

NEXTGEN® OFFICE END USER AGREEMENT

IMPORTANT--READ CAREFULLY: This End-User Agreement ("Agreement") is a legal contract between you ("End User" or "You") and NextGen Healthcare, Inc. ("Company"), the owners of the NextGen® Office software that will be accessed and used by you as part of Products and/or Services made available to you through an Affiliated Organization that has a Master Agreement in place with Company ("Client"). This Agreement is separate and distinct from the Master Agreement in place between Client and Company. If You are also the Client, then in addition to agreeing to the terms and conditions set forth below You are also agreeing to the terms of the [Master Agreement](#).

END USER AFFIRMS ITS UNDERSTANDING THAT:

Client and/or the Affiliated Organization - and not the Company - will be providing End User all access and use of the Products, Services, and Client Data (as well as any needed set up, training, or Maintenance Services) under the Master Agreement.

Company is not a party to any written or oral understanding End User may have with Client and/or the Affiliated Organization as it relates to access and use of the Products, Services, and any Client Data therein. Certain rights and benefits for End User under the Master Agreement - including but not limited to: the right to access and use the Client Data entered and/or created by End User through any Products and Services provided - may be modified by Client and/or the Affiliated Organization at any time and at their sole discretion.

Termination of the Master Agreement in place between Client and Company contemporaneously terminates End User's access and use of the Products and Services. End User itself has no independent right of access and use of the Products, Services and/or Client Data under the Master Agreement.

BY CLICKING THE [ENTER] OR [ACCEPTED] ICON BELOW, OR OTHERWISE USING THE PRODUCTS AND SERVICES PROVIDED, INCLUDING BUT NOT LIMITED TO THE NEXTGEN OFFICE SOLUTION AND ANY CLEARINGHOUSE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE PRODUCTS AND/OR SERVICES PROVIDED OR INSTALL ANY PLUG-IN SOFTWARE (IF ANY) ASSOCIATED THEREWITH, AND EXIT NOW.

PLEASE REVIEW THIS AGREEMENT EVERY TIME YOU USE THE NGO OFFERING (AS DEFINED BELOW) AS THERE MAY BE CHANGES AND UPDATES FROM TIME TO TIME. DO NOT USE THIS WEBSITE OR ANY COMPANY SERVICE OR PRODUCT FOR A MEDICAL EMERGENCY. IF YOU ARE A PROVIDER AND NEED TO CONTACT A PAYOR IN AN EMERGENCY, DO SO DIRECTLY BY TELEPHONE OR OTHER MEANS.

- 1. Authorized User.** You affirm that you are: (i) authorized by Client, or an Affiliated Organization of such Client, to use and access the NextGen® Office solution and/or other Products and Services made available to you by Client, or an Affiliated Organization of such Client, ("NGO Offering") or (ii) are an authorized member of a community using the NGO Offering for purposes of health information exchange or care coordination, and (iii) based in the United States,. Unless specifically stated otherwise in the applicable User Material, you will be assigned a unique ID and password by Client.
- 2. User Account/Access.** To use the NGO Offering and any Clearinghouse Services or other services specifically made available to you by Client or the Affiliated Organization through Client, and for each such Service to operate properly, End User must supply Client or the Affiliated Organization with certain enrollment and registration data ("Registration Data"), all of which must be accurate and updated as appropriate. **Failure to properly maintain the Registration Data shall be a breach of the Agreement.** End

User shall ensure that it can receive e-mail from Company and Client or the Affiliated Organization, which may require End User to add Company to a “trusted” sender list to avoid delays or having Company’s correspondences blocked from End User’s inbox. End User acknowledges that Client or the applicable Affiliated Organization, not Company, is responsible for providing End User with the requisite IDs and passwords to access any of the Services. End User acknowledges that any termination of this Agreement or the Master Agreement or the relationship between End User and the Affiliated Organization and/or with Client, regardless of cause, will halt End Users’ access to and use of the Products and Services (including any data that may be accessible only through Product and Services) and Company shall not be liable for any damages to End User and/or any patient caused by the inaccessibility.

- 3. No License.** End User acknowledges that no license to any Company Technology is being provided to it but rather End User is solely being provided through the Client or Affiliated Organization through Client the use and access of Company Technology through the NGO Offering. However, End User may be required to install on its equipment Plug-In software to access and use the NGO Offering. Subject to End User’s compliance with the terms of this Agreement and solely as it relates to such Plug-In Software, Company has granted Client, during the Service Term, a non-transferable and non-exclusive license to (A) permit End User to access the NGO Offering through the applicable interfaces solely for their internal operations and (B) install, use and implement Plug-In Software solely for use by End User to access and use the NGO Offering as permitted under this Agreement. End User must take appropriate steps to prevent unauthorized access to its login IDs and passwords.
- 4. End User’s Responsibilities.** End User hereby grants Company all consents, authorization and approvals necessary to enable Company to perform its obligations under this Agreement as well as the Master Agreement. Company has no responsibility to identify, evaluate or assist End User in End User’s decision to participate in any Special Program. End User is solely responsible for determining whether to participate in such opportunities. Company is not required to take or refrain from taking any action relating to or arising from such Special Program, except as otherwise set forth in an Order Form, Statement of Work, or Schedule entered between Company and Client.
- 5. Professional Diagnosis and Treatment.** Products and Services made available through the NGO Offering do not make clinical, medical or other professional decisions, and are not substitutes for End User applying professional judgment and analysis. End User is solely responsible for (A) verifying the accuracy of all information and reports produced by or through the NGO Offering; (B) obtaining necessary consents for use and disclosure of patient information; (C) determining data necessary for decision-making by End User and its Personnel; and (D) making all diagnoses and treatments and determining compliance, and complying, with all Laws and licensing requirements for the operation of End User’s business. Company is not responsible for: (A) ensuring that any Providers (i) have active professional licenses and any other credentials required for the provision of services by them, (ii) are not suspended from providing services and/or (B) performing reasonable credentialing activities to ensure that Providers are authorized and suitable for providing services pursuant to applicable Law or otherwise.
- 6. Limitations on Use.** End User will not: (A) sell, transfer, lease, assign, or sublicense any NGO Offering; (B) use any NGO Offering as a service bureau, for outsourcing, for sharing access to any NGO Offering with any Third Party (except for authorized End Users), or for otherwise offering or making available the functionality of the NGO Offering to any Third Party; (C) permit any End User or other person to access or use NGO Offering 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 NGO Offering to process anything other than End User’s data; (E) bypass any privacy and/or security measures Company may use to prevent or restrict access to the NGO Offering (or other accounts, computer systems or networks connected to the Company’s Products or Services); (F) knowingly use the NGO Offering 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 or modify any intellectual property, confidentiality or proprietary notices of Company and/or any Third-Party which appear in any form on or in the NGO Offering or otherwise in any Company materials however reproduced.

- 7. No Use or Disclosure of Confidential Information.** End User will only use Confidential Information for the purposes of this Agreement and will not reproduce, disseminate, or disclose Confidential Information to any Third Party, except to its employees and authorized representatives (i.e., temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this section. End User will treat all Confidential Information with at least the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care. End User shall immediately notify Company of any breaches of security that result in or are likely to result in disclosure of Company's Confidential Information. However, End User may disclose Confidential Information: (A) as approved in a writing signed by Company (B) as required by law, (C) required to report adverse events, hazards and other unsafe conditions made to governmental agencies, health care accreditation organizations and/or patient safety organizations; (D) required to report cybersecurity threats and incidents made to government agencies; (E) required to report information blocking and other unlawful practices to a government agency; (F) required for communicating information about Company's failure to comply with a Condition of Certification or Other Program Requirements.
- 8. End User Data.** Notwithstanding anything in the Agreement to the contrary, End User will not submit any Personally Identifiable Information ("PII"), Individually Identifiable Information ("IIHI") and/or Protected Health Information ("PHI") directly to Company under this Agreement. All End User data is to be provided to the Affiliated Organization and/or Client for the Affiliated Organization and/or Client's use with the NGO Offering on behalf of End User, under the terms of the Master Agreement. End User acknowledges that any obligations under a Business Associate Agreement for any Services runs between Company and Client only and Company has no obligations thereunder directly to the Affiliated Organization and/or the End User.
- 9. Patient Data/De-Identified Data.** End User acknowledges that as among Company, Client, Affiliated Organization and End User, the Client and/or Affiliated Organization owns the Client Data residing within the NGO Offering and that Client and/or the Affiliated Organization control the terms and conditions associated with End User's rights and access to any data residing within the NGO Offering, including but not limited to any PHI and/or PII. Company may De-Identify Client Data before such data is incorporated into any Analytics Database. De-Identified Data will be aggregated with de-identified data from enough other customers in a manner reasonably designed to prevent Company or others from using the Analytics Databases to analyze the characteristics of End User's business. End-User grants Company a non-exclusive, worldwide, paid-in-full, perpetual and irrevocable right and license to: (A) extract, copy, aggregate, process and create derivative works of Client 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. Company will not individually identify End-User as a source of the De-Identified Data for the Analytics Databases, although Company may disclose that certain of its customers allow the use of Client Data for such purposes. End User acknowledges that any obligations under a Business Associate Agreement for any Services runs between Company and Client only and Company has no obligations thereunder directly to the Affiliated Organization and/or the End User.
- 10. Personal Data.** By using NGO Offering, You are agreeing to the terms in our Privacy Policy available [here](#). End User acknowledges that in the course of providing the Services, Company may collect Personal Data about the Client and End User. 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.
- 11. Compliance.** End User represents and warrants that:
- (A) it, 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 (a) listed on the General Services Administration's Excluded Parties List System or (b) suspended or excluded from participation in any Government Payer Programs; and

- (C) there are no pending or threatened governmental investigations against End User 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.

- 12. eLearning Materials Subscription/Training Materials.** For certain components of the NGO Offering, as part of certain required Company training thereon: (A) a subscription through Client for access by End User to Company's "eLearning" online training materials (the "**eLearning Materials**") may be included in the NGO Offering fee paid for by Client on behalf of End User. Company provides eLearning Materials only for online access by End User for the sole purpose of learning how to access and use the NGO Offering. End User may not make any copies or download any of the eLearning Materials unless such materials expressly state otherwise. End User must have its own subscription and use its own ID and password to access eLearning Materials; and/or (B) use of printed materials (as may be provided during onsite training sessions) and/or electronic materials (available for download for remote training sessions) may be required. Company owns all such materials and all such materials are for End User's own use. End User may not make any copies of these materials unless such materials expressly state otherwise.
- 13. Proprietary Rights.** Company and its licensors own the Company Technology that is used in the NGO Offering. Outside of the access and use rights provided to End User from Client or the Affiliated Organization, End User obtains no individual right to access and use the NGO Offering nor to any Company Technology used therein. End User has no right to use 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.
- 14. No Modifications.** End User may not modify, create derivative works of, adapt, translate, reverse engineer or otherwise decompile, disassemble or attempt to discover the source code or any other non-user facing aspects in any NGO Offering. **Breach of this section will be deemed a material breach of this Agreement and entitle Company to immediately terminate this Agreement.**
- 15. Feedback.** The purpose of this section is to avoid potential misunderstandings or disputes when Company's products and/or marketing strategies might seem like ideas submitted or feedback given by End User to Company. 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 End User; (2) there is no obligation for End User to give, or Company to review, Feedback; and (3) there is no obligation to keep any Feedback confidential.
- 16. Disclaimer of Warranty and Limitation of Liability.** THE NGO OFFERING, AS WELL AS ANY COMPANY TECHNOLOGY RESIDING THEREIN, IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY (WHETHER EXPRESS OR IMPLIED - INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT) OR ANY OTHER LIABILITY TO COMPANY, INCLUDING WITHOUT LIMITATION, FOR SEQUENCE, ACCURACY OR COMPLETENESS OF DATA OR THAT IT WILL MEET THE END USER'S REQUIREMENTS, EVEN IF COMPANY OR ANY OF ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. END USER ASSUMES THE ENTIRE RISK OF USING THE NGO OFFERING AND ANY COMPANY TECHNOLOGY THEREIN. IN NO EVENT, SHALL COMPANY BE LIABLE TO END USER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR CONTINGENT DAMAGES INCLUDING LOSS OF PROFITS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL APPLY WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR ANY OTHER THEORY.
- 17. Dispute Resolution and Arbitration.** Any dispute, claim, or controversy arising out of or relating to this Agreement, including the determination of the scope or applicability of this clause, will be determined exclusively in the State of Delaware by binding arbitration before a single arbitrator mutually agreed to by the parties. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. There shall be no right to arbitrate on a class action basis or on behalf of the general public or other group of persons similarly situated. Each party will be responsible for its own attorneys' fees and shall split the costs of arbitration. The arbitrator shall have authority to apportion costs

(other than attorneys' fees) at the end of any such proceeding. Judgment on any award may be entered in any court having jurisdiction. Nothing in this clause shall preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

18. Entire Agreement. This Agreement is a companion to the Master Agreement in place with Client. As between End User and Company this Agreement: (i) contains the entire understanding between the parties with respect to the subject matter set forth herein, and neither party is relying on any representations or warranties other than those found in the Agreement, (ii) supersedes all prior and contemporaneous negotiations, agreements, contracts, commitments and understandings, both verbal and written, between the parties, and (iii) does not operate as an acceptance of any conflicting terms or conditions and shall prevail over any conflicting provisions of any purchase order, request for proposal, request for information or any other instrument. End User understands that the headings used in the Agreement are solely for convenience of reference and are not intended to have any substantive significance in interpreting the Agreement. **Company may modify the terms of this Agreement at any time by posting new terms to its web site. End User may notify Company in writing within 30-days of such change that End User does not wish to accept the new terms. In the absence of such written non-acceptance notification within the 30-day period, End User confirms acceptance of the new terms by continuing to use the NGO Offerings and any Clearinghouse Services or other services specifically made available to you by Client.** If End User does not accept the new terms by notifying Company within the 30-day period, then End User may continue to use the NGO Offerings and any Clearinghouse Services or other services specifically made available to you by Client under End User's existing terms until the end of the then current month.

19. DEFINITIONS. Capitalized terms shall have the meaning set forth below:

- 19.1 "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 Client to Company prior to their use of any Products or Services) that has entered into a written agreement with Client that binds it and its End Users to comply with the applicable terms of this Master 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 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.
- 19.2 "Analytics Database"** means a data collection derived from De-Identified Data.
- 19.3 "Company Technology"** means the Products, Services and User Materials, 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.
- 19.4 "Confidential Information"** means a Discloser's non-public information (including copies, summaries, and extracts): (A) that is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) that is disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as "confidential", and delivered to Recipient within 15 days after disclosure. Confidential Information of Company includes the terms of the Master Agreement, this Agreement, Company Technology, customer and/or partner lists, and employee lists whether marked or identified as confidential. The Party disclosing Confidential Information is referred to as **"Discloser"** and the Party receiving Confidential Information is referred to as **"Recipient"**. Confidential Information does not include information that:
- is or becomes generally publicly available at or after the time of disclosure through no fault of either Recipient;
 - was known to Recipient free of any confidentiality obligations, before its disclosure by Discloser;
 - becomes known to Recipient free of any confidentiality obligations from a source other than Discloser; or
 - is independently developed by either Recipient without use of Confidential Information.

- 19.5 “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.
- 19.6 “De-Identified Data”** means personal data that has been De-Identified.
- 19.7 “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.
- 19.8 “Feedback”** means any comments, submissions or other feedback End User may provide to Company directly or through Client, at its sole discretion, concerning the functionality and performance of the Company Technology, including identification of potential errors and improvements.
- 19.9 “Government Payer Programs”** means, collectively, any federal health care or insurance program or any form of state Medicaid or other health care or insurance program.
- 19.10 “Law”** means those applicable federal and state statutes, regulations, codes, ordinances, agency directives, binding court orders and other binding government requirements.
- 19.11 “Personnel”** means, with respect to each Party, such Party’s officers, employees and contractors.
- 19.12 “Plug-in Software”** means certain, if any, locally installed software necessary for End User to access and use the NGO Offering. “Plug-in Software” is Company Software.
- 19.13 “Products”** means one or more of the following procured by Client from Company for End User’s use and access as set out in an Order Form: Company Software, Third Party Software, Content, Company Hardware, and Third-Party Hardware.
- 19.14 “Service(s)”** means each service procured by Client from Company under one or more Order Forms, including Implementation Services, Software Maintenance Services, Hardware Maintenance Services, Consulting Services, eLearning services, Hosting Services and SaaS as such terms are defined in the applicable Schedule.
- 19.15 “Software”** means Company Software and Third-Party Software.
- 19.16 “Special Program”** means any governmental or non-governmental program, project, grant, incentive-based opportunity, plug-in, extension use case or other program relating to End User’s or Client’s business.
- 19.17 “User Materials”** means generally available documentation provided by Company relating to the general released versions of Products and Services, including user guides, technical manuals, release notes, installation instructions, information pertaining to maintenance services and online help files regarding use of Software, and all updates thereto.