

## **Agreement for NextGen® Coding Update Offering**

### **IMPORTANT – READ CAREFULLY:**

This Agreement (“Agreement”) is a legal contract between Client (whether an individual or a single business entity) on behalf of itself and all its Providers and NextGen Healthcare, Inc. (“Company”) for the NextGen® Coding Update Offering, which:

- (i) grants Client a license, for use in their NextGen® Enterprise system, to current versions of the CPT codes, formatted HCPCS codes (collectively “Licensed Content”), along with RVU Mapping; and,
- (ii) provides access to and use of Company’s Coding Import Utility tool that will automatically load the Licensed Content and certain scripts that identify deactivated or changed CPT codes - that are hidden within templates within Company’s Knowledge Base - that might need to be changed or removed and replaced with other CPT codes.

BY SIGNING BELOW OR BY CLICKING “ACCEPT” OR “ENTER” AND/OR CONTINUING TO USE THE CODING UPDATE OFFERING, CLIENT IS ACKNOWLEDGING ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO, THE WARRANTY DISCLAIMERS, INDEMNIFICATION OBLIGATIONS, LIMITATIONS OF LIABILITY AND TERMINATION PROVISIONS LISTED BELOW. CLIENT UNDERSTANDS THAT THIS AGREEMENT IS SEPARATE FROM THE MASTER AGREEMENT OR SOFTWARE LICENSE AND SERVICE AGREEMENT (COLLECTIVELY “MASTER AGREEMENT”) ENTERED INTO BETWEEN IT AND COMPANY AS IT RELATES TO ANY NEXTGEN® SOFTWARE AND/OR SERVICE.

IF CLIENT DOES NOT AGREE TO THESE TERMS, (I) DO NOT INSTALL OR USE THE CODING UPDATE OFFERING AND EXIT NOW AND/OR (II) DO NOT EXECUTE THIS AGREEMENT.

IF CLIENT DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT BUT CLIENT HAS ALREADY PURCHASED THE CODING UPDATE OFFERING, DO NOT INSTALL OR USE THE FILE AND CONTACT YOUR NEXTGEN HEALTHCARE SALES REPRESENTATIVE OR ACCOUNT REPRESENTATIVE FOR A REFUND (OR IF CLIENT PURCHASED THROUGH A RESELLER, PLEASE CONTACT THAT DISTRIBUTOR DIRECTLY.)

THIS DOCUMENT OUTLINES THE TERMS AND CONDITIONS ASSOCIATED WITH THE CODING IMPORT UTILITY TOOL PROVIDED BY COMPANY FOR LOADING THE LICENSED CONTENT. THE LICENSED CONTENT HAS ITS OWN TERMS AND CONDITIONS, WHICH CAN BE FOUND IN ATTACHMENT A LOCATED HERE: [AMA TERMS](#).

### **LICENSE TERMS**

While Client will have access and use of one Coding Import Utility Tool for their use, Client must obtain a license to the Licensed Content for each Provider who is using any NextGen® software or service to bill for their medical services and pay the applicable fee as set forth in the applicable Order Form. The Licensed Content is not licensed on a concurrent use basis.

In addition to the standard definition of a Provider in the Master Agreement, an End User is a Provider using the Licensed Content if he or she directly accesses the Licensed Content in a product or, in the case where Licensed Content is embedded in a product and not directly accessible, relies on embedded Licensed Content to perform his or her intended function with the product and/or its output. More specifically an End User is a Provider if he/she:

- Accesses, uses and/or manipulates the Licensed Content either at the input (the point at which data is entered into the NextGen® software and/or service), the output (the point at which data, reports or the like are received from the NextGen software and/or service) or both phases of using the NextGen software and/or service.

- Accesses, uses and/or manipulates the Licensed Content to produce or enable an output that could not have been created without the Licensed Content having been embedded into the NextGen® Coding Update Offering, even though the Licensed Content may not be visible or directly accessible; or,
- Makes use of an output of the NextGen® software and/or service that relies on or could not have been created without the Licensed Content embedded into the NextGen® Coding Update Offering, even though the Licensed Content may not be visible or directly accessible.

## **RESTRICTIONS**

The license granted to the NextGen® Coding Update Offering is a non-transferable, non-exclusive, personal license for Client's internal use by its End Users within the United States of America.

Client is prohibited from publishing, distributing (whether through the internet, or other public computer based information systems), creating derivative works (including translating) , transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Coding Import Utility Tool and/or the Licensed Content, whether in whole or any portion of thereof.

Client understands that provision of the Licensed Content is dependent upon a continuing relationship between Company and the American Medical Association.

Client must ensure that anyone with authorization to the NextGen® Coding Update Offering, general, and the Licensed Content, in particular, will comply with the provisions of this Agreement.

## **BACK UP RIGHTS**

Client may only make copies of the Licensed Content therein for back-up or archival purposes. All notices of proprietary rights, including trademarks and copyright notices, must appear on all permitted back up or archival copies made.

## **DISCLAIMER OF WARRANTY**

**THE CODING IMPORT UTILITY TOOL AND LICENSED CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT ANY LIABILITY TO COMPANY, INCLUDING WITHOUT LIMITATION, NO LIABILITY FOR ANY DAMAGES (EXCEPT DIRECT DAMAGES) INCLUDING BUT NOT LIMITED TO: CONSEQUENTIAL, INDIRECT, CONTINGENT, OR SPECIAL DAMAGES, LOST PROFITS FOR SEQUENCE, ACCURACY OR COMPLETENESS OF DATA OR THAT IT WILL MEET CLIENT'S REQUIREMENTS, EVEN IF COMPANY OR ANY OF THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY THIRD PARTY. CLIENT ASSUMES THE ENTIRE RISK OF USING THE CODING IMPORT UTILITY TOOL AND THE LICENSED CONTENT THEREIN.**

**COMPANY'S SOLE LIABILITY AND RESPONSIBILITY IS FOR THE AMA TO MAKE AVAILABLE TO CLIENT, THROUGH COMPANY, A REPLACEMENT COPY OF THE LICENSED CONTENT EMBEDDED IN THE CODING IMPORT UTILITY TOOL, AND THAT COMPANY DISCLAIMS ANY LIABILITY FOR ANY CONSEQUENCES DUE TO USE, MISUSE, OR INTERPRETATION OF INFORMATION CONTAINED OR NOT CONTAINED WITHIN THE LICENSED CONTENT ITSELF OR AS EMBEDDED WITHIN THE NEXTGEN® CODING UPDATE OFFERING.**

## **INDEMNIFICATION**

Client agrees to defend, hold harmless and indemnify Company for any and all claims or demands, including costs, expenses and reasonable attorney's fees, due to unauthorized access to or misuse of the Coding Import Utility Tool and/or the Licensed Content by its Providers and/or its other employees, agents, subcontractors, End User or other persons (whether authorized or unauthorized.)

**MISCELLANEOUS**

This Agreement automatically terminates in the event Client's default hereunder; and upon termination Client must immediately cease use of the Coding Import Utility Tool and/or the Licensed Content and completely return or destroy same residing on any hardware and/or system under its control.

In the event a provision under this Agreement is determined to violate any law or is unenforceable the balance of the Agreement will remain in full force and effect.

\*\*Accepted By (Signature): \_\_\_\_\_

Company: \_\_\_\_\_

GCN and/or SAP #: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

eMail: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

*(\*\* Any use of the Licensed Content signifies acceptance of these terms and conditions regardless of absence of signature.)*

## ATTACHMENT A

### **AMA END USER AGREEMENT TERMS FOR CURRENT PROCEDURAL TERMINOLOGY**

- (a) Licensed Content is copyrighted by the American Medical Association and CPT is a registered trademark of the AMA.
- (b) Client, as a party to a license agreement with the AMA, is authorized to grant End User a limited, non-exclusive, non-transferable, non-sublicensable license for End User to use Licensed Content in Client's Licensed Product(s), for the sole purpose of internal use by End User within the Territory. The sublicense granted hereunder shall automatically terminate upon termination of the Agreement between Client and AMA, unless prior written consent of AMA is obtained by Client or a direct license between End User and AMA is entered.
- (c) The provision of updated Licensed Content in the Licensed Product(s) is dependent on a continuing contractual relationship between Client and the AMA.
- (d) End User is prohibited from making Licensed Content publicly available, creating derivative works (including translating), transferring, selling, leasing, licensing, or otherwise making available to any unauthorized party the Licensed Product(s), or a copy or portion of Licensed Content to any unauthorized party, including a subsidiary, affiliate, or other legal entity, however designated, for any purpose whatsoever except as expressly permitted in this Agreement.
- (e) **End User expressly acknowledges and agrees to the extent permitted by applicable law, use of the Licensed Content is at End User's sole risk and the Licensed Content is provided "as is" without warranty of any kind. The AMA does not directly or indirectly practice medicine or dispense medical services. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The Licensed Content does not replace the AMA's Current Procedural Terminology book or other appropriate coding authority. The coding information contained in the Licensed Content should be used only as a guide.**
- (f) End User is required to keep records and submit reports including information necessary for the calculation of royalties payable to the AMA by the Client, of the same type as required of Client under this Agreement. All records and reports required under this Section shall be subject to audit by AMA.
- (g) **U.S. Government End Users.** CPT is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. This agreement does not grant the Federal Government a direct license to use CPT based on FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items).
- (h) End User must ensure that anyone with authorized access to the Licensed Product(s) will comply with the provisions of the End User Agreement.
- (i) AMA shall be named as a third-party beneficiary of the End User Agreement.
- (j) End User expressly consents to the release of its name to the AMA.
- (k) Contract Assent Mechanism.
  - a. If a written contract is used, an authorized official of both Client and End User must execute the agreement in writing.
  - b. If a shrink-wrap or click-wrap license is used, use of the Licensed Product(s) must be limited to the U.S.
  - c. If a shrink-wrap license is used, the following notice must appear in boldface type in a conspicuous location so it can be seen prior to opening the Electronic Licensed Product(s) package:

Initials: \_\_\_\_\_

Carefully read the following terms and conditions before opening and using the <insert name of Licensed Product.>. Opening and using <insert name of Licensed Product> acknowledges your acceptance of these terms and conditions. If you do not agree with these terms and conditions, you should return the <insert name of Licensed Product> package within a reasonable time and your money will be refunded.

- d. If a click-wrap agreement will be used, each End User must indicate acceptance of the terms of the End User Agreement by an appropriate mechanism provided for that purpose. For purposes of this Agreement, “click-wrap agreement” means a license agreement that: (i) appears on a computer screen or Web page; (ii) requires End Users to see the terms of the license agreement before indicating acceptance; (iii) includes a computer program or Web page mechanism which requires End Users to accept the terms of the End User Agreement prior to accessing Licensed Product (for example, by pointing the cursor at a “I Accept” box and indicating by clicking that they accept the terms); and (iv) includes a mechanism to keep a record of the End User’s acceptance of the End User Agreement.

**Initials:** \_\_\_\_\_