

NextGen® Products/Services - General Terms and Conditions

Effective: May 2020

As it relates to Client's use of the NextGen® products and/or services obtained through any third-party vendor, in conjunction with the terms of the Partner's agreement with Client, Client agrees to the following additional terms and conditions. As it relates to the NextGen® products and/or services, to the extent of any conflict between the Partner's agreement and these terms and conditions the terms of this document shall prevail.

CLIENT RESPONSIBILITIES

- **General.** Client will comply, and Client will cause all Affiliated Organizations, End Users, Personnel and other persons to whom Client provides any access to NextGen® products, services or other NextGen® Confidential Information to comply with the applicable provisions of this Agreement; and, Client shall be responsible for the non-compliance of any such Affiliated Organizations, End Users, Personnel and/or other person.
- **Failure to Pay.** Client acknowledges that if Partner fails to pay, any undisputed amount due NextGen Healthcare for the NextGen® and/or third party products and/or services obtained from NextGen Healthcare on behalf of Client, NextGen Healthcare may, in its sole discretion, (A) terminate any license or rights available to Client to the NextGen and/or third party products and/or services, (B) suspend or restrict provision of such products and/or services and/or (C) discontinue any future right to purchase products and/or services from NextGen Healthcare, whether at a discount price or otherwise. However, NextGen Healthcare will not exercise its rights under items (A) through (C) above if Partner is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

Limitations on Use. All End Users must be licensed to use the NextGen® and/or third party products and/or services. Except to the limited extent expressly permitted in this Agreement, Except to the limited extent expressly permitted in this Master Agreement, Client will not: (A) sell, transfer, lease, assign, or sublicense any Software or Services; (B) use any Software or Services as a service bureau, for outsourcing, for sharing access to any Services with any Third Party (except for authorized End Users), or for otherwise offering or making available the functionality of the Products or Services to any Third Party; (C) permit any End User or other person to access or use Products or Services using another End User's ID, login or password or otherwise make an End User's ID, login or password available to any Third Party; (D) use any Software or Service to process anything other than Client's, Affiliated Organizations', or an End Users' data; (E) bypass any privacy and/or security measures Company may use to prevent or restrict access to the Products and/or Services (or other accounts, computer systems or networks connected to the Company's Products or Services); (F) knowingly use the Products and/or Services in a manner that violates any applicable local, state, national and foreign laws, treaties or regulations (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws); or (G) remove any intellectual property, confidentiality or proprietary notices of Company and/or any Third-Party which appear in any form on the Products and/or Services or otherwise in any Company collateral or materials however reproduced.

- **Professional Diagnosis and Treatment.** NextGen® products and services do not make clinical, medical or other professional decisions, and are not substitutes for End User's Personnel applying professional judgment and analysis. Client is solely responsible for: (A) verifying the accuracy of all information and reports produced by Company Software and Services; (B) obtaining necessary consents for use and disclosure of patient information; (C) determining data necessary for decision-making by Client and its Personnel; (D) making all diagnoses and treatments and determining compliance, and complying, with all Laws and licensing requirements for the operation of Client's business; (E) assuring its Providers have the necessary professional licenses and, unless Client has purchased Company's Credentialing Service, are properly credentialed pursuant to applicable Law to perform their services.

CONFIDENTIALITY. Client acknowledges and agrees that the NextGen® products and services, along with their applicable documentation [including all Interfaces, templates, forms, software tools, algorithms, software (in source code and object code forms), user interface designs, architecture, toolkits, plug-ins, objects, documentation, network designs, ideas, processes, know-how, methodologies, formulas, systems, data, heuristics, designs, inventions, techniques, trade secrets, and any related intellectual property rights throughout the world included therein, as well as any derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed, Client lists, and employee lists whether or not marked or identified as confidential] constitute confidential information, and valuable trade secrets and intellectual property, of NextGen Healthcare and its third party licensors and service providers ("Confidential Information"). Client shall maintain the Confidential Information in strict confidence. Client shall not, and Client shall not permit its employees, agents and subcontractors to, sell, transfer, publish, disclose, display or otherwise make accessible the Confidential Information, in whole or in part, to any third party. Confidential Information does not include information that: (a) is or becomes publicly available at or after the time of disclosure through no fault of either Recipient (b) was known to Recipient free of any confidentiality obligations, before its disclosure by Discloser; (c) becomes known to Recipient free of any confidentiality obligations from a source other than Discloser; or (d) is independently developed by either Recipient without use of Confidential Information.

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PRIVACY. Client acknowledges that in the performance of certain NextGen® services NextGen Healthcare may De-Identify Client Data before such data is incorporated into any Analytics Database. Client grants NextGen Healthcare a non-exclusive, worldwide, paid-in-full, perpetual and irrevocable right and license to: (A) extract, copy, aggregate, process and create derivative works of De-Identified Data to derive, or add to, Analytics Databases; (B) employ data analytics on the Analytics Databases for purposes of developing Data Analytics solutions; and (C) prepare derivative works of the Analytics Databases, and use, execute, reproduce, display, perform, transfer, distribute, and sublicense the Analytics Databases and such derivative works. De-Identified Data will be aggregated with de-identified data from a sufficient number of other Clients in a manner designed to prevent NextGen Healthcare or others from using the Analytics Databases to analyze the particular characteristics of Client's business. NextGen Healthcare will not individually identify Client as a source of the De-Identified Data for the Analytics Databases, although NextGen Healthcare may disclose that certain of its Clients allow the use of Client data for such purposes.

eLEARNING MATERIALS SUBSCRIPTION/TRAINING MATERIALS. For certain NextGen® products and/or services, Client may purchase a subscription for access by its End Users to NextGen Healthcare's "eLearning" online training program*; and/or (B) use printed materials (as may be provided during onsite training sessions) and/or electronic materials (available for download for remote training sessions). Client may not make copies and/or download any of the training materials, unless such materials expressly state otherwise. Each End User must have his/her own subscription to any eLearning materials and use his/her own ID and password to access such materials. All training materials are licensed to Client for their own internal use and are provided solely to assist Client's End Users in learning how to use the NextGen® products and/or services. Subscriptions to the eLearning Materials are for one year commencing upon the Effective Date. eLearning Material subscriptions automatically renew for successive 1-year Service Term (s) at then-current rates, unless a Party provides written notice of its intent not to renew at least 60 days before the end of the then-current Service Term.

PROPRIETARY RIGHTS. NextGen Healthcare and its licensors own the NextGen Healthcare Technology. To the extent Software and content are obtained by Client, the Software and content are always licensed, not sold. Client has no right to use NextGen Healthcare's or any Third Party's name, trademarks or logo, or any goodwill now or hereafter associated therewith, all of which is the sole property of and will inure exclusively to the benefit of NextGen Healthcare or such Third Party. Client agrees not to modify, create derivative works of, adapt, translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code in any NextGen Healthcare Technology. Breach of this Section will be deemed a material breach of this Agreement and entitle NextGen Healthcare to immediately terminate Client's rights under this Agreement.

FEEDBACK. The purpose of this section is to avoid potential misunderstandings or disputes when NextGen Healthcare's products and/or marketing strategies might seem similar to ideas submitted or feedback given to NextGen Healthcare. NextGen Healthcare or any of its employees do not accept or consider *unsolicited* ideas, including ideas for new advertising campaigns, new promotions, new or improved products or technologies, product enhancements, processes, materials, marketing plans or new product names. Should NextGen Healthcare seek out Client's, and/or any of its Personnel's, feedback on NextGen Healthcare's existing products and/or marketing strategies, Client is under no obligation to provide any such feedback. However, if despite NextGen Healthcare's request that Client not send NextGen Healthcare its unsolicited ideas, Client still submits them, or if Client elects to provide feedback on NextGen Healthcare's existing products, services and/or marketing strategies, then regardless of what is stated when Client makes such a submission or provides such feedback, the following terms shall apply to Client's submissions and feedback: (1) Company will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such Feedback as Company sees fit, without any obligation or restriction of any kind to Client; (2) there is no obligation for Company to review Feedback; and (3) there is no obligation to keep any Feedback confidential..

COMPLIANCE. Client represents and warrants that to the best of its knowledge: (A) it, its affiliates and its Personnel are not under or subject to a "Corporate Integrity Agreement" or any other restriction or investigation by any payer, government agency or industry self-regulating organization; (B) neither it nor any of its affiliates, directors or Personnel are (i) listed on the General Services Administration's Excluded Parties List System or (ii) suspended or excluded from participation in any Government Payer Programs; and (C) there are no pending or threatened governmental investigations against Client or any of its affiliates, directors or Personnel that may lead to suspension or exclusion from Government Payer Programs or may be cause for listing on the General Services Administration's Excluded Parties List System.

DISCLAIMER OF WARRANTIES. NEXTGEN HEALTHCARE DOES NOT PROVIDE ANY INSTALLATION SERVICES OR TRAINING UNDER THIS AGREEMENT, THOUGH EXTENSIVE SERVICES MAY BE REQUIRED TO INSTALL AND IMPLEMENT THE SOFTWARE. NO SOFTWARE MAINTENANCE SERVICES OR SOFTWARE UPDATES ARE PROVIDED BY NEXTGEN HEALTHCARE TO CLIENT UNDER THIS AGREEMENT, THOUGH IN NEXTGEN HEALTHCARE'S OPINION, SUCH MAINTENANCE SERVICES ARE NECESSARY FOR THE SUCCESSFUL, ONGOING OPERATION OF THE SOFTWARE. ALL SOFTWARE MAINTENANCE SERVICES, THROUGH WHICH SOFTWARE UPDATES ARE MADE AVAILABLE, MUST BE PURCHASED UNDER A SEPARATE AGREEMENT. CLIENT EXPRESSLY AGREES THAT USE OF THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES IS AT CLIENT'S SOLE RISK. THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEXTGEN HEALTHCARE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY

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KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEXTGEN HEALTHCARE DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY WARRANTIES IN CONNECTION WITH CONTENT AND THIRD-PARTY MATERIALS. ALL CONTENT AND THIRD-PARTY MATERIALS ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY OR INDEMNIFICATION FROM NEXTGEN HEALTHCARE WHATSOEVER. NEXTGEN HEALTHCARE MAKES NO WARRANTY THAT THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES WILL MEET CLIENT’S REQUIREMENTS, OR THAT THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM NEXTGEN HEALTHCARE OR THROUGH THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CLIENT.

LIMITATION OF LIABILITY. IN NO EVENT SHALL NEXTGEN HEALTHCARE’S BE LIABLE FOR ANY INDIRECT, INCIDENTAL, NEGLIGENCE, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, RESULTING FROM THE USE OR THE INABILITY TO USE THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SOFTWARE AND/OR NEXTGEN HEALTHCARE SERVICES OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF CLIENT’S TRANSMISSIONS OR DATA, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF NEXTGEN HEALTHCARE’S HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEXTGEN HEALTHCARE’S LIABILITY TO CLIENT OR ANY THIRD PARTIES IS LIMITED TO \$50.⁰⁰. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CLIENT.

GENERAL PROVISIONS

- **Third Party Materials/Third Party Beneficiaries/Additional Modules.** Certain Third-Party Materials listed on an Order Form may be subject to terms and conditions that are separate from the terms and conditions set forth under this Master Agreement. (Those affected Third-Party Materials are found at: www.nextgen.com/thirdpartyagreements and are agreements solely between the Third-Party vendor and Client.) Although the Third-Party Materials may be required to utilize the full features and functionality of the Company Software and/or Service, Client is not required to obtain such Third-Party Materials directly through Company. In addition, Company may offer from within the Products and Services new modules/capabilities and/or additional Third-Party offerings that may present additional terms and conditions that are separate from those set forth under the Master Agreement. By signing the Order Form and/or clicking “I ACCEPT” or equivalent language, Client is agreeing to comply with those separate terms and conditions. Except as set forth above or in any Schedule, the Parties agree and acknowledge that this Master Agreement is not made for the benefit of any Third Party and nothing in this Master Agreement, whether expressed or implied, is intended to confer upon any Third Party any rights or remedies under or by reason of this Master Agreement, nor is anything in this Master Agreement intended to relieve or discharge the liability of either Party hereto, nor shall any provision hereof give any entity any right of subrogation against or action over or against either Party.
- **U.S. Government Licensing.** For US Government End Users: Client acknowledges that Products and Services are “Commercial Item(s),” as that term is defined at 48 C.F.R. section 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable and has been developed exclusively at private expense. Client agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (A) only as Commercial Items; and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.
- **Export Rules.** Client acknowledges that NextGen Healthcare’s technology may be subject to the U.S. Export Administration Regulations and other export laws and regulations, and Client will comply with all applicable export and import control laws and regulations of the United States and the foreign jurisdiction in which the NextGen Healthcare’s technology is used and, in particular, Client will not export or re-export NextGen Healthcare’s technology without all required United States and foreign government licenses.

DEFINITIONS. Capitalized terms shall have the meaning set forth in the Order Form or as defined below.

- **“Affiliated Organization”** means a company, practice, group and/or other legal entity (including those having separate tax identification numbers) of a Client located within the United States (and pre-identified, in writing, by Partner to Company prior to their access and/or use of any NextGen Healthcare product or service) that has entered into a written agreement with Partner that binds Client and its End Users to comply with the Pass-Through Terms, as required under this Agreement, AND are either: (i) owned by Client; or (ii) in which Client has a majority controlling interest in such company, practice, group and/or

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other legal entity; or (iii) in which Client has entered into a management agreement with such company, practice and/or other legal entity that creates a bona fide business relationship with Client to perform one or more management service functions.

- **“De-Identify” or “De-Identified”** means to de-identify personal data in accordance with the “safe harbor” requirements of section 164.514(b)(2) of the HIPAA regulations, or in a manner that otherwise meets the requirements of section 164.514.
- **“De-Identified Data”** means Client Data that has been De-Identified.
- **“End User(s)”** means Personnel who are: (A) based in the United States and (B) authorized by Client or an Affiliated Organization to use any portion of the Products or Services or (C) an authorized member of a community using the Software for purposes of health information exchange or care coordination. Unless specifically stated otherwise in the applicable User Material, each End User will be assigned a unique ID and password.
- **“Personnel”** means, with respect to each Party, such Party’s officers, employees and contractors.