



## ***EHR Assist Interface – End User License Agreement***

Licensor: *Gerbino Computer Systems, Inc., DBA “Qventive”*

In addition to the terms and conditions under your (you shall be referred to herein as “Licensee”) Master Agreement or Software License and Services Agreement (“Master Agreement”) with NextGen Healthcare, these additional terms are applicable for the use of any “Qventive” offerings. To the extent there is a conflict between these terms and the terms in the Master Agreement, these terms shall prevail solely as it relates to the applicable “Qventive” offering.

### **1. DEFINITIONS.**

(a) "Software" means the computer programs and documentation related to the EHR Assist Interface license(s) that the customer has purchased.

(b) "Install" means placing the Software on a computer's hard disk, CD-ROM or other secondary storage device.

(c) "Use" means (i) executing or loading the Software into computer RAM or other primary memory, and (ii) copying the Software for archival or emergency restart purposes.

2. **GRANT OF RIGHTS.** Licensor hereby grants Licensee a non-exclusive license to install and use the Software on one single user computer in its possession. The licenses granted to customer under this Agreement are non-transferable and revocable to the extent provided in the Agreement; and extend to Customer and its authorized users to access and use in the United States solely for Customer’s internal business purposes.

3. **LICENSE TERM.** This License is effective with deployment of the Qventive offering to Licensee and the license granted to the Software remains in force until Licensee stops using the Software or until Licensor terminates this License because of Licensee's failure to comply with any of its terms and conditions.

4. **TERMINATION.** Licensor shall have the right to immediately terminate this License if Licensee fails to perform any obligation required of Licensee under this License or if Licensee becomes bankrupt or insolvent.

5. **RETURN OR DESTRUCTION OF SOFTWARE UPON TERMINATION.** Upon termination of this License, Licensee shall return to Licensor or destroy the original and all copies of the Software including partial copies and modifications. Licensor shall have a reasonable opportunity to conduct an inspection of Licensee's place of business to assure compliance with this provision.



6. **TITLE TO SOFTWARE.** Licensor retains title to, and ownership of the Software and all enhancements, modifications and updates made to the Software.
7. **MODIFICATIONS AND ENHANCEMENTS.** Licensee will make no efforts to reverse engineer the Software or make any modifications or enhancements without Licensor's express written consent.
8. **WARRANTY LIMITATIONS.** The Software is provided "as is." Licensor disclaims all warranties, including but not limited to, all express or implied warranties of merchantability and fitness for a particular purpose.
9. **REMEDY LIMITATIONS.** Licensor's entire liability and Licensor's sole and exclusive remedy for breach of the foregoing warranty shall be Licensor's option to either:
  - (a) return to Licensee the license fee for the period in which the Software did not perform according to this warranty, or
  - (b) repair the defects or replace the Software.
10. **DAMAGE LIMITATIONS.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING LOSS OF PROFITS. THE LICENSOR'S LIABILITY TO LICENSEE FOR ANY OTHER DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT WHETHER IN CONTRACT, TORT, OR OTHERWISE WILL BE LIMITED TO THE AMOUNT RECEIVED BY LICENSOR FROM LICENSEE AS COMPENSATION FOR THE SOFTWARE DURING THE 3 MONTH PERIOD IMMEDIATELY PRIOR TO THE TIME SUCH CLAIM AROSE.
11. **CONFIDENTIALITY.** Licensee will treat the Software as a trade secret and proprietary know-how belonging to Licensor that is being made available to Licensee in confidence. Licensee agrees to treat the Software with at least the same care as it treats its own confidential or proprietary information.
12. **DISPUTE RESOLUTION.**
  - (a) Good Faith Negotiation: In the event of any controversy or claim arising out of or relating to this Agreement, the parties agree to first attempt to resolve the dispute through good faith negotiations. Either party may initiate such negotiations by providing written notice to the other party outlining the dispute. The parties agree to meet (either in person, by phone, or by video conference) within 10 business days of receiving such notice to attempt to resolve the dispute.



- (b) Mediation: If the parties are unable to resolve the dispute through good faith negotiations within 30 days of the initial notice, they agree to submit the dispute to non-binding mediation before a mutually agreed-upon mediator. If the parties cannot agree on a mediator within 15 days of either party's request for mediation, a mediator shall be appointed by the American Arbitration Association. Each party shall bear its own costs in connection with mediation, except the parties shall equally share the fees and expenses of the mediator.
- (c) Binding Arbitration: If the dispute is not resolved through mediation within 30 days of the mediation request, the parties agree to submit the dispute to binding arbitration under the rules of the American Arbitration Association. The arbitration shall take place in Bergen County, NJ. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.
- (d) Exceptions: This Dispute Resolution process does not prevent either party from seeking immediate injunctive relief from a court of competent jurisdiction if such action is necessary to protect confidential information, intellectual property, or proprietary rights.

13. **ATTORNEY FEES.** If any legal action is necessary to enforce this License, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which it may be entitled.

#### 14. **GENERAL PROVISIONS.**

- (a) Complete Agreement: This License Agreement together with all schedules referred to in this Agreement, all of which are incorporated herein by reference, constitutes the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements, representations, and documentation relating to the subject matter of this Agreement.
- (b) Modifications: Modifications and amendments to this Agreement, including any exhibit, schedule, or attachment hereto, shall be enforceable only if in writing and signed by authorized representatives of both parties.
- (c) Applicable law: This License will be governed by the laws of the State of New Jersey.
- (d) Notices: All notices and other communications given in connection with this License shall be in writing and shall be deemed given as follows:
  - 1. When delivered personally to the recipient's address as appearing in the introductory paragraph to this License; or



2. Three days after being deposited in the United States mail, postage prepaid to the recipient's address as appearing in the introductory paragraph to this License; or
  3. When sent by fax or telex to the last fax or telex number of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail or the recipient delivers a written confirmation of receipt.
  4. Any party may change its address appearing in the introductory paragraph to this License by given notice of the change in accordance with this paragraph.
- (e) No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the parties.
15. **ASSIGNMENT.** The rights conferred by this License shall not be assignable by the Licensee without Licensor's prior written consent. The licensor may impose a reasonable license fee on any such assignment.