Mirth® CONNECT FOR RESEARCH BY NEXTGEN HEALTHCARE INTERNATIONAL AGREEMENT

This Mirth® Connect Agreement ("Connect Agreement") is a legal contract between the entity that is entering this Connect Agreement (the "Client") and **NextGen Healthcare, Inc**. ("Company").   This agreement is solely for the use of the following offerings: *Mirth® Connect for Research by NextGen Healthcare, including any extensions that are a part thereof,* the (collectively "Connect Offerings"). In addition to the General Terms attached, the following Schedules and every Order Form, Schedule, Addenda, Appendix, Exhibit and/or Attachment thereto are collectively intended to be a complete integration and comprise the "Connect Agreement" between the parties. Capitalized terms shall have the meaning set forth in the Order Form, Schedule, Exhibit or as defined in the Definitions Section below.

SCHEDULE:	APPLICABLE TO:	Version #:
End User License Agreement ("EULA")	All End Users of the Connect Offerings	EULA – which may be amended from time to time
Data Processing Addendum ("DPA")	All dealings with Company that involve processing of Personal Data	DPA – which may be amended from time-to-time)

Unless specifically set forth in an Addendum to the contrary, the order of precedence shall be as follows:

1. Addendum, if any;
2. Order Form;
3. Applicable Schedule and any Exhibit or Attachment thereto, if any; and,
4. General Terms

No Software Maintenance Services are provided under this Agreement and Client shall not have access to the Mirth® Command Center.

GENERAL TERMS

1. **INTENTIONALLY LEFT BLANK.**

2. **CLIENT RESPONSIBILITIES**

2.1   General. The Client will comply, and the Client will cause all Affiliated Organizations, End Users, Personnel and other persons to whom the Client provides any access to Products or other Company Confidential Information to comply with the applicable provisions of this Connect Agreement, including the EULA; and, the Client shall be responsible for the non-compliance of any such Affiliated Organizations, End Users, Personnel and/or other person.

2.2   Required Resources. The Client: (A) must provide, at its own expense, the Personnel, Facilities and Equipment required for use of the Connect Offerings; and (B) must also obtain any consents, authorizations and approvals necessary to enable Company to access such Facilities and Equipment to perform its obligations for the Client under this Connect Agreement.

2.3   Special Programs. Company has no responsibility to identify, evaluate or assist the Client in the Client's decision to participate in any Special Program. The Client is solely responsible for determining whether to participate in such opportunities.

2.4   Professional Diagnosis and Treatment. Company Software do not make clinical, medical or other professional decisions, and are not substitutes for the Client's Personnel applying professional judgment and analysis. The Client is solely responsible for: (A) verifying the accuracy of all information and reports produced by Company Software, including as further outlined by Company's Data Use Policy, as may be amended from time to time; (B) obtaining necessary consents for use and disclosure of patient information; (C) determining data necessary for decision-making by the Client and its Personnel, and (D) complying, with all Laws and licensing requirements for the operation of Client's business .

2.5   Limitations on Use. Except to the limited extent expressly permitted in this Connect Agreement, the Client will not: (A) sell, transfer, lease, assign, or sublicense any Product; (B) use any Product as a service bureau, for outsourcing, for sharing access to any Product with any Third Party (except for authorized End Users), or for otherwise offering or making available the functionality of the Products to any Third Party; (C) permit any End User or other person to access or use Products using another End User's ID, login, password, or otherwise make an End User's ID, login or password available to any Third Party; (D) use any Product to process anything other than the 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 (or other accounts, computer systems or networks connected to the Company's Products); (F) knowingly use the Products 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 or otherwise in any Company collateral or materials however reproduced.

3. **CONFIDENTIALITY**

3.1.   Protection of Confidential Information. As between the Parties, each Party retains all ownership rights in and to its Confidential Information. The Recipient will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Discloser in writing, limit access to Confidential Information of the Discloser to those of its employees and contractors who need that access for purposes consistent with the Connect Agreement and who have signed confidentiality agreements with the Recipient containing protections not materially less protective of the Confidential Information than those herein. Neither Party will disclose the terms of the Connect Agreement or any Order Form to any Third Party other than its affiliates without the other Party's prior written consent, provided that a Party that makes any such disclosure to its affiliate will remain responsible for such affiliate's compliance with this "Confidentiality" Section. Notwithstanding the foregoing,

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Company may disclose the terms of this Agreement and any applicable Order Form to a contractor of Company to the extent necessary to perform Company's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

3.2 **Compelled Disclosure.** Recipient may disclose Confidential Information of the Discloser, excluding Protected Health Information, which shall be governed by the terms of a Business Associate Agreement between the Parties, if any, to the extent compelled by Law to do so, provided the Recipient gives the Discloser prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Discloser's cost, if the Discloser wishes to contest the disclosure. If the Recipient is compelled by Law to disclose the Discloser's Confidential Information as part of a civil proceeding to which the Discloser is a party, and the Discloser is not contesting the disclosure, the Discloser will reimburse the Recipient for its reasonable cost of compiling and providing secure access to that Confidential Information.

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4. PRIVACY

4.1 **Protected Health Information.** If the Client orders Services that require Client to provide to Company Protected Health Information ("PHI") that is protected under any Laws, the Parties will enter into, and maintain throughout the Service Term, a mutually agreed upon Business Associate Agreement. Company does not own the PHI provided by the Client, and Client will provide Company with, only the minimum PHI required to perform the Services hereunder. The Parties each will comply with their respective obligations set forth in the Business Associate Agreement.

4.2 **Personal Data.**

A. If the Client orders Services that require the Client to provide to Company any Personal Data that is protected under any Data Protection Laws, the Parties agree to enter into a mutually agreed upon Data Processing Agreement. To the extent that any Data Protection Laws are not applicable to Client Data, this Section shall not apply.

B. To the extent Company, in its role as a Service Provider under CCPA (including as it may be amended by the California Privacy Rights Act, "CPRA"), receives Personal Data that constitutes "personal information" under CCPA, Company will not (i) sell (as defined in CCPA) such Personal Data; (ii) shall not retain, use, or disclose such Personal Data for any purpose other than performing the Services under the Connect Agreement or as otherwise permitted under CCPA; (iii) retain, use, or disclose the Personal Data for a commercial purpose other than providing the Services unless otherwise permitted under the Agreement; or (iv) retain, use, or disclose such Personal Data outside of the direct business relationship between the Client and Company.

C. The Client acknowledges that in the course of providing the Services, Company may collect Personal Data about the Client and its End Users. The collection, use, and disclosure of such Personal Data by the Company shall be conducted in accordance with the Company's Privacy Policy, as may be amended from time to time, which outlines these practices in detail. By engaging with the Services, the Client and its End Users signify their understanding of, and agreement to, the data practices as described in the Company's Privacy Policy.

5. CONNECT OFFERINGS LICENSE.

5.1 **Company Software.** Subject to the Client's compliance with the terms of this Connect Agreement, Company grants the Client during the License Term, a non-exclusive and non-transferable license to:

(A) install and implement the Connect Offerings on Authorized Server(s) and, where applicable, Authorized Workstation(s) solely for use by End Users for internal operations in quantities as set forth in the Order Form and/or applicable Schedule

(B) and in accordance with applicable Metrics and User Materials; and

(C) use, copy and distribute internally User Materials as reasonably required for permitted use of the Connect Offerings. Any such copies of the User Materials must contain the same copyright and other proprietary notices that appear in the original User Materials.

5.2 **Non-Production Use**.

(A) **Dynamic License(s).** Applicable Terms and conditions for use of Dynamic License(s) will be as outlined in the Order Form and as follows:.

1. Client is required to keep all Dynamic License Instances connected to the internet unless granted a written exception by Company to use the Dynamic License Instances via an Offline Deployment, where Offline Deployment is defined as a client who uses Company's offline validation process to perform license key validation.
2. Unless stated otherwise in the Order Form, (i) Client is being granted and may only operate one Production Instance of the Connect Offerings in a Client-owned or leased location , that is identified to Company, if requested by Company; and (ii) Client is being granted and may also operate up to a maximum of three (3) Non-Production Instances (e.g. backup, development, quality assurance/test, etc.) of the Connect Offerings not to exceed any limit set forth in the Order Form, each of which may be installed in a Client-owned or leased location separate from where the Production Instance is installed, provided such location is identified to Company, if requested by Company.
3. Client must initially install the current general released version of the Connect Offerings and Company recommends Client remain current on releases of the Connect Offerings for security reasons.

5.3 **License Keys.** A Connect Offering, or subsequent version thereto, will require a License Key to operate; and, in such case, the License Key is provided at the time of Delivery, as defined below. Any additional License Keys would be provided as needed.

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5.4   **No Title Transfer**. All of the Company Technology shall remain personal property, and the title thereto shall remain with the Company at all times. The Client shall have no right, title or interest therein or thereto except as to the use thereof subject to the terms and conditions of this Connect Agreement. The Client shall keep the Company Technology free from any and all judgments, liens and encumbrances. The Client shall give Company immediate notice of the attachment or other judicial process, lien, or encumbrance affecting the Company Technology and shall indemnify and save Company harmless of and from any loss or damage caused thereby.

5.5   **Effect of Termination**. Upon termination of this Connect Agreement, or upon expiration of the License Term, the Client must cease to use the Connect Offerings, uninstall all copies of the Software from all Authorized Servers and Authorized Workstations, destroy any media containing the Software, and certify to Company in writing once complete. In the event the Client fails to cease its use of the Connect Offerings, including but not limited to any extensions included therein, Company reserves the right to terminate Client's access to the Connect Offerings.

5.6   **Delivery.** The Connect Offerings are deemed to be delivered and accepted by the Client on the date the Connect Offering(s) is made available by Company for electronic download ("Delivery").

5.7   **License Compliance.** During each License Term and for 3 years thereafter, the Client and its Affiliated Organizations shall keep complete and accurate books and records relating to use of the Connect Offerings under this Connect Agreement. Company may, at its expense and no more than once every calendar year, inspect such records and access related systems to verify that use of the Connect Offerings by the Client and its Affiliated Organizations comply with the terms of this Connect Agreement. If a verification shows that the Client, its Affiliated Organizations, End Users or Third Party contractors of the Client or its Affiliated Organizations are using the Connect Offerings beyond the quantity that was legitimately licensed or in any way not permitted under this Connect Agreement, the Client must pay, unless disputed in good faith, any license fees based on Company's then-current list price, within 30 days of invoice date.

5.8   **Open-Source Software Disclosure for Connect Offerings.** The Connect Offerings include third-party code licensed for use and redistribution under open-source licenses. A list of disclosures of the open-source code and the associated licenses can be found with the Client's Mirth Connect files in \docs\thirdparty. The licenses are granted by the original licensors of the respective open-source code. The Client is responsible for complying with any terms and conditions of the open-source licenses. Notwithstanding any of the terms and conditions set forth herein, Company disclaims any representations or warranties with respect to the open-source code.

5.9   **Eligibility Criteria.** Client must meet the Eligibility Criteria at all times during the License Term. The Eligibility Criteria are outlined here: Clinical Research | NextGen Healthcare – which may be amended from time to time. If, during the License Term, Client fails to meet the Eligibility Criteria: (i) Client must notify Company promptly, in writing, and (ii) Company reserves the right to terminate the Agreement for cause in accordance with the Term and Termination Section below.

6.   CONSULTING SERVICES AND IMPLEMENTATION SERVICES.

6.1   **Self-Implementation and/or Consulting Services**.   The Client understands the Connect Offerings come with no implementation and consulting services and the Connect Offerings are self-installed.

7.   SOFTWARE MAINTENANCE SERVICES.

7.1   **Software Maintenance Tiers.** No Software Maintenance Services are included under this Agreement.

8.   DATA USE POLICY. Client Data may be used by Company in accordance with the Company's Data Use Policy, as may be amended from time to time.

9.   TERM AND TERMINATION

9.1   **Term.** This Connect Agreement applies to the Connect Offerings from the Effective Date of the applicable Order Form until the expiration of the applicable License Term, unless terminated earlier under this Connect Agreement.

9.2   **Termination with Cause**.

(A)   Material Breach by Either Party. If either Party commits a material breach of this Connect Agreement, the non-breaching Party must give written notice describing, in reasonable detail, the nature and basis of the breach to the breaching Party. Except as otherwise allowed under this Connect Agreement, if the breach is not cured within 30 days of the notice date or such other mutually agreed, in writing, extension thereof, the non-breaching Party may immediately terminate this Connect Agreement. All notices by the Client pursuant to this Section must be submitted in the Company's Success Community with a copy sent to the Company's legal department via legal@nextgen.com.

(B)   Bankruptcy. Each Party may terminate this Connect Agreement immediately upon written notice if the other Party ceases to conduct its business, makes a general assignment for the benefit of its creditors, admits publicly its inability to meet its obligations as they come due, voluntarily files for bankruptcy or insolvency, or is the subject of a filing by a third party for bankruptcy, insolvency, receivership or similar protection that is not dismissed within 45 days.

9.3. **Survival.** The termination or expiration of this Connect Agreement will not affect any provisions of this Connect Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: Client Responsibilities, Confidentiality, Privacy, Term and Termination, Proprietary Rights, Warranty Disclaimers, Limitation of Liability and General Provisions.

10. PROPRIETARY RIGHTS

10.1 **Ownership.** Company and/or its licensors retain all right, title, and interest in and to the Company Technology. No Company Technology is ever sold to the Client but rather the Client is purchasing a license thereto. Unless specifically stated, in writing, by the Company to the contrary, the Client has no right to use the Company'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 Company or such Third Party. The Client will not use the Products and/or Services in a manner that violates any third-party intellectual property, contractual or other proprietary rights.

10.2 **No Modifications**. Unless specifically stated, in writing, by Company to the contrary, the Client agrees not to modify, create derivative works of, adapt, translate, reverse engineer the Products and/or Services or otherwise decompile, disassemble, or attempt to discover the source code or any other non-user facing aspects in any Product and/or Service. Breach of this Section will be deemed a material breach of the Connect Agreement and entitle Company to immediately terminate the Connect Agreement.

10.3 **Feedback.** The purpose of this section is to avoid potential misunderstandings or disputes when Company's products and/or marketing strategies might seem similar to ideas submitted or feedback given to Company. Feedback means any comments, submissions or other feedback the Client may provide to Company, at its sole discretion, concerning the functionality and performance of the Company Technology, including identification of potential errors and improvements. By submitting any 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 the Client, (2) there is no obligation for Company to review Feedback, and (3) there is no obligation to keep any Feedback confidential.

11. LIMITED WARRANTIES

11.1 **General.** Each Party represents and warrants that to the best of their knowledge: (A) it is duly organized and in good standing under the Laws of the state of its organization; (B) it has full authority to execute and perform under this Connect Agreement, and such performance is not prohibited by any agreement to which the Party is bound or any applicable Law; and (C) it will comply with all Laws applicable to its business and operations.

11.2 **Compliance.** Each Party 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 such Party 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. Breach of this Section will be a material breach of the Connect Agreement and entitle the non-breaching Party to immediately terminate the Connect Agreement.

11.3 **Intentionally Left Blank.**

11.4 **Authority.** The Client represents and warrants that: (i) the execution of this Agreement does not violate any terms of pre-existing agreements between the Client and any third parties; (ii) the signer has full power, authority, and proper authorization to execute and perform both financial and non-financial obligations under this Agreement on behalf of the Client; and (iii) if the signer is acting on behalf of an entity, rather than as an individual, they have taken all necessary actions to authorize and ratify the execution and delivery of this Agreement and the Client's obligations under it. The Client acknowledges and agrees that this Agreement may be periodically updated or amended, and that the Client will be bound by any such revisions.

12. **WARRANTY DISCLAIMERS. To the maximum extent permitted by Law, Company and its licensors provide the Connect Offerings and Services on an "As-Is" and "As Available" basis. Company and Third Party suppliers disclaim and make no, and the Client is not reliant upon any, other representations, warranties and conditions of any kind, express, implied or statutory, including representations, guarantees, conditions or warranties of merchantability, title, non-infringement, fitness for a particular purpose, accuracy, or implied by the provisions of any Laws that by their terms can be disclaimed (such as the Uniform Commercial Code or the Uniform Computer Information Transactions Act). If such provisions cannot be excluded and disclaimed, then the provisions of this Connect Agreement will control to the maximum extent permitted. Without any limitation, neither Company nor its licensors (A) warrant that the Connect Offerings or Services will be complete, accurate, uninterrupted, free of Viruses, error free, or that any error can be corrected, or (B) guarantees or agrees to ensure that any Connect Offerings or Services comply with applicable Laws.**

13. **LIMITATION OF LIABILITY**

EXCEPT FOR EXCLUDED CLAIMS, NEITHER PARTY SHALL BE LIABLE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE OR PRODUCT LIABILITY), FOR ANY OF THE FOLLOWING ARISING OUT OF OR CONCERNING THIS CONNECT AGREEMENT, HOWEVER CAUSED: CONSEQUENTIAL, SPECIAL, MORAL, INCIDENTAL, INDIRECT, RELIANCE, PUNITIVE OR EXEMPLARY DAMAGES; LOSS OF GOODWILL, PROFITS, USE, OPPORTUNITIES, REVENUE OR SAVINGS; BUSINESS INTERRUPTION; OR LOSS ARISING FROM THEFT OR CORRUPTION OF DATA, VIRUSES, OR SPYWARE. IN NO EVENT ARE ANY OTHER THIRD PARTIES (INCLUDING COMPANY LICENSORS) LIABLE TO THE CLIENT UNDER THE TERMS OF THIS AGREEMENT ON ANY BASIS WHATSOEVER. COMPANY SHALL HAVE NO LIABILITY FOR ANY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER REGARDLESS OF THE CAUSE OF ACTION OR THEORY OF LIABILITY.

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14.   **INTENTIONALLY LEFT BLANK.**

15.   **GENERAL PROVISIONS**

      15.1   **Equitable Relief.** Actual or threatened breach of certain sections of this Connect Agreement (including, without limitation, provisions on intellectual property, license, privacy, data protection and confidentiality) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.

      15.2   **Notices.** Any notice given under this Connect Agreement must be in writing and, other than service of process, may be delivered: (A) if to Company, to both www.community.nextgen.com/SuccessCommunityLogin and legal@nextgen.com and (B) if to the Client, to the: (i) "sold to" email address set forth on the Order Form, or (ii) such other address as identified by the Client from time to time. Notices delivered personally or via overnight courier will be effective upon delivery, and notices delivered by U.S. mail will be deemed effective five (5) Business Days after being deposited in an official U.S. Postal Service mailbox. A notice is deemed to be received by email the first Business Day after sending by email, unless the sender receives an automated message that the email has not been delivered, provided email shall not be sufficient for notices of termination or default.

      15.3   **Viruses and Other Malware.** Each Party will use and maintain updated commercial Virus scanning software and/or use reasonable efforts to ensure that its electronic communications (and, as it relates to Company, the Company Software) do not contain any Virus.

      15.4   **Choice of Law**. This Connect Agreement will be governed by the laws of the state of Delaware, without regard to its conflicts of laws principles.

      15.5   **Waiver; Modification; Relationship of Parties.** Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Connect Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties. Company is an independent contractor, and nothing in this Connect Agreement is intended to constitute an employment, partnership, joint venture, fiduciary, trust or agency relationship between the Parties, or authorize the Client or Company to enter into any commitment or agreement with any Third Party that is binding on the other Party. Subject to the other terms of this Connect Agreement, each Party solely determines which of its Personnel will perform its obligations.

      15.6   **Assignment; Binding Effect; Subcontractors.** This Connect Agreement is personal to the Client, and the Client may not delegate and/or assign this Connect Agreement, including but not limited to any and all Connect Offerings and/or Services thereunder, or any of the Client's rights or duties hereunder without the advance, written consent of Company, which shall not be unreasonably withheld. Any attempted delegation, assignment, or transfer by the Client in violation of the provisions of this Section will be deemed void and of no force and effect. Company may assign this Connect Agreement or its rights and/or duties to its affiliates or to its successor in the event of a sale of all or substantially all of its assets, voting securities, or the assets or business related to the Products or Services provided under this Connect Agreement. Subject to the foregoing, this Connect Agreement will be binding upon and inure to the benefit of the Parties' respective permitted transferees, successors, and assigns. Company may subcontract the performance of its obligations to Third Parties as it determines appropriate, but in such cases, Company shall remain responsible for the performance of its subcontractors.

      15.7   **Force Majeure.** A Party's failure to perform its obligations under this Connect Agreement, other than the payment of money, is excused to the extent that the failure is caused by an event outside its reasonable control, including an act of God, act or threat of terrorism, shortage of materials, strike or labor action, war or threat of military or significant police action, failure of Third Party suppliers, denial of service attacks and other malicious conduct, governmental acts, orders, or restrictions, other cause beyond its reasonable control and natural disaster, utility failures, and/or power outages.

      15.8   **Severability.** If any term of this Connect Agreement is for any reason held invalid, unenforceable or deemed contrary to any Law or policy, the Parties' preference is that such terms or provisions be effective to the extent permitted by Law and the same will not affect any other term or provision of this Connect Agreement, which will otherwise remain in full force and effect.

      15.9   **Client Cooperation.** Company may publicly identify the Client as a customer of Company.

      15.10.   **Covenant not to Solicit or Hire.** Each Party recognizes the expense and time associated with recruiting, hiring, training and maintaining employees. Each Party agrees that as it relates to any Employee, it will not during the term of this Connect Agreement nor for one year after the termination or expiration of this Connect Agreement directly or indirectly solicit to reduce the relationship of the other Party's Employee(s) for itself or on behalf of any Third Party. For the purposes of this section, "Employee" shall mean any current employee of a Party or any former employee who worked for the other Party in the prior 6 months and was involved in any respect with the Services or performance of this Connect Agreement. Each Party agrees that the damages to be incurred by the other Party for a violation of this section are difficult to estimate; and accordingly, for any violation of this section by a Party or its Personnel damages may include costs to recruit and replace such solicited employee.

      15.11   **U.S. Government Licensing.** For US Government End Users: the Client acknowledges that Connect Offerings and Services are either "Commercial Products," Commercial Services," or "Commercial (COTS) Item(s)," as those terms are 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. The 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.

15.12   Export Rules. The Client acknowledges that the Connect Offerings may be subject to the U.S. Export Administration Regulations and other export laws and regulations, and the Client will comply with them.

15.13   Entire Agreement (Merger Clause). This Connect Agreement is the entire agreement between Company and the Client regarding the Client's purchase and use of Connect Offerings and Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Connect Agreement except as expressly stated in this Connect Agreement. The parties acknowledge and agree that they have not relied upon any representations, warranties, or statements not expressly set forth in this Connect Agreement or incorporated documents.

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

16.1   **"Active Instances"** represents the number of Instances running in a 24-hour period. An Instance is considered active the day it starts and any day after that it remains active for even a portion of the day. If an Instance is started on Monday at 6am and stopped on Wednesday at 10am, it is considered an Active Instance on Monday, Tuesday, and Wednesday.

16.2   **"Affiliated Organization"** means a company, practice, group and/or other legal entity (including those having separate tax identification numbers) that has entered into a written agreement with the Client that binds it and its End Users to comply with the applicable terms of this Connect Agreement and are either: (i) owned by the Client; or (ii) in which the Client has entered into a management agreement with such company, practice and/or other legal entity that creates a bona fide business relationship with the Client to perform one or more management service functions.

16.3   **"Analytics Database"** means Company's collection of Client Data from various customers of Company.

16.4   **"Authorized Server"** means a Hardware server owned or leased by the Client and located in a location as set forth in the Connect Offerings License Section above. Except as otherwise agreed by Company in writing, Authorized Servers will not be used for the benefit of any party other than the Client, its Affiliated Organizations, and End Users.

16.5   **"Authorized Workstation"** means a desktop, tablet or laptop computer used by an End User.

16.6   **"Business Day/Business Hour"** means time during which Company is actively staffed and most Company resources are available, but excludes nights, weekends and holidays observed by Company.

16.7   **"Capacity"** is defined as the maximum Daily Average Utilization the Client is allowed without incurring additional fees, if any, or requiring the purchase of additional Instances via a supplemental Order Form to meet the Client's Daily Average Utilization. Capacity is calculated as the number of Instances contracted for, which is the number of Bundles purchased multiplied by four (4) total Instances per Bundle.

16.8   **"CCPA"** means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq.

16.9   **"Certified Professional"** means any Client Personnel who: (A) is actively involved in the day-to-day operation and support of the Connect Offerings and Services within the Client's organization, (B)has suitable education and experience to understand the Connect Offerings and Services; (C) has successfully completed the applicable Company Connect certification tests (if any); and (D) if a contractor and not an employee of the Client, has entered into a separate agreement with Company to become a Third Party Certified Professional.

16.10   "Claim" means a claim, action, proceeding, or demand made against a person or entity, however arising and whether present or future, fixed or unascertained, actual, threatened or contingent.

16.11   "Client Data" means the compilation of the Client's, its Affiliated Organizations', subsidiaries', and/or parent entity's data from all Data Sources.

16.12   **"Company Software"** means software in object code form licensed under an Order Form, and identified as Company Software, including any Interfaces, templates, and any and all updates, modifications, improvements, extensions, and derivative works made thereto by or for Company, Client, or any Third Party.

16.13   **"Company Technology"** means the Products, Services and User Materials made available by Company, including all Interfaces, templates, forms, software tools, algorithms, software (in source code and object code forms), user interface designs, architecture, toolkits, extensions, objects, documentation, network designs, Docker images, 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.

16.14   **"Confidential Information"** means all information disclosed by a Party ("Discloser") to the other Party ("Recipient"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of the Client includes Client Data; Confidential Information of Company includes the Services, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each Party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. Notwithstanding the foregoing, Confidential Information does not include PHI which shall be governed by the BAA, or any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a Third Party without knowledge of any breach of any obligation owed to the Discloser, or (iv) was independently developed by the Recipient without use of Confidential Information of the other Party.

16.15   **"Daily Average Utilization"** is defined as the total number of Active Instances used by the Client in a calendar month, divided by the number of calendar days in that month.

16.16   **"Data Protection Laws"** means the CCPA together with the European Data Protection Laws, or any other applicable data protection Laws and regulations which may be promulgated in the future.

16.17   **"Data Source"** means a single feed of aggregated personal, medical, financial and/or other data that is imported into any Company Technology.

16.18   **"Dynamic License"** is a license mechanism that allows the Client to dynamically utilize up to a certain number of active *Mirth® Connect by NextGen Healthcare* Instances, inclusive of Non-Production and Production environments.

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16.19 **"Effective Date"** means the date signed on the applicable Order Form by the Client; or, if multiple parties will be signing, then the date last signed on the applicable Order Form by the authorized representative of all parties. (While each Order Form may have its own Effective Date, the Effective Date of the "Connect Agreement" shall be the Effective Date of the first Order Form entered into between the parties.)

16.20 **"End User(s)"** means Personnel who are: (A) authorized by the Client or an Affiliated Organization to use any portion of the Products or Services or (B) 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.

16.21 **"European Data Protection Laws"** means the Data Protection Act 1998 (the "1998 DP Act"), the General Data Protection Regulation (EU 2016/679) as it applies in all EU member states and the UK (the "GDPR", and together with the 1998 DP Act).

16.22 **"Excluded Claims"** means Claims arising from the Client's breach of the Limitations on Use, Confidentiality, Term, Proprietary Rights and No Modifications sections herein.

16.23 **"Facilities & Equipment"** means a Client data center with all infrastructures, security controls, connectivity, systems, including back-up and recovery capabilities to avoid loss of data in the event of any failure, as well as all computers, background technology and equipment (including appropriate chipsets, processing speeds, RAM, storage, operating systems, connectivity, services, data, subscriptions, software, configurations and other components) necessary to operate the Products and/or Services.

16.24 **"Fulfillment Date"** means the earlier of the: (i) date of Fulfillment set forth in the Order Form, Exhibit, or (ii) the stated number of days (as specifically stated in the Order Form, Addendum or Exhibit) after the Effective Date, which if no stated amount of days is specifically identified, then 60 days.

16.25 "**Hardware"** means Company hardware and Third-Party hardware.

16.26 **"Instances"** means a single installation of Company Software running on any physical or virtual server the Client may provide.

16.27 **"Interface"** means the part of any Company Software designed to exchange data between or among Company Software components and other software or between Company Software and Hardware.

16.28 **"Law"** means those applicable federal and state statutes, regulations, codes, ordinances, agency directives, binding court orders and other binding government requirements.

16.29 **"License Key"** means each encrypted alphanumeric code needed to activate the Connect Offerings and/or features in the Connect Offerings.

16.30 **"License Term"** means the period set forth in an Order Form for which the Client has purchased the applicable Software license.

16.31 **"Lives"** means the net number of individuals whose data is stored in the database of Company Software, as measured by the master patient index.

16.32 **"LGR"** or **"Limited General Release"** means versions of the Software made available by Company on a limited general release basis.

16.33 "**Loss**" means any damage, loss, cost, expense, or liability incurred by a person or entity.

16.34 **"Metric"** means each standard specified by Company in the Order Form or applicable Schedule that describes the scope of the Client's rights to use the Software, as applicable.

16.35 "**Non-Production Instance**" means an additional installation of Company Software used to directly support one or more Production Instances – including, but not limited to, system used to test or stage software configurations or interfaces prior to deployment in a Production Instance, development environment, passive standby or failover system, or a demo/training system.

16.36 **"Order Form"** means each executed sales order form for the Client's procurement of Connect Offerings.

16.37 "**Party**" means Company or Client, as applicable.

16.38 **"Personal Data"** shall have the combined meaning of (a) Personal Data as defined in the "European Data Protection Laws", and (b) "Personal Information" as defined in the "CCPA".

16.39 **"Personnel"** means, with respect to each Party, such Party's officers, employees and contractors.

16.40 "**Products**" means one of the Connect Offerings obtained by the Client from Company.

16.41 **"Production"** means use of the Connect Offerings to support actual business operations of the Client and its Affiliated Organizations and excludes training, backup, development, quality assurance and similar non-productive uses.

16.42 **"Production Instance"** means an Instance that is used to serve the primary purpose for which the Client has purchased a license to use the Connect Offerings - including but not limited to, primary system housing or handling live production data, secondary system used for reporting purposes, additional active system used to distribute or segregate load.

16.43 **"Schedule"** means a written document executed by both Parties or incorporated by reference into an Order Form, which describes additional terms, related to the Connect Offerings.

16.44 **"Service(s)"** means each service procured from Company under one or more Order Forms subject to the terms of the Agreement outlined therein, including Implementation Services, Software Maintenance Services, Consulting Services, .

16.45 **"Service Term"** means the Initial Term set forth in an Order Form or applicable Schedule for which the Client has purchased the applicable Service.

16.46 **"Software"** means the applicable Connect Offering(s).

16.47 **"Special Program"** means any governmental or non-governmental program, project, grant, incentive-based opportunity, extension, extension use case or other program relating to the Client's business.

16.48 **"Third Party"** means any person or entity other than Company or Client.

16.49 **"Update(s)"** means any patch, fix, improvement, enhancement or change to Company Software that Company makes commercially available at no additional charge to customers. Updates do not include additional modules and/or capabilities for which Company, or a Third Party charges a separate license fee.

16.50 **"User Materials"** means the general-released, available documentation provided by Company relating to the general released versions of Connect Offerings, including user guides, technical manuals, release notes, installation instructions, and online help files regarding use of Software, and all updates thereto.

16.51 **"Virus"** means viruses, worms, and other malware or malicious code intended to cause or that cause computers or systems to fail to act properly or to function in an unintended manner or permit unintended access to such computers or systems by any Third Party. License keys and other functionality intentionally inserted in Software by the licensor are not Viruses.