

## **Terms & Conditions**

### **The Patient Portal Participation Agreement**

PLEASE READ THESE TERMS OF SERVICE AND THE INCORPORATED NOTICES CAREFULLY AND IN THEIR ENTIRETY BEFORE ACCEPTING THIS AGREEMENT.

This Patient Portal Participation Agreement (“Agreement”) is between you and Healthcare Information XChange of New York, Inc., doing business as Hixny (“Hixny”). This Agreement applies to the Patient Portal located at <https://myhealthrecordny.com>, which is referred to herein as the “Patient Portal.” By agreeing to this Agreement and using the Patient Portal, you hereby agree to the terms and conditions set forth below.

Hixny operates a health information exchange (“HIE”) that enables the exchange of interoperable health information among various health care-related organizations, including but not limited to hospitals, physician practices, health plans, accountable care organizations, public health agencies, and community-based organizations (collectively, “Hixny Participants”). The Patient Portal is an Internet application that gives you the opportunity to view, download and transmit certain patient data from your health care providers that are Hixny Participants. You may also have the opportunity to contribute your own patient data to the HIE via the Patient Portal, if Hixny determines (in its sole discretion) to offer such functionality.

The following policies are incorporated into and made part of this Agreement (collectively, “Incorporated Notices”):

[Copyright and Intellectual Property Notice](#)  
[Accessibility Statement](#)  
[Website Privacy Notice](#)

#### **Your Responsibilities: What You Must Do**

When using the Patient Portal, you agree to do the following:

- Keep your Patient Portal username and password confidential;
- Do not allow others to use your username and password to access any data or records on the Patient Portal;
- Comply with all applicable Federal and State laws and regulations;
- Comply with all of Hixny’s Policies and Procedures applicable to the Patient Portal, including but not limited to The Patient Portal - Access Policy for Participant-Contributed Patient Data and Patient Access and Use Policy for Patient-Contributed Data, which can be obtained upon request by e-mail, which are incorporated herein by reference;
- Comply with any notices provided by Hixny related to use of the Patient Portal;
- Promptly notify Hixny if you learn of a security breach related to the Patient Portal; and
- Promptly notify Hixny if you are mistakenly given access to someone else’s patient data.

#### **Your Responsibilities: What You May Not Do**

You are prohibited from violating or attempting to violate the security of the Patient Portal. When using The Patient Portal, you may not:

- Use the Patient Portal in a way that harms Hixny, any Hixny Participant, and/or vendors;
- Use any portion of the Patient Portal as a destination linked from any unsolicited bulk messages or unsolicited commercial messages (“spam”);
- Modify or reroute, or attempt to modify or reroute, the Patient Portal;
- Damage, disable, overburden, or impair the Patient Portal (or the network(s) connected to the Portal) or interfere with anyone’s use and enjoyment of the Patient Portal; or
- Resell, reproduce, duplicate, sell, redistribute, or make any derivative of the Patient Portal, or any part of the Patient Portal;
- Access information not intended for such or logging onto a server or an account which you are not authorized to access;
- Attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization;
- Attempt to interfere with service to any user, provider, host or network, including, but not limited to, submitting any malware or virus to the Patient Portal or the Hixny Website, overloading, “flooding,” “spamming,” “mail-bombing,” “crashing,” or other malicious or illegal act of any description;
- Use any device, software, script or routine to interfere or attempt to interfere with the proper working of the Patient Portal or any activity being conducted on the Patient Portal;
- Use or attempt to use any engine, software, tool, agent or other device or mechanism (including, without limitation, browsers, spiders, robots, avatars or intelligent agents) to navigate or search the Patient Portal or Hixny Website, other than through generally available third-party web browsers, for example, Microsoft Edge, Firefox, Google Chrome, etc.;

Hixny reserves the right to investigate and take such action as it deems necessary regarding any activity that it suspects is intended to violate the security of the Patient Portal. If, in Hixny’s sole discretion, it appears that you have violated this Agreement or acted in any way that interferes or is intended to interfere with the functioning of the Patient Portal, or another’s lawful access and use thereof, Hixny may take any action it deems appropriate to prevent further interference including, but not limited to, immediate suspension and/or cancellation of your access to the Patient Portal or related services. You may be civilly or criminally liable for such violations. Hixny will cooperate with law enforcement authorities in prosecuting any individual or entity involved in such violations.

### **What Patient Data Is Accessible**

It is Hixny’s policy to give patients access to their patient data to the maximum extent possible, subject to Federal and State laws and regulations and any applicable exceptions. By accessing the Patient Portal, you will be able to view, download and transmit all of your patient data on the HIE unless access is denied or an exception applies. [The Patient Portal – Patient Access Policy for Participant-Contributed Patient Data](#) specifies which data categories are accessible to patients through the Patient Portal and is available upon request via e-mail.

You understand that you may only view, download and transmit any patient data available via the Patient Portal. You will **not** be able to edit or change any such patient data.

### **Denial of Access**

You understand that Federal and New York State laws and regulations allow Hixny and Hixny Participants to deny a request made by you to access your medical records in certain limited instances, such as when Hixny cannot authenticate your identity or a Hixny Participant requests that Hixny block your access in order to prevent harm. If a Hixny Participant notifies Hixny that you should be denied access to data contributed by such Hixny Participant, Hixny will use reasonable efforts to block your access in compliance with applicable laws. If access is denied, the Hixny Participant will notify you of the reason for such denial and provide information as to how you may request a review of such denial. You agree that Hixny has no liability for complying with such requests to block your access to patient data. Additional information about this process may be found in [The Patient Portal – Patient Access Policy for Participant-Contributed Patient Data](#), which is available upon request via e-mail.

### **Uploading Your Own Patient Data**

You understand that you may have the ability to upload your own patient data to the HIE, as determined by Hixny in its sole discretion. If Hixny offers this option and you choose to do this, you understand that your patient data will be accessible by any Hixny Participant whom you have given consent to access your patient data via the HIE by having executed the Hixny Patient Consent Form. Such consent applies even if you executed the Hixny Patient Consent Form prior to this Patient Portal Participation Agreement.

You further understand that, if you have provided consent to a particular Hixny Participant, such Hixny Participant will have access to any and all patient data you upload to the HIE, including the following sensitive information: HIV-related information, mental health information, genetic testing information, sexually transmitted disease and reproductive health information, including abortion information, and alcohol and substance abuse treatment information. By executing this Agreement, you understand that Hixny cannot, and has no obligation to, block or filter sensitive information from any Hixny Participant for whom you have given consent.

If you wish to deny a Hixny Participant access to patient data that you are uploading to the HIE, you must revoke any prior consents given to such Hixny Participant. See [The Patient Portal - Access and Use Policy for Patient-Contributed Data](#), for more information.

### **Medical Advice Disclaimer: Seek Medical Advice From Your Physician**

***The Patient Portal does not provide medical or any other health care advice, diagnosis or treatment.*** Always seek the advice of your physician or other qualified health provider with any questions you may have regarding a medical condition, diet, fitness or wellness program. Never disregard professional medical advice or delay in seeking it because of information you accessed on or through the Patient Portal. [FOR ALL MEDICAL EMERGENCIES, DIAL 911.](#)

Hixny is not a healthcare provider and does not engage in the practice of medicine or other professional healthcare services. The Patient Portal does not constitute professional healthcare advice. The Patient Portal and any content provided in connection therewith are offered as one tool to assist you to understand and manage your well-being and the healthcare that may be received from your chosen providers, who Hixny does not control.

Neither the Patient Portal nor any content offered in connection therewith substitute for professional advice, diagnosis or treatment by a physician or other qualified healthcare professional. Always seek the advice of a physician or other qualified healthcare professional with any questions regarding medical symptoms or a medical condition. Never disregard professional medical advice or delay seeking it because of something you have read on the Patient Portal.

***If you think you or someone you are taking care of has a medical or psychiatric emergency, dial 911 or go to the nearest hospital.***

### **Privacy Related to Use of The Patient Portal**

Hixny considers your use of the Patient Portal to be private and is committed to protecting your privacy. However, Hixny may access or disclose information about you, your use of the Patient Portal and/or the content of your communications in order to:

- Comply with the law or legal process or enforceable governmental request served on Hixny;
- Enforce and investigate potential violations of this Agreement, including use of the Patient Portal, to participate in, or facilitate, activities that violate the law;
- Detect, prevent or otherwise address fraud, security or technical issues; or
- Protect the rights, property, or safety of Hixny, its employees, Hixny Participants, other users, customers, or the public.

In addition, Hixny may access or disclose your patient data, whether contributed by you or a Hixny Participant, in accordance with the Hixny Policies and Procedures. You consent to the access and disclosures outlined in this section.

### **Security of Patient Data**

The security of any patient data on the Patient Portal is of utmost importance to Hixny, and Hixny takes reasonable precautions to protect your patient data. Hixny uses encryption technology designed to help ensure the integrity and privacy of the information you provide to Hixny. As an added security precaution, all data is kept on servers with firewalls that meet or exceed industry standards to prevent intruders from gaining access. Hixny reviews its security practices on a regular basis to help ensure that your data is maintained securely and safeguarded in accordance with all applicable laws and regulations and the Hixny Policies and Procedures. However, no system can perfectly guard against risks of intentional intrusion or inadvertent disclosure of information. Moreover, when you transmit information via the Internet, your transmission may be compromised before it reaches Hixny. Accordingly, Hixny makes no guarantee of confidentiality or security of the data you submit or transmit via the Internet, including while using the Patient Portal. This includes transmitting any data from the Patient Portal to another application, including but not limited to any health care apps. Hixny is not responsible for the circumvention of any privacy settings or security measures by any users or third parties.

**YOU HEREBY EXPRESSLY AND FULLY ASSUME THE RISK OF ANY UNAUTHORIZED DISCLOSURE OR INTENTIONAL INTRUSION, OR OF ANY DELAY, FAILURE, INTERRUPTION OR CORRUPTION OF DATA OR OTHER INFORMATION**

TRANSMITTED IN CONNECTION WITH ANY SERVICE RELATED TO YOUR USE OF THE PATIENT PORTAL.

For further information, please see Hixny's [Website Privacy Notice](#).

### **Access and Use of the Patient Portal and Content**

Subject to your acceptance of, and compliance with, this Agreement as may be periodically amended, Hixny hereby grants you a non-exclusive, non-transferable limited license to access and make personal non-commercial use of the Patient Portal and its content. This license does not entitle you to any resale or commercial use of the Patient Portal or its contents; any derivative works of the Patient Portal or its contents; any downloading or copying of account information for the benefit of any person; or any use of data mining, robots or similar data gathering and extraction tools, which are expressly forbidden for any purpose whatsoever. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create, derivative works from, transfer, or offer for sale any information contained on, or obtained from the Patient Portal, or any portion thereof. Hixny will investigate and take appropriate legal action, including civil and criminal redress, for any misuse and fraudulent activity on the Patient Portal.

### **Identity Verification**

Prior to being granted access to the Patient Portal, you will be required to verify your identity, or you may choose not to continue. This identity verification may be done either by contacting the Hixny Support Team or by using an online identity verification system ("Identity Verification System"). This Identity Verification System is owned and operated by a third party that has its own terms, conditions, and privacy policies. All references to the Patient Portal in this Agreement exclude the Identity Verification System. HIXNY MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING YOUR ACCESS TO AND/OR USAGE OF THIS IDENTITY VERIFICATION SYSTEM AND SHALL NOT BE HELD RESPONSIBLE OR LIABLE FOR SUCH ACCESS AND/OR USAGE OR THE ACTS OR OMISSIONS OF THE IDENTITY VERIFICATION SYSTEM.

### **Access, Correction and Data Integrity**

Although Hixny attempts to maintain the integrity and accuracy of the information in the Patient Portal, Hixny makes no guarantees as to its correctness, completeness, timeliness, or accuracy. The Patient Portal may contain typographical errors, inaccuracies, or other errors or omissions. Also, unauthorized additions, deletions, or alterations could be made to the Patient Portal by third parties without our knowledge. If you believe that information found on the Patient Portal is inaccurate or incomplete, please inform us by contacting us at [support@hixny.org](mailto:support@hixny.org).

### **Hixny Makes No Warranties**

Hixny does not warrant the accuracy, completeness, timeliness or usefulness of the opinions, advice, content, services, or other information provided through the Patient Portal. Content provided on the Patient Portal may contain health or medical-related materials or information that you may find sexually explicit or otherwise offensive. You agree that your access and of the Patient Portal is, solely at your own risk. The Patient Portal is provided by Hixny on an "as is" and "as available" basis.

DISCLAIMER OF WARRANTIES: EXCEPT AS MAY BE OTHERWISE NOTED IN THESE TERMS OF SERVICE, HIXNY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIAL OR PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. HIXNY DOES NOT MAKE ANY WARRANTY THAT ACCESS TO OR USE OF THE PATIENT PORTAL WILL MEET YOUR REQUIREMENTS OR YOUR EXPECTATIONS. HIXNY DOES NOT MAKE ANY WARRANTY THAT ACCESS TO OR USE OF THE PATIENT PORTAL WILL BE AVAILABLE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. HIXNY MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USING THE PATIENT PORTAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM HIXNY SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. TO THE EXTENT THAT CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY. IT IS AGREED THAT THE DISCLAIMERS AND EXCLUSIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

**Limitation of Liability**

UNDER NO CIRCUMSTANCES SHALL HIXNY OR ITS AFFILIATES, SUPPLIERS, AND OTHER THIRD PARTIES MENTIONED OR LINKED TO VIA THE SERVICES BE LIABLE FOR YOUR USE OR MISUSE OF THE PATIENT PORTAL. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY AND PUNITIVE DAMAGES, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE (EVEN IF HIXNY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM YOUR OR ANYONE ELSE'S USE OR MISUSE OF THE PATIENT PORTAL OR COMPONENTS PROVIDED IN CONNECTION THEREWITH, INCLUDING DAMAGES THAT MIGHT BE INCURRED BY THIRD PARTIES. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

**Exclusion of Incidental, Consequential and Certain Other Damages**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HIXNY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PROSPECTIVE BUSINESS ADVANTAGE, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THE USE OR MISUSE OF, UNAVAILABILITY OF OR INABILITY TO USE THE PATIENT PORTAL OR RELATED SERVICES, OR IN CONNECTION WITH ANY PROVISION OF THIS

AGREEMENT AND THE INCORPORATED NOTICES, EVEN IN THE EVENT OF THE FAULT, TORT, INCLUDING NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY, OF HIXNY (EXCEPT ARISING EXCLUSIVELY FROM HIXNY'S INTENTIONAL CONDUCT OR GROSS NEGLIGENCE), AND EVEN IF HIXNY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **Exclusive Remedy**

IT IS AGREED THAT, NOTWITHSTANDING THE FOREGOING, SHOULD ANY LIABILITY ON THE PART OF HIXNY BE PROVEN, IT WILL NEVERTHELESS BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ANTICIPATE OR FIX THE AMOUNT OF DAMAGES THAT WERE PROXIMATELY CAUSED BY SUCH LIABILITY. THEREFORE, IT IS AGREED THAT IN NO EVENT MAY THE USER RECOVER AN AMOUNT ABOVE \$150, IN FULL AND COMPLETE SATISFACTION OF ANY AND ALL CLAIMS. IT IS AGREED THAT THE FOREGOING LIMITATION IS NOT INTENDED TO BE AND IS NOT A PENALTY.

### **Claims**

Any claims related to this Agreement or the Patient Portal may not be brought unless brought within one (1) year. The one-year period begins on the date when the claim first could be filed. If it is not filed, then that claim is permanently barred. This applies to you and your successors and to Hixny and its successors and assigns. You may notify Hixny by contacting [support@hixny.org](mailto:support@hixny.org).

### **Specific Performance**

You acknowledge that a breach of this Agreement or other agreement between you and Hixny will cause irreparable injury and that money damages may be inadequate to remedy the injury to Hixny. Therefore, in the event of a breach or threatened breach, Hixny will be entitled to equitable relief, including injunctive relief and specific performance, without the posting of a bond or other security, and without proof of actual damages.

### **Connectivity**

The Patient Portal will not work if your internet access service, wi-fi router, or electrical power is unavailable or unstable. It is exclusively your responsibility to arrange for and maintain the necessary power, wireless, cellular, wi-fi, internet service or other stable means that will enable you to connect, download, access, and/or use the Patient Portal. Your use and enjoyment of the Patient Portal may be affected by the suitability and performance of your device, hardware, software, data access or other technology that you use to connect with and use the Patient Portal or Website.

### **Ownership of the Patient Portal and its Contents**

The Patient Portal and its individual components are owned and operated by Hixny. All of the information and content (other than your healthcare records) that are featured or displayed on the Patient Portal, including but not limited to keywords, specialty tags, text, illustrations, artwork, video, music, trademarks, logos, charts, graphs, illustrations, or articles, are owned by or licensed to Hixny or its affiliates, business partners, or licensors. Hixny reserves the right to amend,

change, alter, enhance, remove, or cease to provide access to the Patient Portal, its individual components, or their content at any time, without prior notice to you.

### **Hixny's Intellectual Property**

Hixny owns any and all intellectual property rights arising out of, related to, or in any way connected with "Healthcare Information Xchange of New York," "Hixny," Hixny's related logos, slogans, service marks or trademarks, etc., the Patient Portal, and the HIE and related services and products (collectively, "Hixny Intellectual Property"). You cannot use the Hixny Intellectual Property without first obtaining Hixny's express and specific written permission. Nothing on the Patient Portal will be construed as granting a license or right to use the Hixny Intellectual Property without Hixny's permission.

### **Communications Between Hixny and You; Notices to Hixny**

By agreeing to become a Patient Portal User, you agree to receive essential communications by email, phone or text messages to the address(es) you provide when you sign up for usage of the Patient Portal. For example, essential communications may include (but are not limited to):

- A one-time, multifactor authentication passcode sent to you to establish that the email address that you have provided is accurate, up-to-date and delivers emails from the Patient Portal;
- A multi-factor authentication code passcode sent to you to use to confirm your identity when logging onto the Patient Portal, accessing your User Account, or using Patient Portal functions;
- Notification that an important message awaits you on the Patient Portal;
- Periodic updates regarding this Agreement and Hixny's terms of service;
- Emergency alerts and critical messages;
- A response to your request to reset your Patient Portal account password;
- Communications concerning your account with Hixny and any disputes in regard thereto; and
- Hixny's response to an email that you have sent to it.

In addition, depending on your User Account settings, you may receive non-essential emails, such as general health communications that Hixny believes may be of interest to you based on your input or the information about you contained in the Patient Portal. You may periodically also receive invitations to participate in user satisfaction and other types of surveys related to your experiences with the Patient Portal. Participation in such surveys is always optional.

Essential and non-essential communications may also be made by Hixny via the Patient Portal log-in screen and/or Hixny's Website.

Message and data rates may apply for any messages sent to you from Hixny and to Hixny from you. If you have any questions about your text plan or data plan, it is best to contact your wireless provider. You acknowledge that you are aware that text messages are not fully secure and could be intercepted by a third party. You acknowledge that if you share your mobile device with others, they may be able to view text messages sent by Hixny and others. It is your responsibility to understand the risks of receiving text messages on your mobile device.



ANY COMMUNICATIONS BETWEEN HIXNY AND YOU ARE SUBJECT TO ALL WARRANTIES SET FORTH IN THIS AGREEMENT. Except as required otherwise by law, Hixny reserves the right to preserve or remove any communication by you that it deems to violate these warranties or this Agreement. If you do not consent to receive any notices electronically, you must stop using the Patient Portal.

### **Third-Party Links**

The Patient Portal may contain links to third-party websites. Third-party links are provided for your convenience and as a courtesy to you. Third-party websites are not owned, operated or controlled by Hixny. You agree that Hixny is not responsible for the content or functionality contained on any such third-party website and that you waive any and all claims against Hixny as to any loss incurred as the result of your access or use of such third-party website.

### **Indemnity**

You understand and agree that you will indemnify, defend and hold harmless Hixny from any and all liability, expense, cost, fine, settlement or judgment including, without limitation, reasonable attorneys' fees and legal expenses incurred, which are alleged to be connected with, arising out of, or in any way related to your access to or use of the Patient Portal, or your breach of the Warranties contained herein or any other provision of this Agreement and/or Incorporated Notices.

### **Changes To The Patient Portal**

Hixny reserves the right to update, change, modify, add, delete, revise, or replace the Patient Portal at any time and for any reason. Hixny may cancel or suspend your use of the Patient Portal at any time. Such cancellation or suspension may be without cause and/or without notice. Upon cancellation, your right to use the Patient Portal stops right away.

### **Changes To This Agreement**

Hixny reserves the right to update, change, modify, add, delete, revise or replace this Agreement at any time for any reason by posting new applicable terms and conditions on the Patient Portal website. If you do not agree to the changes, then you must stop using the Patient Portal. If you do not stop using the Patient Portal, then your use of the Patient Portal will continue under the changed Patient Portal Participation Agreement. Hixny recommends that you regularly check this Agreement when visiting, accessing or using the Patient Portal, as this Agreement may have changed since you last did so.

### **Interpreting This Agreement**

All parts of this Agreement apply to the maximum extent permitted by law. A court may hold that Hixny cannot enforce a part of this Agreement as written. If this happens, then you and Hixny will replace that part with terms that most closely match the intent of the part that Hixny cannot enforce. The rest of this Agreement will not change. If you have confidentiality obligations related to the Patient Portal, those obligations remain in force. The section titles in this Agreement do not limit the other terms of this Agreement. Any capitalized terms not defined in this Agreement are defined in the Hixny Policies and Procedures.

**Assignment; No Third-Party Beneficiaries**

Hixny may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not transfer to anyone else, either temporarily or permanently, any rights to use the Patient Portal or any part of the Patient Portal. This Agreement is solely for your benefit and Hixny's. It is not for the benefit of any other person.

**Parties, Choice of Law, and Location for Resolving Disputes**

This Agreement is between you and Hixny and is binding and inures to the benefit of the parties and their respective heirs, executors, administrators, personal and legal representatives, affiliates, successors, and permitted assigns. New York State law governs the interpretation of this Agreement, regardless of conflict of laws or principles. You and Hixny irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Albany County, New York, for all disputes arising out of or relating to this Patient Portal Participation Agreement.

**Notices to Hixny**

Any notices by you to Hixny may be given in the following manner by email to [privsec@hixny.org](mailto:privsec@hixny.org) or by U.S. mail to:

Hixny  
Attention: Privacy and Security Officer  
80 Wolf Road  
Suite 500  
Albany, NY 12205

**Acceptance of This Agreement By Hixny**

After you have accepted the terms and conditions of this Patient Portal Participation Agreement, Hixny will send notice if it has accepted you as an "Hixny Patient Portal User," meaning you are authorized to use the Patient Portal. Hixny reserves the right to accept or deny an individual as an Authorized User, as determined by Hixny in its sole discretion.

**Termination**

Hixny may terminate this Agreement at any time, without notice. You may also terminate this Agreement at any time by providing written notice to Hixny, whereby such termination shall be effective as of five (5) days after notice is received by Hixny. Upon termination by you or Hixny for any reason, Hixny will either return any patient data contributed by you or destroy such patient data if impossible to return. Notwithstanding the foregoing, you understand and agree that Hixny cannot return or destroy patient data contributed by you that has been accessed by any Hixny Participants.

**Relationship of the Parties**

You and Hixny are independent contractors. There is no partnership, agency, or joint venture relationship between you and Hixny.

**No International Use**

Although this Patient Portal may be accessible worldwide, Hixny makes no representation that materials, content, services or products available on or through the Patient Portal are appropriate

or available for use in locations outside the United States. Those who choose to access this Patient Portal from other locations do so on their own initiative and at their own risk. If you choose to access this Patient Portal from outside the United States, you are responsible for compliance with local laws in your jurisdiction, including, but not limited to, the taxation of products or services purchased over the Internet. Hixny, its affiliates, licensors, contractors, and service providers, and suppliers have no control over and accept no responsibility for your compliance with applicable in your country and/or state of residence.

### **Void Where Prohibited**

Any offer for any product, service, and/or information made in connection with the Patient Portal is void where prohibited.

### **No Use By Children**

Hixny does not offer services or products directly to children under 18 years of age. Patient data is not accessible via the Patient Portal for minors ages 10-17. For children under the age of 10, the child's parent or guardian may establish an account on behalf of the child in order to use the Patient Portal. When a child becomes 18 years of age, the child will have an opportunity to take over the management of their healthcare, with or without the participation of their parent or guardian. By using the Patient Portal, you are representing to Hixny that you are 18 years of age or older or the parent/guardian of a child under the age of 10. Hixny will not be liable for any damages that may result from a misrepresentation of age by a user.

### **Force Majeure**

In addition to any excuse provided by applicable law, Hixny shall be excused from liability for non-delivery or delay in delivery of the Patient Portal or related services arising from any event beyond Hixny's reasonable control, whether or not foreseeable by either party, including, but not limited to, labor disturbance, interruptions in supply chain, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, public health emergency, pandemic, and other causes or events beyond Hixny's reasonable control, whether or not similar to those which are enumerated hereinabove.

### **Waiver**

Failure to exercise, or any delay in exercising, any right or remedy provided under this or any agreement between you and Hixny or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that right or any other remedy in the future against you or any other individual or entity.

### **Complete Agreement**

This Agreement and the Hixny Policies and Procedures is the entire agreement between you and Hixny regarding your use of the Patient Portal. It supersedes any prior Patient Portal Participation Agreement or statements regarding your use of the Patient Portal.

### **Access by Parent, Guardian or Personal Representative**

If you are under the age of 18 or you have authorized someone else to act on your behalf by operation of law or express written authority, all of the terms and conditions of this Agreement apply to such individual's usage of the Patient Portal. You represent and warrant that you have

provided accurate and complete proof of your relationship with this individual. Hixny will have no liability or responsibility for any action performed by you or this individual on your behalf.

**Acceptance of Agreement**

By clicking “I agree to the Terms & Conditions” and “Continue” and then accessing or using the Patient Portal, you represent and warrant that: (1) you have read and understand this Agreement and Incorporated Notices and that you are accepting this Agreement; (2) you have the legal power and authority to agree to, and be bound by, this Agreement; and (3) all information provided by you in connection with your access and use of the Patient Portal is true, complete and accurate.

Terms & Conditions Revised: 10/26/2023