



## **PROFESSIONAL SERVICES AGREEMENT “PSA”**

Medicalistics, LLC, a Texas Limited Liability Company (“Medicalistics” and/or “Company”) and <INSERT CLIENT INFO>, (“Client” or “<INSERT CLIENT INFO>”) (each a “Party” or collectively, the “Parties”) agree that the terms and conditions set forth in this Professional Services Agreement (this “Agreement”), the Exhibits to this Agreement, and the Service Schedule(s) (each a “Service Schedule” “Schedule” and collectively, the “Service Schedules”) executed from time to time hereunder will apply to any order accepted by Medicalistics for the sale of Services to, and the purchase of Services by, the Client.

### **TERMS AND CONDITIONS**

#### **1. TERM**

This Agreement provides the terms and conditions for the purchase of software, software maintenance, software support, and related additional professional services by the Client from Medicalistics, as described in this Agreement and its attachments. This Agreement will be effective after execution of this Agreement by Medicalistics and upon approval of the <INSERT CLIENT INFO> and will continue in full force and effect for successive one-year periods. This Agreement will automatically renew each year unless otherwise terminated under the provisions of this Agreement. The word “Agreement” as used herein shall be defined as this Professional Services Agreement, together with any executed Services Schedule(s) (“Schedule”) or other incorporated exhibits, attachments or addenda.

#### **2. LICENSED SOFTWARE PURCHASE**

2.1 As part of this Agreement, the Client will be purchasing the licensed software programs, applications, and/or modules listed on **Exhibit “A”** and **“Exhibit “B”**, attached to this Agreement and made a part of this Agreement for all purposes (the “Medicalistics Software” and/or “NextGen Software”) pursuant to a software license granted to the Client by and/or through Medicalistics, LLC, as its’s own software or as an authorized reseller of certain Third Party Software (the “\_\_\_\_\_ License”),

2.2 Upon the Effective Date of this Agreement, any pre-existing License (if such exists) will be replaced and superseded for all intents and purposes by the Software License granted and described in the Medicalistics Master Software License Agreement and any applicable NextGen EULA, attached to this Agreement as **Exhibit “B”** and made a part of this Agreement for all purposes.

2.3 The Client is procuring the certain Medicalistics and NextGen Software licenses listed in **Exhibit “A”**.

2.4 The parties acknowledge and agree that the Client intends to license from Medicalistics software that the Client and Medicalistics determines is needed to implement a new software systems environment to address clients needs related to Electronic Health Record (EHR) and Billing Management and all necessary interface applications. The Client understands that such software has been developed and is exclusively owned by Medicalistics, and that all such licenses will be subject to the terms and conditions of the license agreements contained within **Exhibit “B”**. Such future procurements will be effected through modifications to this Agreement, in accordance with the modification procedures set out below.

#### **3. SCHEDULES**

When the Client desires to purchase Services from Medicalistics, the Client will submit a completed Services Schedule. Each Services Schedule shall refer to and shall be incorporated by reference to this Agreement. Once

---

Medicalistics accepts a Schedule in writing, subject to the terms and conditions of this Agreement, Medicalistics agrees to provide and perform the Services described in each Services Schedule for the Client as set forth therein.

#### 4. SERVICES

4.1 Medicalistics will perform the specific software implementation, support, maintenance and related professional services listed below (the "Services"):

(i) integration, implementation, consulting, and support services as needed to ensure the installed Software functions in accordance with the Performance Criteria;

(ii) any necessary Third Party (primarily NextGen Software) implementation and maintenance services described in this Agreement and in its exhibits, including the Medicalistics LLC Software Maintenance Services Agreement attached to this Agreement as **Exhibit "C"** and made a part of this Agreement for all purposes;

(iii) any additional professional services required by the Client and offered by Medicalistics that are listed in **Schedule "D"**, attached to and made a part of this Agreement for all purposes, which services will be invoiced in accordance with the hourly rates set forth in **Schedule "D"**;

(iv) any services not described in the foregoing paragraphs that are described in each Services Schedule executed from time to time under this Agreement.

4.2 To the extent practicable, and in order to facilitate Medicalistics' performance of the Services, the Client will endeavor to provide Medicalistics with access to a telephones and telecopier, and reasonable working space, including, as applicable, heat, light, electric current and outlets for the use by Medicalistics' personnel. Medicalistics will be provided with access to the Client's computer systems on which the latest current version of the NextGen Software resides. The Client will provide to Medicalistics needed security access (RS Tokens, security software, other security measures) as needed.

4.3 Implied Services. If any services, functions, or responsibilities not specifically described in this Agreement are required for the proper performance of the Services and provision of products under this Agreement, they will be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement. Except as otherwise expressly specified as a responsibility of <INSERT CLIENT INFO> in this Agreement, Medicalistics shall be responsible for providing the facilities, personnel and other resources as necessary to provide the Services under this Agreement.

4.4 Subscription Services.

4.5 Statements of Work; Change Orders for Services. Company will perform Professional Services according to the Ordering Document as the parties may agree to in writing from time to time. Either party may propose a change order to add to, reduce, or change the Professional Services ordered. Each change order shall specify the change(s) to the Professional Services, the time to perform the Professional Services, and the fees owed to Company, due to the change. Once executed by both parties, a change order shall become a part of the Ordering Documents.

4.6 Cooperation with Company. Client shall provide Company with good-faith cooperation and access to such information, facilities, personnel and equipment as Company may reasonably require in order to provide the Professional Services. Client acknowledges that Company's performance is dependent upon the timely and effective completion of Client's responsibilities hereunder and Client's timely decisions and approvals in connection with the Professional Services. Company shall be entitled to rely on all such decisions and approvals. The scope and definition of Services will be as described in each Services Schedule executed from time to time under this Agreement. The Client will provide HealthWorks with access to its telephones with local and long distance access, telecopier, adequate working space including, as applicable, heat, light, electric current and outlets for the use by HealthWorks' personnel. HealthWorks will be provided with access to client's computer systems. Client will provide to HealthWorks needed security access (RS Tokens, security software, other security measures) as needed.

---

## 5. PAYMENT AND FINANCIAL TERMS

5.1 Client Address to be Invoiced: Payments will be made by check or warrant by <INSERT CLIENT INFO> upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:

<INSERT CLIENT INFO>  
{Insert Client's Address}

5.2 All payments shall be made by the Client to Medicalistics at the address indicated on Medicalistics' invoice or at such other address as may be designated in writing to the Client by Medicalistics.

5.3 Medicalistics shall provide <INSERT CLIENT INFO> with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Agreement funds are payable.

5.4 As a minimum, invoices must include: (i) name, address, and telephone number of Medicalistics and similar information in the event payment is to be made to a different address; (ii) <INSERT CLIENT INFO> Contract or Purchase Order number; (iii) identification of products or services as outlined in this Agreement; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Agreement. <INSERT CLIENT INFO> will not pay invoices that are in excess of the amount authorized by the Purchase Order.

5.5 Payment will be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by <INSERT CLIENT INFO> prior to execution of this Agreement.

5.6 Accrual and payment of interest on overdue payments shall be governed by specific state statute.

5.7 <INSERT CLIENT INFO> is a political subdivision organized under the laws of the State of \_\_\_\_\_ and is exempt from sales and use taxes under \_\_\_\_\_, as amended. An exemption certificate will be provided to Medicalistics upon written request. Medicalistics is responsible for all taxable matters associated with providing products and services under this Agreement, including all compensation paid to Medicalistics for such products and services.

## 6. COMPENSATION

6.1 As compensation for Medicalistics' provision of the Services under this Agreement, the Client will pay Medicalistics the sum indicated in **Exhibit "C"**. Medicalistics shall submit to the <INSERT CLIENT INFO> Auditor an invoice detailing the Services performed.

6.2 Medicalistics is an independent contractor and <INSERT CLIENT INFO> shall not pay Medicalistics any customary <INSERT CLIENT INFO> employment benefits, including, but not limited to taxes, worker's compensation, health or retirement benefits, sick leave or vacation and holiday.

6.3 Medicalistics is responsible for reporting all federal, state, and city tax liabilities, social security obligations, and any other taxable matters associated with the Services and compensation rendered under this Agreement and shall be solely obligated to pay any and all taxes related to income paid to Medicalistics.

## 7. WARRANTIES

---

7.1 Performance Criteria. Medicalistics warrants and represents that the Medicalistics and NextGen Software will perform substantially in accordance with the performance capabilities, functionality requirements, and technical specifications (the "Performance Criteria") set forth: (i) in **Exhibit "E"**, attached to this Agreement and made a part of this Agreement for all purposes, (ii) elsewhere in this Agreement, and (iii) in any Services Schedules executed from time to time. Medicalistics will perform the Services under this Agreement in such a manner to ensure that the Software continues to meet or exceed these Performance Criteria.

7.2 Software Warranty. Company warrants that the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE will operate in all material respects in conformity with the functional specifications described in the Documentation. "**Documentation**" means the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE User instructions, release notes and on-line help files in the form generally made available by Company to its customers, as updated from time to time by Company. If the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE does not perform as warranted and there is a material failure of the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE to conform to its functional specifications described in the Documentation that is reported by the Client to, and replicable by, Company ("**Errors**"), Company shall use commercially reasonable efforts to correct Errors. As Client's exclusive remedy for any claim under this warranty, Client shall promptly notify Company in writing of its claim. Provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall, within thirty (30) days of its receipt of Client's written notice, (i) correct such Error; (ii) provide Client with a plan reasonably acceptable to Client for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Company, then Company or Client may terminate the affected Subscription Services, and Client will be entitled to a refund of the pre-paid portion of the fees paid for the affected Subscription Services. The preceding warranty cure shall constitute Company's entire liability and Client's exclusive remedy for cure of the warranty set forth herein in this Section 7.2. If Client elects not to terminate the Subscription Services, Client waives all rights for the applicable warranty cure set forth herein. Company is not responsible for any claimed breach of any warranty set forth in this section caused by: (i) modifications made to the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE by anyone other than Company; (ii) Company's adherence to Client's specifications or instructions; (iii) Errors caused by or related to Internet connections; (iv) Client deviating from the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE operating procedures described in the Documentation; (v) discrepancies that do not significantly impair or affect the operation of the Subscription Service; or (vi) any systems or programs not supplied by Company.

7.3 Services Warranty. The Services to be furnished by Medicalistics hereunder are professional services. Medicalistics warrants that the services provided under this Agreement shall be performed in a good and workmanlike manner and in accordance with the highest standards in the industry for an experienced and competent company performing the same or similar services.

7.4 Professional Services. Company warrants that the Professional Services will be performed in a workmanlike manner. As Client's exclusive remedy for any claim under this warranty, Client shall notify Company in writing of its claim within thirty (30) days of Company's completion of the applicable services and, provided that such claim is reasonably determined by Company to be Company's responsibility, Company shall re-perform the applicable service. Company's entire liability and Client's exclusive remedy for any breach of the warranty set forth in this section shall be the re-performance of the applicable service.

7.5 General Warranty Terms. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY SPECIFICALLY DISCLAIMED. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, ALL SUBSCRIPTION SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED ON AN 'AS IS AS AVAILABLE' BASIS. COMPANY, ITS LICENSORS, DATA CENTER AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE, DATABASE, CONTENT, DELIVERABLES OR PROFESSIONAL

---

SERVICES ARE ERROR- FREE, ACCURATE OR RELIABLE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED OR WILL COMPLY WITH ANY LAW, RULE OR REGULATION, (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY COMPANY, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE CONTENT IS NOT DESIGNED OR INTENDED TO MEET ALL OF ITS OR ITS USERS' TRAINING AND EDUCATIONAL NEEDS OR REQUIREMENTS, INCLUDING TRAINING AND EDUCATION THAT IS REQUIRED UNDER APPLICABLE LAWS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES PROVIDED HEREUNDER TO ACHIEVE ITS INTENDED RESULTS. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF ALL MODIFIED CONTENT AND PROPRIETARY CONTENT AND SHALL BE SOLELY LIABLE FOR ALL USE OF MODIFIED CONTENT AND PROPRIETARY CONTENT BY ITS USERS.

CUSTOMER ACKNOWLEDGES THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND ITS DATA. ACCORDINGLY, COMPANY CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. CUSTOMER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR ANY USERS' COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. CUSTOMER FURTHER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR RESULTS OBTAINED FROM THE USE OF THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SUBSCRIPTION SERVICES ARE NOT INTENDED TO PROVIDE MEDICAL ADVICE, OPINIONS, DIAGNOSIS, OR A SUGGESTED COURSE OF TREATMENT. CUSTOMER FURTHER AGREES THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT'S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY DIAGNOSTIC, CLINICAL OR MEDICAL INFORMATION RESIDES SOLELY WITH THE HEALTHCARE PROVIDER. CUSTOMER ACCEPTS ALL LIABILITY FOR SUCH DIAGNOSIS OR TREATMENT. COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S OR ANY OF USERS' USE OF THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, IN COMBINATION WITH ANY THIRD-PARTY PRODUCTS, SERVICES, SOFTWARE OR WEB SITES THAT ARE ACCESSED VIA LINKS FROM WITHIN THE SUBSCRIPTION SERVICES.

NO CLAIM ARISING OUT OF THE AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN THE SHORTER OF ONE YEAR OR THE PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS OCCURRED. THIS SECTION 7 SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY. Any alteration to the Services delivered hereunder by the Client or any third party without the written consent of Medicalistics shall void any warranty provided hereunder.

7.6 Personnel. Medicalistics warrants and represents that its personnel and subcontractors have the knowledge, ability, expertise and experience to furnish and maintain the NextGen Software in accordance with this Agreement and its exhibits, attachments and appendices. Any replacement personnel and any subcontractor(s) shall have equal or greater qualifications when compared to the original person or subcontractor.

7.7 Conflicting Agreements. Medicalistics warrants that it is not a party to any other existing agreement that would prevent it from entering into this Agreement or which would adversely affect this Agreement.

## 8. DATA RIGHTS AND OWNERSHIP OF SERVICES AND CONTENT

---

8.1 General. Software developed by Medicalistics for Client under this Agreement or under any Services Schedule shall be owned by Medicalistics and the Parties will execute the appropriate license or other authorized use agreement so that the Client may use such developed software for Client's own internal use. Any modifications, enhancements derivation, or revisions to any software developed for Client under this Agreement and owned by Medicalistics shall remain the sole and exclusive property of Medicalistics, and Medicalistics retains all right, title and interest in such enhancements, modifications, derivation, and revisions, unless otherwise agreed to in writing by Medicalistics and the Client. All rights not expressly granted in this Agreement are reserved by Company and its licensors.

8.2 Grant of Use. Subject to the terms of the Agreement, Company grants to Client the right to access and use the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE and, if purchased, all Content described in the Ordering Document, solely for its internal business purposes and solely in connection with the personal training and education of Users. Each User shall use Content for his/her personal education and training purposes only.

8.3 Authorized Users. Client shall provide Company with the required demographic data for all Users in the specified electronic format provided by Company to complete the initial registration process. Periodic additions of Users, within the Subscription Metrics, may be done manually or using the specified electronic format to bulk upload Users into the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE. Client agrees not to activate and deactivate Users repeatedly as a method of keeping the number of Users within range of the Subscription Metrics stated in the Ordering Document. Company will routinely monitor the system for patterns of activation/deactivation that are outside the range of what would be expected with normal use.

8.4 Acceptable Use. Client and all Users shall use the Subscription Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Client agrees and shall ensure that Users agree not to post or upload any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (iii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iv) otherwise violates any applicable law. Client further agrees and shall ensure that Users agree not to interfere or disrupt networks connected to the Subscription Services, not to interfere with another entity's use of similar services and to comply with all regulations, policies and procedures of networks connected to the Subscription Services. Company may remove any violating content posted on the Subscription Services or transmitted through the Subscription Services without notice. Company may suspend or terminate any User's access to the Subscription Services in the event that Company reasonably determines that such User has violated the terms and conditions of this Agreement.

8.5 Subscription Services. Company and its licensors shall retain sole and exclusive ownership of, and all rights, title, and interest in, Subscription Services and the Site, including without limitation (a) Intellectual Property embodied or associated therein, and (b) all derivative works. Company shall retain all rights, title and interest in and to any and all Intellectual Property used or in any manner employed by Company in the provision of Professional Services.

8.6 Modified Content; Proprietary Content. Certain Users designated by Client may have authority to modify portions of the Content to meet certain of Client's needs or requirements ("*Modified Content*") or to create unique content to meet certain of Client's needs or requirements ("*Proprietary Content*"). In the case of Modified Content, Client shall own the specific modifications made by authorized Users (but not the underlying Content). In the case of Proprietary Content, Client shall own the Proprietary Content created by authorized Users.

8.7 Company's Allowed Usage of De-Identified Data. Company retains the rights to use "De-Identified Data" in accordance with HIPPA Compliance and allowed usage.

8.8 Enforcement. Client shall (i) ensure that all Users of Subscription Services comply with the terms and

---

conditions of this Agreement, (ii) promptly notify Company of any actual or suspected violation thereof and (iii) cooperate with Company with respect to investigation and enforcement of the Agreement. Client shall be solely responsible for all acts and omissions of its Users in connection with their access and use of the Subscription Services.

8.9 Restrictions. Client shall not itself, or through any affiliate, employee, contractor, agent or other third party (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Subscription Services, the Site or access thereto; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Site or the Content to any User other than those who have authorization to access; (iv) write or develop any derivative works based upon the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE; or modify, adapt, translate or otherwise make any changes to the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE or any part thereof; (vi) use the Subscription Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Company's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Subscription Services; or (viii) remove from any Content or other materials owned by Company identification, patent, copyright, trademark or other notices. Proprietary notices, including without limitation patents, copyrights and trademarks notices, as well as disclaimer notices, must be reproduced on any such authorized copies

## 9. CONFIDENTIAL INFORMATION

9.1 The Parties acknowledge and agree that each Party may provide to the other certain information that is considered confidential, proprietary and/or otherwise not subject to disclosure to third parties (the "Confidential Information"). The Parties shall clearly designate "Confidential" all such Confidential Information. "Confidential Information" is defined within each Software License and as part of this Agreement per Section 9.2 below. Each Party agrees to hold such Confidential Information in strict confidence using the same standard of care as it uses to protect its own Confidential Information but not less than a reasonable standard of care, and shall not disclose such Confidential Information for any purpose except as necessary to fulfill its obligations under this Agreement, or except as required by law. Each Party shall further limit access to such Confidential information to such of its employees, agents and contractors who need such access to fulfill its obligations under this Agreement, and shall require its employees, agents and contractors who have access to such Confidential Information to abide by the confidentiality provisions of this Agreement.

9.2. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other party. "*Confidential Information*" means any and all information disclosed by either party to the other which is marked "confidential" or "proprietary" or which should be reasonably understood by each party to be confidential or proprietary, including, but not limited to, the terms and conditions (but not the existence) of this Agreement, all trade secrets, Intellectual Property as well as results of testing and benchmarking of the Subscription Services. Each party will protect the other party's Confidential Information from unauthorized dissemination and use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Company may use, for purposes outside of this Agreement, anonymous, de-identified data; however, Company agrees not to use or disclose this information to the extent prohibited by applicable law. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was lawfully in the receiving party's possession before receipt from the disclosing party without a duty of confidentiality; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other. A party ("Disclosing Party") may disclose Confidential Information of the other party if it is compelled by law to do so, provided the Disclosing Party gives the other party prior notice of such compelled disclosure (to the extent legally

---

permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

9.3 Applicable State and Federal Public Information Act. Notwithstanding the foregoing, disclosure of any information obtained by either Party or any of its officials, employees, agents or representatives in connection with this Agreement shall be subject to the provisions of the applicable State Public Information Act and all legal authorities relating thereto, including but not limited to opinions, decisions and letter rulings issued by the State Attorney General's Office. The parties acknowledge that, under the terms of this Agreement, Company does not collect or possess Protected Health Information, as defined in 45 C.F.R. § 160.103, and that Company shall not be required to execute a Business Associate agreement or similar agreement. Client warrants and represents that it shall not upload in any of the Subscription Services or otherwise provide Company or its suppliers access to any such Protected Health Information.

## 10. LIMITATION OF DAMAGES AND REMEDIES

10.1 MEDICALISTICS ENTIRE LIABILITY AND THE CLIENT'S EXCLUSIVE REMEDIES AGAINST MEDICALISTICS FOR DAMAGES FROM ANY CLAIM OR CONTROVERSY WHATSOEVER REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE IN ACCORDANCE WITH THE FOLLOWING:

(i) FOR PERSONAL INJURY (INCLUDING DEATH) TO THE EXTENT CAUSED BY COMPANY, THE CLIENT SHALL BE ENTITLED TO RECOVER FROM COMPANY ACTUAL, DIRECT DAMAGES;

(ii) FOR CLAIMS OTHER THAN THOSE SET FORTH IN (i) ABOVE, COMPANY LIABILITY SHALL BE LIMITED TO ACTUAL, DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THREE TIMES THE PRICE PAID TO COMPANY FOR THE AFFECTED SERVICES;

(iii) IN NO EVENT SHALL COMPANY, INCLUDING ITS OFFICERS, DIRECTORS AND EMPLOYEES, BE LIABLE FOR LOSS OF PROFITS, LOSS OF USE OF EQUIPMENT OR SYSTEMS, OR ANY OTHER INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGE, WHETHER OR NOT COMPANY HAS BEEN ADVISED TO THE POSSIBILITY OF SUCH DAMAGES.

## 11. TRAVEL

11.1 Only those travel expenses of Medicalistics personnel that are approved in advance and in writing by <INSERT CLIENT INFO> will be reimbursed by the Client. Reimbursement will be made in accordance with the Client's "Travel Policy" provisions of the <INSERT CLIENT INFO> Budget Rules, a copy of which will be provided to Medicalistics upon request.

## 12. INDEMNIFICATION

12.1 Intellectual Property Indemnification. Medicalistics represents and warrants that (i) all applicable copyrights, patents, trade secrets, licenses and other proprietary and intellectual property rights that may exist on materials used in this Agreement have been adhered to and (ii) the Client will not be liable for any infringement of those rights and any rights granted to <INSERT CLIENT INFO> will apply for the duration of this Agreement. Medicalistics SHALL INDEMNIFY <INSERT CLIENT INFO>, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION AND LIABILITY OF EVERY KIND INCLUDING EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY FEES FOR DAMAGES TO ANY PERSON OR PROPERTY ARISING IN CONNECTION WITH ANY ALLEGED OR ACTUAL INFRINGEMENT OF EXISTING COPYRIGHTS, PATENTS, TRADE SECRETS, LICENSES AND OTHER PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS APPLICABLE TO MATERIALS USED IN THIS



---

AGREEMENT. IN THE EVENT THAT AN INFRINGEMENT SUIT OR PROCEEDING ARISES, MEDICALISTICS SHALL, AT ITS SOLE COST AND EXPENSE, SECURE <INSERT CLIENT INFO>'S RIGHT TO CONTINUE USING THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT OR REPLACE OR MODIFY ALL OR PART OF THE PRODUCT OR SERVICE TO RENDER IT NONINFRINGING.

12.2 General Indemnification. MEDICALISTICS SHALL INDEMNIFY <INSERT CLIENT INFO>, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND WHETHER MERITORIOUS OR NOT AND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES, ARISING IN CONNECTION WITH THE SERVICES PROVIDED BY MEDICALISTICS UNDER THIS AGREEMENT. IT IS THE EXPRESSED INTENTION OF THE PARTIES TO THIS AGREEMENT, BOTH MEDICALISTICS AND <INSERT CLIENT INFO>, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY MEDICALISTICS TO INDEMNIFY AND PROTECT <INSERT CLIENT INFO> FROM THE CONSEQUENCES OF MEDICALISTICS' ACTIONS. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE, FOR LOSS OF PROFITS, REVENUE, OR LOSS OR INACCURACY OF DATA, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 13. TERMINATION BY THE PARTIES

13.1 Either party may terminate the Agreement including all Ordering Documents executed thereunder immediately upon written notice (i) in the event that the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within thirty (30) days of being notified in writing of such breach; or (ii) in the event of institution of a bankruptcy, receivership, insolvency, reorganization, or other similar proceedings if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code.

13.2 Termination for Convenience. The Client may terminate this Contract, in whole or in part, without showing cause upon prior written notification to the Company specifying the extent and the effective date of the termination. The Client will pay all reasonable costs associated with this Contract that the Company has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Company may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. In addition, the parties will perform a "True Up" if terminated for convenience. This "True Up" will include reimbursing Company for any longer full term discounts that were provided off the regular rates of services that would not have been provided if Client had not agreed to the complete term. Finally, all expenses incurred by Company shall be reimbursed by Client.

13.3 Termination for Default. If the Company does not fulfill obligations under this Contract or violates any provision of this Contract, the Department may terminate the Contract by giving the Company Ninety (90 ) days written notice of termination. Termination under this paragraph does not relieve the Company from liability for any damages caused to the Client. As to Client's Default, without prejudice to any other rights or remedies available at law or in equity, Company may withhold or suspend, in whole or in part, performance hereunder and/or terminate this Agreement if (I) The Client fails to comply with any provisions of this Agreement, including payment obligations, within fifteen (15) days of the designated date, or (ii) a bankruptcy, insolvency, receivership, liquidation, dissolution or similar proceeding is instituted by or against The Client which is not discharged or

---

dismissed within sixty (60) days of its occurrence. All such rights and remedies shall be cumulative and may be enforced concurrently or individually from time to time. All license grants shall be forfeited upon non-payment.

13.4 Effect of Termination. Following termination of this Agreement (for whatever reason provided for under the Agreement), Client shall certify that Client has returned or destroyed all copies of the Content, Confidential Information and Intellectual Property of Company and all materials or documents relating to the Subscription Services in any format and residing on any media. Client acknowledges that its rights to use the same are relinquished. Company has no obligation to retain Client data after the three months following the expiration or termination of Subscription Services; however, Company shall provide the Client data collected on the MEDICALISTICS AND THIRD PARTY LICENSED SOFTWARE to Client, upon reasonable request and during Company's normal business hours, for no additional fee during these three months, after which additional fees may be incurred. Upon termination for any reason of a Professional Services engagement, all work product, including all drafts and works in progress of deliverables shall be delivered to Client. Upon its receipt of a notice of termination, Company shall cease and shall cause any agent or subcontractor to cease all work under the applicable Ordering Documents and minimize any additional costs or reimbursable expenses unless otherwise directed in writing by Client. Except as may be expressly set forth in the applicable Ordering Documents, Client shall pay Company's fees for services performed to the date of termination on a T&M basis together with any expenses reasonably incurred in connection therewith.

#### 14. SECURITY REQUIREMENTS

14.1 The Software and any Services or other products provided by Medicalistics under this Agreement must be secure, comply with all <INSERT CLIENT INFO> Information Security Requirements, and provide appropriate levels of confidentiality, integrity and availability of information in the system. The Services and products must also meet or exceed all federal, state, and local government laws and regulations governing the creation, use, storage, access, accessibility, maintenance, processing and transmission of information assets. This paragraph applies to Medicalistics' activities in accessing the <INSERT CLIENT INFO>'s system to provide the Services and products under this Agreement.

#### 15. MISCELLANEOUS

15.1 Notice. Any and all notices required under this Agreement shall be effective upon "receipt" and shall be in writing and personally delivered or in lieu of such personal service deposited in the U.S. Main, Certified Mail, return receipt requested, or to the following addresses:

<INSERT CLIENT INFO>: \_\_\_\_\_

Medicalistics: \_\_\_\_\_

The parties may change their respective addresses for notice by delivery of a notice complying with the requirements of this section.

15.2 Venue. The obligations and undertakings of the Parties to this Agreement are performable in Dallas County, Texas, and this Agreement is and will be governed by and construed in accordance with the laws of the State of Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Dallas County, Texas.

15.3 Assignment. The Parties may not assign any of the rights or obligations under this Agreement without the prior written consent of the other Party. NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF <INSERT CLIENT INFO> HAS THE AUTHORITY TO APPROVE ANY ASSIGNMENT UNDER THIS AGREEMENT UNLESS THAT SPECIFIC AUTHORITY IS EXPRESSLY GRANTED BY THE <INSERT CLIENT INFO> COMMISSIONERS COURT. The terms, provisions, covenants, obligations and conditions of this

---

Agreement are binding upon and inure to the benefit of the successors in interest and the assigns of the Parties hereto if the assignment or transfer is made in compliance with the provisions of this Agreement.

15.4 Force Majeure. Neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this subsection, such as without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

15.5 Entire Agreement. This Agreement, including Ordering Documents and other attachments incorporated by reference, constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, proposals, conditions, representations, warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. No modification to the Agreement will be binding unless in writing and includes a signature by an authorized representative of each party. All pre-printed or standard terms of any of Client's purchase order or other business processing document shall have no effect.

15.6 Definitions and Usage. In this Agreement, the term "day" means a calendar day. Words of any gender used in this Agreement will be held and construed to include any other gender, and words in the singular number will be held to include the plural, unless the context otherwise requires. Words that are not specifically defined herein should be given a common usage construction.

15.7 Non-Waiver and Reservation of Rights. No payment, act or omission by either Party may constitute or be construed as a waiver of any breach or default of the other Party which then exists or may subsequently exist. The failure of either Party to exercise any right or privilege granted in this Agreement will not be construed as a waiver of that right or privilege. All rights of either Party under this Agreement are specifically reserved and any payment, act or omission will not impair or prejudice any remedy or right of either Party under it. Any right or remedy stated in this Agreement will not preclude the exercise of any other right or remedy under this Agreement, the law or at equity, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

15.8 Access to Records. Medicalistics agrees to maintain appropriate accounting records of costs and expenses, together with all supporting documentation, for a period of two years following the completion date of this Agreement. Medicalistics further agrees that duly authorized representatives of <INSERT CLIENT INFO> shall have access to and the right to examine in any storage medium, any and all books, documents, accounts, files, reports, papers, records, things or property belonging to or in use by the Medicalistics in obtaining or performing the products and Services under this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The right of access continues throughout the records retention period set forth herein. This right of access may be exercised during normal business hours and at reasonable intervals. Where feasible and upon request, Medicalistics shall provide requested information to <INSERT CLIENT INFO> audit staff in electronic format. Failure to allow inspection and audit under this Agreement may result in the order of work stoppage until the cause of such work stoppage order is eliminated or in termination of this Agreement by <INSERT CLIENT INFO>.

15.9 Severability. If any clause, sentence, provision, paragraph or article of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or ineffective in any respect, the remainder Agreement shall remain valid and binding.

15.10 No Third Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party.

---

15.11 Amendment. Only written instruments signed by both <INSERT CLIENT INFO> and Medicalistics may amend this Agreement.

15.12 Covenant Against Contingent Fees. Medicalistics warrants that no persons or selling agency has been retained to solicit this Agreement upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by Medicalistics to secure business. For breach or violation of this warranty, <INSERT CLIENT INFO> will have the right to terminate this Agreement without liability, or in its discretion to, as applicable, add to or deduct from the Agreement price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

15.13 Monitoring. <INSERT CLIENT INFO> reserves the right to perform periodic on-site monitoring of Medicalistics' compliance with the terms of this Agreement, and of the adequacy and timeliness of Medicalistics' performance under this Agreement. After each monitoring visit, <INSERT CLIENT INFO> will provide Medicalistics with a written report of the monitor's findings. If the report notes deficiencies in Medicalistics' performances under the terms of this Agreement, it will include requirements and deadlines for the correction of those deficiencies by Medicalistics. Medicalistics shall take action specified in the monitoring report prior to the deadlines specified.

15.14 Gratuities. <INSERT CLIENT INFO> may terminate this Agreement if it is found that gratuities of any kind including entertainment, or gifts were offered or given by Medicalistics or any agent or representative of Medicalistics, to any <INSERT CLIENT INFO> official or employee with a view toward securing favorable treatment with respect of this Agreement. If this Agreement is terminated by the <INSERT CLIENT INFO> pursuant to this provision, <INSERT CLIENT INFO> shall be entitled, in addition to any other rights and remedies, to recover from Medicalistics at least three times the cost incurred by Medicalistics in providing the gratuities.

15.15 Insurance. During the term of this Agreement, Medicalistics shall, at its own expense, maintain, and shall require all of its subcontractors providing products and Services under this Agreement to maintain, standard insurance to cover Medicalistics' obligations under this Agreement, in accordance with applicable generally accepted business standards and in accordance with **Exhibit "F"** ("Insurance Requirements"), attached to this Agreement and made a part of this Agreement for all purposes. With respect to required insurance, Medicalistics shall: (i) name <INSERT CLIENT INFO> as an additional insured, as its interests may appear, (ii) provide <INSERT CLIENT INFO> a waiver of subrogation, (iii) provide <INSERT CLIENT INFO> with a 30 calendar days advance written notice of cancellation or material change to said insurance, (iv) provide the <INSERT CLIENT INFO> Purchasing Agent a certificate or certificates of insurance evidencing the required coverages and minimum amounts specified in **Exhibit "F"**, within 10 calendar days after approval of this Agreement by the Commissioners Court or within 10 calendar days of each renewal of the insurance, as applicable, with each certificate containing the contract number indicated on the contract award form issued by <INSERT CLIENT INFO>.

15.16 Sovereign Immunity. No provision of the Agreement or any of its exhibits, attachments or addenda is in any way intended to constitute a waiver by <INSERT CLIENT INFO> of any immunities from suit or liability that <INSERT CLIENT INFO> may have by operation of law, and <INSERT CLIENT INFO> hereby retains all of its affirmative defenses.

15.17 Authority to Execute. Medicalistics hereby warrants and agrees that the person executing this Agreement has been duly authorized by Medicalistics to sign this Agreement and to bind Medicalistics validly and legally to all the terms, conditions and provisions of this Agreement. If Medicalistics alleges that said person lacks such authority, <INSERT CLIENT INFO> may immediately terminate this Agreement without penalty or liability to Medicalistics.

15.18 Medicalistics' Certifications. Medicalistics certifies that it is a duly qualified business entity and is capable of performing and meeting all of its obligations under this Agreement, that it is not in receivership or contemplating same, and has not filed for bankruptcy. Medicalistics further certifies that the company is not currently delinquent with respect to payment of property taxes within <INSERT CLIENT INFO>.

---

15.19 Civil Rights/ADA Compliance. Medicalistics shall provide all services and activities required by this Agreement in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] if Medicalistics were an entity bound to comply with these laws. Medicalistics shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.

15.20 Compliance. Medicalistics must comply with all federal and state laws and regulations, and all city and <INSERT CLIENT INFO> ordinances, orders, and regulations, relating in any way to this Agreement. Medicalistics must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations. Medicalistics must pay all taxes and license fees imposed by the federal and the state governments and their agencies and political subdivisions upon the property and business of Medicalistics.

15.21 Security Compliance.

15.21.1 Network, Computer, and Information Security Compliance: The goods and/or services provided under this Agreement must be and remain in compliance with applicable Texas law, as well as with all <INSERT CLIENT INFO> network, computer, software, and information security policies, standards, specifications, guidelines, processes and procedures already developed or deployed or subsequently developed or deployed and used by or for the <INSERT CLIENT INFO> Department of Information and Telecommunications Services (“ITS”) and/or a department, office or division of any elected or appointed <INSERT CLIENT INFO> official (collectively, the “<INSERT CLIENT INFO> Security Requirements” or the “Security Requirements”). The documents comprising the Security Requirements may be obtained upon request from ITS and upon execution of a <INSERT CLIENT INFO> Non-Disclosure and Confidentiality Agreement.

15.21.2 Initial Compliance: Medicalistics’ goods and/or services shall comply with the Security Requirements including but not limited to the <INSERT CLIENT INFO> Asset Management Policy, Lifecycle Management Standard, Configuration Management Standard, Change Control Standard, and System Development Lifecycle Standard. Contractor’s goods and/or services must operate with and be compatible with any and all network security, computer security, software security, and/or information security safeguards, including security hardware, software, appliances deployed by <INSERT CLIENT INFO> (the “Security Safeguards”).

15.21.3 Certification of Compliance: Medicalistics must perform a self-conducted compliance review of Medicalistics’ goods and/or services and provide to the <INSERT CLIENT INFO> written certification in the form of a completed, signed, and dated compliance review checklist, attesting that Medicalistics’ goods and/or services are compliant with the Security Requirements. An authorized official of Medicalistics’ company must sign and date the compliance review checklist.

15.21.4 Ongoing Compliance Upon Execution of Contract: Medicalistics’ goods, services, practices, and/or procedures must remain in compliance with the Security Requirements and compatible with the Security Safeguards, including complying with any and all modifications and/or additions to the Security Requirements and/or Security Safeguards that may occur throughout the term of the Agreement. Medicalistics shall provide the required hardware, software, materials, expertise, and/or labor required to ensure ongoing compliance of Medicalistics-provided goods and/or services with the Security Requirements, including operability and compatibility with the Security Safeguards as a part of ongoing maintenance and support. Medicalistics-provided goods, services, practices, and/or procedures must be accredited by the ITS Department Security Manager before being connected into the <INSERT CLIENT INFO> Government Network or placed into any <INSERT CLIENT INFO> production operation environment. Accreditation is achieved by undergoing a Security Assessment that shows Medicalistics-supplied goods and/or services are compliant with the Security Requirements and Security Safeguards. This security evaluation of the specific solutions covered by the Agreement may reveal aspects of the architecture, implementation, operation, maintenance, and/or other aspect of these solutions that may necessitate

---

incorporating additional solution-specific information security requirements to protect <INSERT CLIENT INFO> computers, networks, software, information, and facilities.

15.21.5 Notification of Non-Compliance or Incompatibility: If Medicalistics determines, at any time during the Agreement term, that Medicalistics' goods, services, practices, and procedures do not comply with <INSERT CLIENT INFO>'s current Security Requirements and/or are not compatible with <INSERT CLIENT INFO>'s current Security Safeguards, Medicalistics shall notify the ITS Help Desk by no later than the end of the business day following the confirmation by the Medicalistics of the non-compliance or incompatibility. If <INSERT CLIENT INFO> determines at any time during the Agreement term that Medicalistics' goods, services, practices, and procedures do not comply with <INSERT CLIENT INFO>'s current Security Requirements and/or compatibility with <INSERT CLIENT INFO>'s current Security Safeguards, <INSERT CLIENT INFO> shall notify Medicalistics by no later than the end of the business day following the confirmation by Medicalistics of the non-compliance or incompatibility.

15.21.6 Remedy of Non-Compliance or Incompatibility: In the event that either <INSERT CLIENT INFO> or Medicalistics are notified of a non-compliance and/or incompatibility, Medicalistics shall:

- 1.) Determine the effort and cost to bring Medicalistics' goods, services, practices, and procedures into compliance and compatibility;
- 2.) Provide a draft working plan, including schedule, work effort and cost details, to remedy the non-compliance or incompatibility to the <INSERT CLIENT INFO> no later than 5 working days after notification of the non-compliance and/or the incompatibility to <INSERT CLIENT INFO> has been confirmed.

15.22 Obligations that Survive Termination. The Parties recognize and agree that the termination, cancellation or expiration of this Agreement does not excuse the parties from complying with their respective obligations under Sections 5, 7, 9, 10, 13.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the later date set forth below (the "Effective Date").

Medicalistics, LLC

<INSERT CLIENT INFO>

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_ BY: \_\_\_\_\_

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

---

**Exhibit “A”**

**List of Medicalistics and Third Party (NextGen) Software  
Licensed to Client Per Agreement**

Quantity      Description

---

**Exhibit “B”  
(Applicable Software License Agreements)**

<b>Schedule 2.10</b>	<b>Medicalistics Software License Agreement</b>
<b>Schedule 2.20</b>	<b>NextGen EULA General Terms and Conditions</b>
<b>Schedule 2.30</b>	<b>NexGen EULA License Terms</b>
<b>Schedule 2.40</b>	<b>NextGen EULA SaaS Offerings</b>



---

**Exhibit “C”**

**(Attach Applicable Software Maintenance Services Agreement)**

---

## Exhibit “D”

Developer or Senior Consultant	160.00 / HR
Trainer	160.00/ HR
Travel Time	40.00/ HR

\*Minimum 24 Hours onsite engagements per individual Medicalistics personnel.

\*\* Medicalistics' Usual and Customary hourly rate is \$175.00 per hour. The \$160 .00 per hour rate quoted above is based on our volume discount pricing for exceeding 1000 consulting hours in a year

---

**Exhibit “E”**

**Performance Criteria Per Agreement**

---

## Exhibit “F”

### INSURANCE REQUIREMENTS

- I. General Requirements. All insurance specified in Section II of this document must meet the requirements specified in the Agreement and must meet the following General Requirements.
- A. The minimum types and limits of insurance indicated in Section II hereof shall be maintained throughout the duration of the Agreement.
  - B. Insurance shall be written by companies licensed in the State of Texas with an A.M. Best rating of B+ VIII or higher.
  - C. Prior to commencing work under the Agreement, insurance shall be in force as evidenced by a Certificate or Certificates of Insurance issued by the writing agent or carrier.
  - D. Certificates of Insurance shall include the endorsements outlined in Section II hereof and shall be submitted to the <INSERT CLIENT INFO> Purchasing Agent as required in the Agreement. The Certificates shall show the <INSERT CLIENT INFO> Contract number and all endorsements by number.
  - E. Insurance required under the Agreement including this Exhibit which names <INSERT CLIENT INFO> as an Additional Insured shall be considered primary for all claims.
  - F. Insurance limits shown in Section II hereof may be written as Combined Single Limits or structured using primary and excess or umbrella coverage that follows the form of the primary policy.
  - G. <INSERT CLIENT INFO> reserves the right to review insurance requirements during the term of the Agreement and to require that Medicalistics make reasonable adjustments when the scope of services or products provided has been expanded.
  - H. Medicalistics shall not allow any insurance to be cancelled or lapse during the contract term.
  - I. Medicalistics shall not permit the minimum limits of coverage to erode or otherwise be reduced.
  - J. Medicalistics shall be responsible for all premiums, deductibles and self-insured retention. All deductibles and self-insured retention shall be shown on the Certificates of Insurance.
  - K. Insurance coverage specified in Section II hereof is not intended and shall not be interpreted or construed to limit the responsibility or liability of Medicalistics, or its subcontractor(s).

II. Specific Requirements.

The following requirements II-A - II-D inclusive) apply to Medicalistics and subcontractor(s) performing services or providing products under the Agreement including any amendment thereto. Medicalistics acknowledges and agrees to the following concerning insurance requirements applicable to Medicalistics and its subcontractor(s):

- A. Workers' Compensation and Employers' Liability Insurance
  - 1. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act.
  - 2. Employer Liability limits are:
    - \$500,000 bodily injury (each accident)
    - \$500,000 bodily injury by disease
    - \$500,000 policy limit
  - 3. Policies under this Section shall apply to State of Texas and include the following endorsements in favor of <INSERT CLIENT INFO>:
    - a. Waiver of Subrogation (Form 420304);
    - b. Thirty (30) days Notice of Cancellation (Form 420601).
- B. Commercial General Liability Insurance
  - 1. Minimum limit:
    - \$1,000,000 per occurrence for coverage A and B with a \$1,000,000 policy aggregate.

- 
2. The Policy shall contain or be endorsed as follows:
    - a. Blanket contractual liability for this Agreement
    - b. Independent contractor coverage
  3. The Policy shall also include the following endorsements in favor of <INSERT CLIENT INFO>:
    - a. Waiver of Subrogation (Form CG 2404);
    - b. Thirty (30) days Notice of Cancellation (Form CG 0205)
    - c. <INSERT CLIENT INFO> named as additional insured (Form CG 2010).
- C. Business Automobile Liability Insurance
1. If any form of transportation is used in connection with providing products or services under the Agreement, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$500,000 per occurrence.<sup>1</sup>
  2. The Policy shall also include the following endorsements in favor of <INSERT CLIENT INFO>:
    - a. Waiver of Subrogation (Form TE 2046A)
    - b. Thirty (30) days Notice of Cancellation (Form TE 0202A).
    - c. <INSERT CLIENT INFO> named as an additional insured (Form TE 9901B).
- D. Professional Liability and/Errors & Omissions Policy
- If coverage is written on a claims made policy, the retroactive date shall be prior to the date services begin under the Agreement or the effective date of the Agreement, whichever comes first. Coverage shall include a three (3) year extended reporting period from the date the Agreement expires, is terminated or is cancelled. The Certificate of Insurance shall clarify coverage is claims made and shall contain both the retroactive date of coverage and the extended reporting period date.
1. Minimum limit:  
\$1,000,000 per occurrence, \$3,000,000 policy aggregate
  2. The policy shall include the following endorsements in favor of <INSERT CLIENT INFO>:
    - a. Thirty (30) days Notice of Cancellation or change.
  3. Additional insured status for <INSERT CLIENT INFO> is not required.

---

<sup>1</sup> If use of a motor vehicle in connection with the Agreement is strictly limited to travel to and from work or work sites, evidence of personal automobile policy coverage with limits of \$100,000/\$300,000/\$500,000 may be provided in lieu of Business Automobile Liability Insurance.



## Schedule 2.10

### Medicalistics License Agreement

#### **I. GENERAL TERMS**

The following terms and conditions will be applicable to all Agreements and Order's between Client and Medicalistics (hereinafter referred to as "Medicalistics" or "Company"). As it relates to Client's use of the Medicalistics® products and/or services obtained through Medicalistics and/or any third-party vendor, in conjunction with the terms of the Medicalistics Partner's Agreement with Client, Client agrees to the following additional terms and conditions. As it relates to the Medicalistics® 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 Medicalistics® products, services or other Medicalistics® 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 Medicalistics for the Medicalistics® and/or third party products and/or services obtained from Medicalistics on behalf of Client, Medicalistics may, in its sole discretion, (A) terminate any license or rights available to Client to the Medicalistics 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 Medicalistics, whether at a discount price or otherwise. However, Medicalistics 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 Medicalistics® 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.** Medicalistics® 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 Medicalistics® 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 Medicalistics 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.

**Privacy.** Client acknowledges that in the performance of certain Medicalistics® services Medicalistics may De-Identify Client Data before such data is incorporated into any Analytics Database. Client grants Medicalistics 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 Medicalistics or others from using the Analytics Databases to analyze the particular characteristics of Client's business. Medicalistics will not individually identify Client as a source of the De-Identified Data for the Analytics Databases, although Medicalistics may disclose that certain of its Clients allow the use of Client data for such purposes.

**eLearning Materials, Subscription/Training Materials.** For certain Medicalistics products and/or services, Client may purchase a subscription for access by its End Users to Medicalistics' 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 Medicalistics® 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.** Medicalistics and its licensors own the Medicalistics 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 Medicalistics' 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 Medicalistics 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 Medicalistics Technology. Breach of this Section will be deemed a material breach of this Agreement and entitle Medicalistics to immediately terminate Client's rights under this Agreement.

**Feedback.** The purpose of this section is to avoid potential misunderstandings or disputes when Medicalistics's products and/or marketing strategies might seem similar to ideas submitted or feedback given to Medicalistics. Medicalistics 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 Medicalistics seek out Client's, and/or any of its Personnel's, feedback on Medicalistics 's existing products and/or marketing strategies, Client is under no obligation to provide any such feedback. However , if despite Medicalistics's request that Client not send Medicalistics its unsolicited ideas, Client still submits them, or if Client elects to provide feedback on Medicalistics ' 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.** MEDICALISTICS 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 MEDICALISTICS TO CLIENT UNDER THIS AGREEMENT, THOUGH IN MEDICALISTICS'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 MEDICALISTICS SERVICES IS AT CLIENT'S SOLE RISK. THE SOFTWARE AND/OR MEDICALISTICS SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MEDICALISTICS AND ITS LICENORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MEDICALISTICS 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 MEDICALISTICS WHATSOEVER. MEDICALISTICS MAKES NO WARRANTY THAT THE SOFTWARE AND/OR MEDICALISTICS SERVICES WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE SOFTWARE AND/OR MEDICALISTICS SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM MEDICALISTICS OR THROUGH THE SOFTWARE AND/OR MEDICALISTICS 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 MEDICALISTICS' 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 MEDICALISTICS 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 MEDICALISTICS 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 MEDICALISTICS'S HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MEDICALISTICS'S' LIABILITY TO CLIENT OR ANY THIRD PARTIES IS LIMITED TO \$100.00. 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. 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 Medicalistics'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 Medicalistics's technology is used and, in particular, Client will not export or re-export Medicalistics's technology without all required United States and foreign government licenses.

## **II. LICENSE TERMS**

**SOFTWARE LICENSE.** To the extent that Client is obtaining a license to Medicalistics's Software through a Medicalistics certified Partner then the following shall apply: Subject to Client's compliance with Partner's PMA, Medicalistics grants Client, through the PMA and during the License Term, a personal, non-exclusive and non-transferable license to: (a) install and implement the Medicalistics Software on Authorized Server(s) and 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 and in accordance with applicable Metrics and User Materials; and (b) use, copy and distribute internally User Materials as reasonably required for permitted use of the Medicalistics® Software. Any such copies of the User Materials must contain the same copyright and other proprietary notices that appear in the original User Materials.

For purposes of clarification, and provided Client does not exceed the Metric quantity of licenses obtain for the particular Medicalistics® Software nor that the license seeking to be transferred is not otherwise restricted in its transferability, the internal transfer of the use of a license between Client's End Users and/or between Client and those End Users of an Affiliated Organization that is owned by Client or (ii) in which Client has a majority controlling interest in such Medicalistics, practice, group and/or other legal entity shall not be deemed a violation of the "non-transferable restriction set forth above.

**LICENSES TERM.** The License Term for any Product commences on the Effective Date of the applicable order form and runs for the Term set forth in the applicable order form.

**THIRD PARTY SOFTWARE.** Third Party Software is licensed solely for use with Medicalistics® Software, and Client will not access Third Party Software except through the Medicalistics® Software with which it operates. Client will

purchase updates to Third Party Software as needed to comply with the requirements of Client's then current version of the applicable Medicalistics® Software.

**NON-PRODUCTION USE.** Client may only operate one Production instance of the Software. Client may operate a reasonable number of non-Production instances (e.g., backup, training, disaster recovery, etc.) of the Software not to exceed any limit set forth in the order form or particular schedule. A backup instance of Software may be installed in a Designated Location separate from the location where the Production instance is installed.

**LICENSE KEYS.** Certain Software may require a License Key to operate, and, in such case, the License Key is provided at the time of Delivery either directly to Client or to Partner on behalf of Client. Any additional License Keys would be provided as needed.

**NO TITLE TRANSFER.** All of the Medicalistics Technology shall remain personal property and the title thereto shall remain with the Medicalistics at all times. 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 Agreement. Client shall keep the Medicalistics Technology free from any and all judgments, liens and encumbrances. Client shall give Medicalistics prompt notice of the attachment or other judicial process, lien, or encumbrance affecting the Medicalistics Technology and shall indemnify and save Medicalistics harmless of and from any loss or damage caused thereby.

**EFFECT OF TERMINATION.** Upon termination of the applicable license, or upon expiration of the License Term, Client must cease to use the Software and Third-Party Software, uninstall all copies of the Software and Third-Party Software from all Authorized Servers and Authorized Workstations, and destroy any media containing the Software and Third-Party Software.

**SOFTWARE SUPPORT AND MAINTENANCE.** Client understands that no Maintenance Services, including Updates, are being provided to it by Medicalistics; and, any Maintenance Services provided by Partner directly to Client (or Medicalistics to Partner) are available only if Client is on the most current general release of such Medicalistics® Software (or such other general released versions)

**LICENSE COMPLIANCE.** During each License Term and for 3 years thereafter, Client and its Affiliated Organizations shall keep complete and accurate books and records relating to use of Products and Services. Company may either at its expense and no more than once every quarter, appoint Partner, its own Personnel or an independent third party (or all) to inspect such records and access related computers and systems to verify that use, installation, and deployment of the Products and Services by Client and its Affiliated Organizations comply with these terms. Any verification may include an onsite audit conducted at Client's or its Affiliated Organizations' relevant places of business upon 15 days prior notice, during regular Business Hours, and will not unreasonably interfere with Client's business activities. If a verification shows that Client, its Affiliated Organizations, End Users or on Company's then Third Party contractors of Client or its Affiliated Organizations are deploying, installing or using the Products and Services (A) beyond the quantity that was legitimately licensed; or (B) in any way not permitted, so that additional fees apply, Client must pay, unless disputed in good faith, the additional license fees and any applicable related maintenance and support fees based on Company's current list price, within 30 days of invoice date.

### **III. SaaS TERMS**

**General.** As it relates to Client's use of any Software as a Service solution offered by Medicalistics 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. To the extent of any conflict between the Partner's agreement and these terms and conditions, as it relates to the SaaS Services, the terms of this document shall prevail.

**Subscription Services for SaaS.** Client is entering into a subscription, through Partner, to access and use certain Products and Services made available by Company in a Software as a Service Model. ("SaaS") During the SaaS Service Term and provided Partner has paid Company the applicable SaaS subscription fee, Client will have the right to

access and use each SaaS offering set forth in the applicable Order Form. Each SaaS subscription entered into is personal to Client, non-exclusive and non-transferable. The SaaS subscription(s), and its associated SaaS Fee, set forth in the applicable Order Form or Schedule, includes for the specific Products and Services: (i) the access and use of such Products and/or Services, (ii) non-administrative access to the Company controlled System upon which the SaaS offering is operated for such Products and/or Services, (iii) Software Maintenance Services on such Products and/or Services, (iv) updated versions of the Third Party Software listed as included and, (v) for each SaaS subscription purchased by Client that is based solely on a Provider Metric, the ability to have that Provider and four (4) additional non-Provider SaaS End Users utilize the SaaS Subscription. No license to the Product(s) is granted to Client under a SaaS subscription.

**Requirements.** Certain SaaS offerings may require Client to install on its equipment Plug-In software to access and use the SaaS offering. During the SaaS Service Term, and provided Client is compliant with the terms of these terms and the Partner's agreement, Client will have a non-transferable and non-exclusive license to permit its SaaS End Users to install, use and implement Plug-In Software solely to access the SaaS offerings for Client's internal operations as permitted under these terms.

**Environment for SaaS Service.** The environment used to provide the SaaS Service consists of the following: Installation. Company will load the Products set forth in any Order Form into the Environment. However, costs associated with migrating from an existing non-Company environment are not a part of the applicable SaaS Service and are not included within the monthly SaaS Service fee.

**Third Party Licenses for infrastructure.** Company will provide the licenses for the third-party operating system, database software, tools, and utilities of the Environment, which are separate and distinct from any other Company Software and third-party materials that Client must purchase to use the features and functionality of the Company Software and/or Service.

**Operation.** Company will maintain the Environment so that the Products thereon perform in accordance with the applicable Product's User Material(s).

**Miscellaneous.** The following additional terms apply to SaaS Service:

**Data Volume.** On average, each End User accessing the SaaS Service is limited to a maximum of fifteen (15) gigabytes of storage for the Client Data generated from or loaded through the Medicalistics Enterprise EHR/PM offering or SaaS offering. SaaS Service Fees are based on the volume of Client Data on the last day of each month. Extra storage used beyond the average of fifteen (15) gigabytes per End User accessing the SaaS Service in any month will be automatically billed at the rate of 75¢ per gigabyte per month.

**Service Term.** The initial Service Term for SaaS Service commences upon the Fulfillment Date for the applicable SaaS Service and continues for 4 years, unless terminated earlier in accordance with the Master Agreement. Client understands that various Products and Services may utilize the SaaS Service and each such Product or Service may have its own Service Term that operates contemporaneously with the Service Term for the Managed Cloud Service. Accordingly, the expiration or termination of a Service Term for one Product or Service does not, in and of itself, terminate the SaaS Service for another Product, Service or the SaaS Service itself. By way of example and not limitation, if Client has enrolled in a 4-year SaaS subscription for the use of Company's EHR offering but only a 1-year Mobile Solution subscription, upon expiration of the Mobile Solution Service Term, the Managed Cloud Services associated with the Mobile Solution will also expire but Client would still be bound to the SaaS Service through the remainder of SaaS subscription for the EHR offering. Unless specified otherwise in the applicable Order Form, applicable Product or Service Schedule or Addendum, each Service Term for SaaS Service automatically renews for successive 1-year terms, unless a Party provides written notice of its intent not to renew at least 3 months prior to the end of the then-current Service Term for Managed Cloud Service.

**Termination; Transition; Return of Client Data.** Upon termination or expiration of the SaaS Service Term for any reason: (A) Client's right to access and use the SaaS offerings and all related functionality therein, immediately terminates and (B) Client must, at its expense, remove and delete all copies of any Plug-In Software, if any. Upon termination or expiration of the Service Term for Managed Cloud Services offered under a hosting model, Client's right to use the Environment immediately terminates. However, Client's right to use the Company Software previously licensed by Client, along with any Third-Party Materials previously licensed by Client, continues according

to the applicable terms of this Master Agreement. Upon termination of SaaS Service for a NextGen® Enterprise offering, Client will promptly obtain AWS' s3 cloud storage (or such other Company approved cloud storage) and provide Company with credentials to access same. Once Company has obtained the necessary access, Company will copy into that storage site the following, to the extent such data exists, which represents the full client data set: (i) Prod.bak- Test, Dev; (ii) ICS images- on the file server; (iii) NGRoot – on the file server and (iv) Client share on the desktop[1] on the file server. Upon confirmation of receipt of the Client Data, Company will render unreadable, unusable, unrecoverable all Client Data residing on hardware controlled by Company to the extent allowed by law. Client may procure additional transition services at Company's then current hourly rates and standard terms and conditions

#### **IV. DEFINITIONS FOR ALL SECTIONS.**

Capitalized terms shall have the meaning set forth in the Order Form or applicable Schedule, General Terms and Conditions 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 Medicalistics 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 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.

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

**"Authorized Server"** means a hardware server owned or leased by Client and located in a Designated Location. Authorized Servers will not be used for the benefit of any party other than Client, its Affiliated Organizations, and End Users.

**"Authorized Workstation"** means a desktop, tablet or laptop computer located within the United States and used by an End User.

**"Business Day/Business Hour"** means time during which Company is actively staffed and most Company resources (including its Maintenance Services staff) are available, but excludes nights, weekends and holidays observed by Company.

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

**"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.

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

**"Company Appliance"** means a platform required to run certain Company Software.

**"Company Hardware"** means equipment and other hardware distributed under Company's brand that is purchased or rented by Client from Company and identified as Company Hardware in an Order Form. Hardware that is not identified as Company Hardware in the Order Form is Third Party Hardware.

**"Company Software"** means software in object code form licensed through an Order Form (entered either directly by Client or through Partner on behalf of Client), or as may be made available for access and/or use under a SaaS offering 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. "Company Software" specifically excludes Content.

**"Company Technology"** means **the Company Software, 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, 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.**

**"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 this Master Agreement, Company Technology, Client lists, and employee lists whether or not 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.

**"Consulting Services"** means services provided or to be provided by Company, either directly or as a subcontractor of Partner, under one or more Order Forms to create reports and forms, customize certain aspects of Client's system and provide other technical and provisional services, as more specifically set forth in Section 5 above.

**"Content"** means any clinical content, in any form, included within Company Software and/or Services.

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

**"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.

**"Delivery"** means the date that the Software is made available to Client, or to Partner on behalf of Client, as described in this Schedule.

**"Designated Location"** means the Client owned or leased location set forth in the applicable Order Form (or such other U.S. address identified in writing to Medicalistics) where the server(s) are located upon which Client intends to load the server-side Software. If operated by a Third Party, a Designated Location must be pre-approved in writing by Medicalistics.

**"Disaster Recovery Environment"** means Client's technical environment designed solely to allow Client to respond to an interruption in service that is due to an event beyond Client's control, where Client cannot provide critical business functions for a material period.

**"Effective Date"** means the date signed on the applicable Order Form by 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.

**"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.

**"Environment"** means the Facilities & Equipment that Company deems necessary for operating the SaaS Service and making it available for Client's use through Client's internet connection, all as specified in the applicable Statement of Work and/or Order Form.

**"Facilities & Equipment"** means a 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 other components necessary to operate the Products and/or Services.

**"Fulfillment" (Mobile)** means, for Mobile Solution services, when Medicalistics has confirmed to Partner that it has provided the necessary resources to the applicable Client to complete the initial configuration, implementation and activation of the Mobile Solution.

**"Fulfillment" (SaaS)** means when Company has confirmed that the SaaS Service is ready for Client to access and begin testing of the applicable Product(s).

**“Group of Charts”** means the aggregation of all patient charts within a practice or within separate disciplines within a practice.

**“Hardware”** means Company Hardware and Third-Party Hardware.

**“Help Desk Support”** means the support services provided by Company help desk under its then current Maintenance Program.

**“Implementation Services”** means services provided, or to be provided, by Company under one or more Order Forms to configure, install and implement Software and Hardware for Client’s use

**“Instances”** means a single installation of Company Software running on a Company Appliance or such other physical or virtual server Client may provide.

**“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.

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

**“License Key”** means each encrypted alphanumeric code needed to activate certain Software and/or features in certain Software.

**“License Term”** means the period set forth in an Order Form for which Client, either directly and/or through a Partner, has purchased the applicable Software license.

**“Lives”** means the net number of individuals whose data is stored in the database of Company Software, regardless of Data Source, as measured by the master patient index.

**“LGR”** or **“Limited General Release”** means versions of the Software and/or Services made available by Company on a limited general release basis.

**“Master Agreement”** means, collectively, all Order Forms, General Terms and Conditions Schedule, and all other Schedules, Exhibits, Attachments, Statement of Works and Addenda, if any, entered into between the parties and as delineated in any Order Form(s).

**“Metric”** means each standard specified by Company in the Order Form or applicable Schedule that describes either: (i) the scope of Client’s rights to use the Software and/or Services, as applicable or (ii) the measure by which Client’s use of the applicable SaaS offering will be calculated and charged as reported to Client in periodic reports.

**“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.

**“Order Form”** means each sales order form that is executed between Client and Company or that is executed by Partner on behalf of Client for Products and/or Services provided to Client, for Client’s procurement of Products and Services.

**“Partner”** means a third-party, independent contractor certified by Company as authorized to resell, support and/or implement certain named Company Products directly to the Partner’s customer base – all in accordance with the terms of the written agreement entered into directly between Company and such third-party entity.

**“Party”** means Company or Client, as applicable.

**“Personnel”** means, with respect to each Party, such Party’s officers, employees and contractors.

**“Plug-in Software”** means certain, if any, locally installed software on Client’s equipment necessary for Saas End Users to access and use the Saas offering. “Plug-in Software” is Company Software.

**“Population Limit”** means the Metric based on the maximum number of Lives allowed under the Company Software.

**“Practice License”** means each distinct and separate server license required by the Enterprise software for: (1) each tax identification number associated with Client and its Affiliated Organizations and/or (2) each separate Group of Charts kept by Client and its Affiliated Organizations within the Software.

**“Products”** means one or more of the following procured from Company, either directly or through Partner, by Client as set out in an Order Form: Company Technology, Third Party Software, Content, Company Hardware, and Third-Party Hardware.

**“Production”** means use of Software to support actual business operations of Client and its Affiliated Organizations and excludes training, back up, development, quality assurance and similar non-productive uses.

**“Production Instance”** means is an Instance that is used to serve the primary purpose for which Client has purchased a license to use Company Software - 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

**"Provider"** means any licensed provider of healthcare services, including physicians, osteopathic physicians, dentists, optometrists, physical therapists, nurse practitioners, physician assistants and all other licensed providers.

**"Registered End User"** means an End User that completes Medicalistics's account registration process to access and use Mobile Solution and the App.

**"SaaS"** means Company services that (A) make Software functionality accessible to Client on a subscription basis via the Internet and a browser as more specifically set forth in the applicable User Materials and (B) are identified as "SaaS" on an Order Form.

**"SaaS End User"** means any End User that needs to have log-in authority to the Environment for a particular Product(s).

**"Schedule"** means a written document executed by both Parties or incorporated by reference into an Order Form, which describes additional terms, related to Products and Services.

**"Service(s)"** means each service procured from Company, either directly or through a Partner, under one or more Order Forms, including Implementation Services, Software Maintenance Services, Hardware Maintenance Services, Consulting Services, eLearning services, and Managed Cloud Service as such terms are defined in the applicable Schedule.

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

**"Software"** means Company Software and Third-Party Software.

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

**"Statement of Work"** means a written document executed by the Parties or incorporated by reference into an Order Form that describes specific Implementation Services or Consulting Services to be provided by Company as well as any deliverable(s) or milestone(s).

**"System"** means collectively, the Company Software, appropriate Third-Party database software, operating system software, Third Party Materials and other hardware, software and items described in an applicable Statement of Work functioning together as a single system.

**"System Administrator"** means a person with responsibility for the operation of Client's computing systems and networks with suitable background, experience and education.

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

**"Third Party Hardware"** means equipment and other hardware distributed under a Third Party's brand that is purchased or rented by Client from Company under an Order Form.

**"Third Party Materials"** means Third Party Software, Third Party Services and Third-Party Hardware.

**"Third Party Services"** means Third Party services identified in an Order Form that are offered and/or made available by and/or through Company, under a Third Party's brand and are accessed and/or used by Client.

**"Third Party Software"** means Third Party software and/or content (A) identified as Third Party Software in an Order Form or otherwise identified and provided to Client in connection with Client's permitted use of Company Software, including related data, graphics, subscriptions, libraries, diagnosis and procedure code sets, and patient education and drug interaction databases and (B) in the case of Hardware, Third Party software pre-installed on such Hardware including BIOS, firmware, operating systems and similar technology.

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

**"User Materials"** means the 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.

**"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.

## Schedule 2.20

# NextGen® Products/Services - General Terms and Conditions "EULA"

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.

## Schedule 2.20

### NextGen® Products/Services - General Terms and Conditions "EULA"

Effective: May 2020

**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

## Schedule 2.20

# NextGen® Products/Services - General Terms and Conditions "EULA"

Effective: May 2020

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.<sup>00</sup>. 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](http://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

## Schedule 2.20

### NextGen® Products/Services - General Terms and Conditions "EULA"

---

Effective: May 2020

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.

## Schedule 2.30

### NextGen® Products/Services – License Terms "EULA"

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.

#### **LICENSE TO NEXTGEN® SOFTWARE**

To the extent that Client is obtaining a license to NextGen Healthcare's Software through a NextGen Healthcare certified Partner then the following shall apply:

Subject to Client's compliance with Partner's PMA, NextGen Healthcare grants Client, through the PMA and during the License Term, a personal, non-exclusive and non-transferable license to:

- (A) install and implement the NextGen® Software on Authorized Server(s) and 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 and in accordance with applicable Metrics and User Materials; and
- (B) use, copy and distribute internally User Materials as reasonably required for permitted use of the NextGen® Software. Any such copies of the User Materials must contain the same copyright and other proprietary notices that appear in the original User Materials.
  - For purposes of clarification, and provided Client does not exceed the Metric quantity of licenses obtain for the particular NextGen® Software nor that the license seeking to be transferred is not otherwise restricted in its transferability, the internal transfer of the use of a license between Client's End Users and/or between Client and those End Users of an Affiliated Organization that is owned by Client or (ii) in which Client has a majority controlling interest in such NextGen Healthcare, practice, group and/or other legal entity shall not be deemed a violation of the "non-transferable restriction set forth above.

**LICENSES TERM.** The License Term for any Product commences on the Effective Date of the applicable order form and runs for the Term set forth in the applicable order form.

**THIRD PARTY SOFTWARE.** Third Party Software is licensed solely for use with NextGen® Software, and Client will not access Third Party Software except through the NextGen® Software with which it operates. Client will purchase updates to Third Party Software as needed to comply with the requirements of Client's then current version of the applicable NextGen® Software.

**NON-PRODUCTION USE.** Client may only operate one Production instance of the Software. Client may operate a reasonable number of non-Production instances (e.g. backup, training, disaster recovery, etc.) of the Software not to exceed any limit set forth in the order form or particular schedule. A backup instance of Software may be installed in a Designated Location separate from the location where the Production instance is installed.

**LICENSE KEYS.** Certain Software may require a License Key to operate and, in such case, the License Key is provided at the time of Delivery either directly to Client or to Partner on behalf of Client. Any additional License Keys would be provided as needed.

**NO TITLE TRANSFER.** All of the NextGen Healthcare Technology shall remain personal property and the title thereto shall remain with the NextGen Healthcare at all times. 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 Agreement. Client shall keep the NextGen Healthcare Technology free from any and all judgments, liens and encumbrances. Client shall give NextGen Healthcare prompt notice of the attachment or other judicial process, lien, or encumbrance affecting the NextGen Healthcare Technology and shall indemnify and save NextGen Healthcare harmless of and from any loss or damage caused thereby.

**EFFECT OF TERMINATION.** Upon termination of the applicable license, or upon expiration of the License Term, Client must cease to use the Software and Third Party Software, uninstall all copies of the Software and Third Party Software from all Authorized Servers and Authorized Workstations, and destroy any media containing the Software and Third Party Software.

**SOFTWARE SUPPORT AND MAINTENANCE.** Client understands that no Maintenance Services, including Updates, are being provided to it by NextGen Healthcare; and, any Maintenance Services provided by Partner directly to Client (or NextGen Healthcare to Partner) are available only if Client is on the most current general release of such NextGen® Software (or such other general released versions

## Schedule 2.30

### NextGen® Products/Services – License Terms "EULA"

---

Effective: May 2020

**LICENSE COMPLIANCE.** During each License Term and for 3 years thereafter, Client and its Affiliated Organizations shall keep complete and accurate books and records relating to use of Products and Services. Company may either at its expense and no more than once every quarter, appoint Partner, its own Personnel or an independent third party (or all) to inspect such records and access related computers and systems to verify that use, installation, and deployment of the Products and Services by Client and its Affiliated Organizations comply with these terms. Any verification may include an onsite audit conducted at Client's or its Affiliated Organizations' relevant places of business upon 15 days prior notice, during regular Business Hours, and will not unreasonably interfere with Client's business activities. If a verification shows that Client, its Affiliated Organizations, End Users or on Company's then Third Party contractors of Client or its Affiliated Organizations are deploying, installing or using the Products and Services (A) beyond the quantity that was legitimately licensed; or (B) in any way not permitted, so that additional fees apply, Client must pay, unless disputed in good faith, the additional license fees and any applicable related maintenance and support fees based on Company's current list price, within 30 days of invoice date.

**DEFINITIONS.** Capitalized terms shall have the meaning set forth in the General Terms and Conditions or as defined below.

- **"Authorized Server"** means a hardware server owned or leased by Client and located in a Designated Location. Authorized Servers will not be used for the benefit of any party other than Client, its Affiliated Organizations, and End Users.
- **"Authorized Workstation"** means a desktop, tablet or laptop computer located within the United States and used by an End User.
- **"Delivery"** means the date that the Software is made available to Client, or to Partner on behalf of Client, as described in this Schedule.
- **"Designated Location"** means the Client owned or leased location set forth in the applicable Order Form (or such other U.S. address identified in writing to NextGen Healthcare) where the server(s) are located upon which Client intends to load the server-side Software. If operated by a Third Party, a Designated Location must be pre-approved in writing by NextGen Healthcare.
- **"Disaster Recovery Environment"** means Client's technical environment designed solely to allow Client to respond to an interruption in service that is due to an event beyond Client's control, where Client cannot provide critical business functions for a material period.
- **"License Key"** means each encrypted alphanumeric code needed to activate certain Software and/or features in certain Software.
- **"Production"** means use of Software to support actual business operations of Client and its Affiliated Organizations and excludes training, backup, development, quality assurance and similar non-productive uses.

## Schedule 2.40

### NextGen Healthcare SaaS Offerings "EULA"

Effective: May 2020

As it relates to Client's use of any Software as a Service solution offered by NextGen Healthcare 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. To the extent of any conflict between the Partner's agreement and these terms and conditions, as it relates to the SaaS Services, the terms of this document shall prevail.

- 1.1. Client is entering into a subscription, through Partner, to access and use certain Products and Services made available by Company in a Software as a Service Model. ("SaaS") During the SaaS Service Term, and provided Partner has paid Company the applicable SaaS subscription fee, Client will have the right to access and use each SaaS offering set forth in the applicable Order Form. Each SaaS subscription entered into is personal to Client, non-exclusive and non-transferable. The SaaS subscription(s), and its associated SaaS Fee, set forth in the applicable Order Form or Schedule, includes for the specific Products and Services: (i) the access and use of such Products and/or Services, (ii) non-administrative access to the Company controlled System upon which the SaaS offering is operated for such Products and/or Services, (iii) Software Maintenance Services on such Products and/or Services, (iv) updated versions of the Third Party Software listed as included and, (v) for each SaaS subscription purchased by Client that is based solely on a *Provider* Metric, the ability to have that Provider and four (4) additional non-Provider SaaS End Users utilize the SaaS Subscription. No license to the Product(s) is granted to Client under a SaaS subscription.
- 1.2. Certain SaaS offerings may require Client to install on its equipment Plug-In software to access and use the SaaS offering. During the SaaS Service Term, and provided Client is compliant with the terms of these terms and the Partner's agreement, Client will have a non-transferable and non-exclusive license to permit its SaaS End Users to install, use and implement Plug-In Software solely to access the SaaS offerings for Client's internal operations as permitted under these terms.

## 2. ENVIRONMENT FOR SaaS SERVICE

- 2.1. The environment used to provide the SaaS Service consists of the following:
  - a. **Installation.** Company will load the Products set forth in any Order Form into the Environment. However, costs associated with migrating from an existing non-Company environment are not a part of the applicable SaaS Service and are not included within the monthly SaaS Service fee.
  - b. **Third Party Licenses for infrastructure.** Company will provide the licenses for the third-party operating system, database software, tools, and utilities of the Environment, which are separate and distinct from any other Company Software and third-party materials that Client must purchase to use the features and functionality of the Company Software and/or Service.
  - c. **Operation.** Company will maintain the Environment so that the Products thereon perform in accordance with the applicable Product's User Material(s).

## 3. MISCELLANEOUS

- 3.1. **Data Volume.** On average, each End User accessing the SaaS Service is limited to a maximum of fifteen (15) gigabytes of storage for the Client Data generated from or loaded through the NextGen Enterprise EHR/PM offering or SaaS offering. SaaS Service Fees are based on the volume of Client Data on the last day of each month. Extra storage used beyond the average of fifteen (15) gigabytes per End User accessing the SaaS Service in any month will be automatically billed at the rate of 75¢ per gigabyte per month.
- 3.2. **Service Term.** The initial Service Term for SaaS Service commences upon the Fulfillment Date for the applicable SaaS Service and continues for 4 years, unless terminated earlier in accordance with the Master Agreement. Client understands that various Products and Services may utilize the SaaS Service and each such Product or Service may have its own Service Term that operates contemporaneously with the Service Term for the Managed Cloud Service. Accordingly, the expiration or termination of a Service Term for one Product or Service does not, in and of itself, terminate the SaaS Service for another Product, Service or the SaaS Service itself. By way of example and not limitation, if Client has enrolled in a 4 year SaaS subscription



## Schedule 2.40

### NextGen Healthcare SaaS Offerings "EULA"

Effective: May 2020

for the use of Company's EHR offering but only a 1 year Mobile Solution subscription, upon expiration of the Mobile Solution Service Term, the Managed Cloud Services associated with the Mobile Solution will also expire but Client would still be bound to the SaaS Service through the remainder of SaaS subscription for the EHR offering.

Unless specified otherwise in the applicable Order Form, applicable Product or Service Schedule or Addendum, each Service Term for SaaS Service automatically renews for successive 1-year terms, unless a Party provides written notice of its intent not to renew at least 3 months prior to the end of the then-current Service Term for Managed Cloud Service.

- 3.3. Effect of Termination; Transition; Return of Client Data.** Upon termination or expiration of the SaaS Service Term for any reason: (A) Client's right to access and use the SaaS offerings and all related functionality therein, immediately terminates and (B) Client must, at its expense, remove and delete all copies of any Plug-In Software, if any.

Upon termination or expiration of the Service Term for Managed Cloud Services offered under a hosting model, Client's right to use the Environment immediately terminates. However, Client's right to use the Company Software previously licensed by Client, along with any Third-Party Materials previously licensed by Client, continues according to the applicable terms of this Master Agreement.

Upon termination of SaaS Service for a NextGen® Enterprise offering, Client will promptly obtain AWS' s3 cloud storage (or such other Company approved cloud storage) and provide Company with credentials to access same. Once Company has obtained the necessary access, Company will copy into that storage site the following, to the extent such data exists, which represents the full client data set: (i) Prod.bak- Test, Dev; (ii) ICS images- on the file server; (iii) NGRoot – on the file server and (iv) Client share on the desktop- on the file server. Upon confirmation of receipt of the Client Data, Company will render unreadable, unusable, unrecoverable all Client Data residing on hardware controlled by Company to the extent allowed by law. Client may procure additional transition services at Company's then current hourly rates and standard terms and conditions

- 4. DEFINITIONS.** Capitalized terms shall have the meaning set forth in the Order Form or applicable Schedule, General Terms and Conditions or as defined below.
- 4.1. "Environment"** means the Facilities & Equipment that Company deems necessary for operating the SaaS Service and making it available for Client's use through Client's internet connection, all as specified in the applicable Statement of Work and/or Order Form.
  - 4.2. "Fulfillment"** means when Company has confirmed that the SaaS Service is ready for Client to access and begin testing of the applicable Product(s).
  - 4.3. "Plug-in Software"** means certain, if any, locally installed software on Client's equipment necessary for SaaS End Users to access and use the SaaS offering. "Plug-in Software" is Company Software.
  - 4.4. "SaaS End User"** means any End User that needs to have log-in authority to the Environment for a particular Product(s).
  - 4.5. "System Administrator"** means a person with responsibility for the operation of Client's computing systems and networks with suitable background, experience and education.