services. The Services are not intended to be used by the customer for any diagnostic purpose and are not a substitute for professional medical advice. You should always seek the advice of your Provider with any questions you may have regarding diagnosis, cure, treatment, mitigation, or prevention of any disease or other medical condition or impairment or the status of your health.

## 10. IP Infringement.

10.1 We respect the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated, you should notify us of your infringement claim in accordance with the procedure set forth below. We will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to our Copyright Agent at [hello@BeyondConciergeMedical.com](mailto:hello@BeyondConciergeMedical.com) (Subject line: "Takedown Request"). You may also contact us by mail at: [hello@BeyondConciergeMedical.com](mailto:hello@BeyondConciergeMedical.com)

10.2 To be effective, the notification must be in writing and contain the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled along with a description of where the material that you claim is infringing is located on the Site, with enough detail that we may find it on the Site;
- Information reasonably sufficient for us to contact you, such as your address, telephone number, or email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

10.3 If you believe that your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- a statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within New York, New York and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

10.4 If a counter-notice is received by the Copyright Agent, we will send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it within ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole discretion.

10.5 In accordance with the DMCA and other applicable law, we have adopted a policy of terminating, in appropriate circumstances and at our sole discretion, users who are deemed to be repeat infringers. We may also at our sole discretion limit access to the Site and/or terminate the Accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

## **11. Payments; Ordering & Availability; Billing.**

11.1 We may offer access to the Services free of charge during a beta or free trial period ("Beta Period"). In exchange for access during the Beta Period, you agree to provide us feedback and evaluations regarding the use of the Services, which will be considered a "Submission" that we will own and have the right use under Section 8.5. At the end of the Beta Period, you must cease use of the Services, unless you register for a subscription to the Services as set forth below. The Services are provided to you during the Beta Period on an "as-is" basis during the Beta Period without any representation or warranty of any kind, express or implied. You assume all risks from using the Services during the Beta Period.

11.2 A Beyond Concierge Medical subscription is billed monthly, and will renew and bill every 30 days. When you order a subscription to the Services, you will provide your payment details and any additional information required to complete your subscription directly to our third-party payment processor. You represent and warrant that you have the legal right to use the payment method you provide to our payment processor, including, without limitation, any credit card you provide when completing a transaction. You should be aware that online payment transactions are subject to validation checks by our payment processor and your card issuer and we are not responsible if your card issuer declines to authorize payment for any reason.

11.3 You agree to have sufficient funds or credit available upon placement of any such order to ensure that the purchase price will be collectible by us. When you purchase Products, you (a) agree to pay the price for such Services as set forth on the Site and all applicable taxes in connection with your purchase (the "Full Purchase Amount"), and (b) authorize us or our third party payment-processor to charge your credit card or other payment method for the Full Purchase Amount.

11.4 We reserve the right, at our sole discretion, to not process or to cancel any orders placed for Services whose price or availability was incorrectly posted on the Site as a result of an error. If this occurs, we will notify you by email.

11.5 Unless otherwise specified, prices quoted are exclusive of: (a) the costs of shipping or carriage to the agreed place of delivery; and (b) sales, use or value added tax and any other tax or duty which (where applicable) must be added to the price payable. Unless otherwise noted, all currency references are in U.S. Dollars.

11.6 We reserve the right, with or without prior notice and in our sole and complete discretion, to (a) discontinue, modify, or limit the available quantity of, any Services, and (b) refuse to allow any user to purchase any Services to a user or a user designated address. All orders of the Services must be for your personal use only.

## **12. Limitation of Liability and Disclaimer of Warranties.**

12.1 EXCEPT AS OTHERWISE PROVIDED BY US IN WRITING, Beyond Concierge Medical, INC., OUR AFFILIATES, AND OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, OR LICENSORS (COLLECTIVELY, THE "Beyond Concierge Medical PARTIES") MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE SITE, CONTENT OR SERVICES, OR ANY RECOMMENDATIONS MADE ABOUT PRODUCTS, INCLUDING BUT NOT LIMITED TO THE SITE'S ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR RELIABILITY. THE Beyond Concierge Medical PARTIES SHALL NOT BE SUBJECT TO LIABILITY FOR THE TRUTH, ACCURACY OR COMPLETENESS OF THE CONTENT OR THE SITE OR ANY OTHER INFORMATION CONVEYED TO THE USER OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN OR FOR ANY DELAYS OR INTERRUPTIONS OF THE DATA OR INFORMATION STREAM FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SERVICES, PRODUCTS AND THE CONTENT AT YOUR OWN RISK. IT IS YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH THE SITES.

12.2 THE Beyond Concierge Medical PARTIES DO NOT WARRANT THAT THE SITE WILL OPERATE ERROR FREE OR THAT THE SITE, ITS SERVERS, THE SERVICES OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE SITE OR THE CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, NO Beyond Concierge Medical PARTY SHALL BE RESPONSIBLE FOR THOSE COSTS. THE Beyond Concierge Medical PARTIES MAKE NO WARRANTY OR REPRESENTATION AND DISCLAIM ALL RESPONSIBILITY AND LIABILITY FOR (A) THE OPERATION OR COMPATIBILITY WITH ANY OTHER APPLICATION OR ANY PARTICULAR SYSTEM OR DEVICE; (B) WHETHER THE SITE WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE OR ERROR-FREE BASIS; AND (C) THE DELETION OF, OR THE FAILURE TO STORE OR TRANSMIT, YOUR CONTENT AND OTHER COMMUNICATIONS MAINTAINED BY THE SITE.

12.3 EXCEPT AS OTHERWISE PROVIDED BY US IN WRITING, THE SITE, CONTENT AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. THE Beyond Concierge Medical PARTIES DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF TITLE, MERCHANTABILITY, NON INFRINGEMENT OF THIRD PARTIES RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE.

## **13. Limitation of Liability.**

13.1 IN NO EVENT SHALL ANY Beyond Concierge Medical PARTY BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES

RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THE USE OR INABILITY TO USE THE SERVICES, PRODUCTS, SITE OR THE CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE), OR ANY OTHER LEGAL THEORY, EVEN IF SUCH MEASURE ME PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, Beyond Concierge Medical PARTIES' TOTAL LIABILITY TO YOU FOR ANY DAMAGES FINALLY AWARDED FROM YOUR USE OF THE SITE SHALL NOT EXCEED THE GREATER OF (I) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) \$500.00 OR (II) THE AMOUNTS PAID BY YOU FOR PRODUCTS YOU HAVE ORDERED THROUGH THE SITE OR OTHERWISE RECEIVED FROM US. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.2 Some jurisdictions do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to you. IN SUCH JURISDICTIONS, THE LIABILITY OF THE Beyond Concierge Medical PARTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. NOTHING IN THESE TERMS AFFECTS ANY LEGAL RIGHTS AND REMEDIES YOU HAVE UNDER LOCAL LAW.

#### **14. Indemnification.**

14.1 To the fullest extent permitted by applicable law, you agree to defend, indemnify, and hold harmless the Beyond Concierge Medical Parties from and against any liabilities, costs, damages, losses, expenses, claims, actions or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from (a) your breach of this Agreement or any applicable law or regulation, (b) any User Content or Feedback you provide, or your access to, use or misuse of the Content or the Services, (c) your violation of any rights of any third party or (d) your negligence or willful misconduct. We shall provide notice to you of any such claim, suit, or proceeding that triggers this indemnification obligation, and you agree to do the same by writing to the Beyond Concierge Medical Legal Department at [legal@Beyond Concierge Medical.com](mailto:legal@BeyondConciergeMedical.com) We reserve the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

#### **15. ARBITRATION CLAUSE AND CLASS ACTION WAIVER—IMPORTANT—PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS.**

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH Beyond Concierge Medical AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US, UNLESS YOU OPT OUT OF ARBITRATION BY FOLLOWING THE INSTRUCTIONS SET FORTH BELOW. NO CLASS OR REPRESENTATIVE ACTIONS OR ARBITRATIONS ARE ALLOWED UNDER THIS ARBITRATION AGREEMENT. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR HAVING A JURY TRIAL.

15.1 UNLESS YOU OPT-OUT AS PROVIDED IN SECTION 15.6, AND EXCEPT AS SET FORTH IN SECTION 15.2, YOU AND Beyond Concierge Medical AGREE THAT ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT OR OUR SERVICES IS PERSONAL TO YOU AND Beyond Concierge Medical AND THAT ANY DISPUTE WILL BE RESOLVED SOLELY THROUGH INDIVIDUAL ACTION, AND WILL NOT BE BROUGHT AS A CLASS ARBITRATION, CLASS ACTION OR ANY OTHER TYPE OF REPRESENTATIVE PROCEEDING.

15.2 Except for small claims disputes in which you or Beyond Concierge Medical seeks to bring an individual action in small claims court located in the county of your billing address or disputes in which you or Beyond Concierge Medical seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and Beyond Concierge Medical waive your rights to a jury trial and to have any dispute arising out of or related to this Agreement or our Services resolved in court. Instead, for any dispute or claim that you have against Beyond Concierge Medical or relating in any way to the Services, you agree to first contact Beyond Concierge Medical and attempt to resolve the claim informally by sending a written notice of your claim ("Notice") to Beyond Concierge Medical by email at [hello@BeyondConciergeMedical.com](mailto:hello@BeyondConciergeMedical.com). or by certified mail addressed to Beyond Concierge Medical Legal Department, 2765 Sand Hill Road, Menlo Park, CA 94025. The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the claim; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and Beyond Concierge Medical cannot reach an agreement to resolve the claim within thirty (30) days after such Notice is received, then either party may submit the dispute to binding arbitration administered by JAMS or, under the limited circumstances set forth above, in court. All disputes submitted to JAMS will be resolved through confidential, binding arbitration. Arbitration proceedings will be held in Santa Clara County, California or may be conducted telephonically or via video conference for disputes alleging damages less than \$500, in accordance with the JAMS Streamlined Arbitration Rules and Procedures ("JAMS Rules"). The most recent version of the JAMS Rules are available on the JAMS website and are hereby incorporated by reference.

15.3 You and Beyond Concierge Medical agree that this Agreement affects interstate commerce and that the enforceability of this Section 15 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), to the maximum extent permitted by applicable law. Arbitration will be handled by a sole arbitrator in accordance with the JAMS Rules. As limited by the FAA, this Agreement and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may

not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

15.4 The arbitrator, Beyond Concierge Medical, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including, but not limited to, all information gathered, prepared and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

15.5 You and Beyond Concierge Medical agree that for any arbitration you initiate, you will pay the filing fee and Beyond Concierge Medical will pay the remaining JAMS fees and costs unless the matter in dispute exceeds \$5,000, in which JAMS fees and costs will be allocated in accordance with the JAMS Rules. For any arbitration initiated by Beyond Concierge Medical, Beyond Concierge Medical will pay all JAMS fees and costs. You and Beyond Concierge Medical agree that the state or federal courts of the sitting in Santa Clary County, California have exclusive jurisdiction over any appeals and the enforcement of an arbitration award or any dispute that is not subject to arbitration under this Section 15.

15.6 Any claim arising out of or related to this Agreement or our Services or Products must be filed within one year after such claim arose; otherwise, the claim is permanently barred, which means that you and Beyond Concierge Medical will not have the right to assert the claim. You have the right to opt out of binding arbitration within 30 days of the earliest of the following dates to occur: (a) your creation of an Account; (b) your first use of the Site or Services; (c) your order of a Product; or (d) you first accepted the terms of this Section 15 by emailing [hello@BeyondConciergeMedical.com](mailto:hello@BeyondConciergeMedical.com). In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve disputes in accordance with Section 18.1.

15.7 If any portion of this Section 15 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision shall be severed from this Agreement; (b) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of this Section 15 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 15; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 15 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 15 will be enforceable.

## **16. Termination.**

16.1 We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Site, Services or the Content at any time and for any or no reason (including if we believe that you have engaged in any suspected fraudulent or abusive activity, or violated or acted inconsistently with the letter or spirit of this Agreement) without prior notice or liability, including the right to reject any order you place for the Services, which may result in the forfeiture and destruction of all information associated with your Account. We reserve the right to change, suspend, or discontinue all or any part of the Services or the Content at any time without prior notice or liability. In the event of Account deletion for any reason, Beyond Concierge Medical may, but is not obligated to, delete any of your User Content. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity, limitations of liability, class action waivers and arbitration. Termination will not limit any of Beyond Concierge Medical's other rights or remedies at law or in equity.

## **17. User Must Comply with Applicable Laws.**

17.1 You are solely responsible for ensuring compliance with the laws of your specific jurisdiction and for abiding by all applicable local, state, provincial, national and international laws and regulations.

17.2 The Site and Services are operated by us in the United States and is intended only for users in the United States. Those who choose to access the Site and Services from locations outside the United States do so at their own initiative and are responsible for compliance with applicable local laws. The United States controls the export of products and information. You expressly agree to comply with such restrictions and not to export or re-export any of the Content or Services to countries or persons prohibited under the export control laws. By downloading the Content or using any of the Services, you are expressly agreeing that you are not in a country where such export is prohibited or are a person or entity for which such export is prohibited. You are solely responsible for compliance with the laws of your specific jurisdiction regarding the import, export, or re-export of the Content or Services.

## **18. Miscellaneous.**

18.1 This Agreement is governed by the internal substantive laws of the State of California, without respect to its conflict of laws provisions. Any dispute between you and Beyond Concierge Medical that is not subject to arbitration or cannot be heard in small claims court will be resolved in state and federal courts sitting in Santa Clara County, California. You agree that a breach of this Agreement will cause irreparable injury to Beyond Concierge Medical for which monetary damages would not be an adequate remedy and Beyond Concierge Medical shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages. If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. Any information you submit to or provide through the Site might be publicly accessible, and you should protect important and private information. We are not liable for protection of privacy of email or other information transferred through the Internet or any other network that you may use.

18.2 Except as expressly agreed by us and you, this Agreement constitutes the entire agreement between us and you with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between us and you with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement and the licenses granted hereunder are personal to you, and are not assignable, transferable or sublicensable by you except with our prior written consent. This Agreement and the licenses granted hereunder may be freely assigned by us. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.

18.3 You agree to accept communications electronically to the email address provided to us. Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices to Beyond Concierge Medical should be sent to **hello@BeyondConciergeMedical.com**.

18.4 If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

## **19. How to Contact Us.**

Beyond Concierge Medical, Inc. is a Florida corporation with its headquarters at 433 Plaza Real, Suite 324A, Boca Raton, FL 33432. You may contact us at the following address: 433 Plaza Real, Suite 324A, Boca Raton, FL 33432, or at the following email address: **hello@BeyondConciergeMedical.com**.