

NextGen End User License Agreement (EULA)

This Software License and Services Agreement (“EULA”) is made by and among NextGen^{®1} Healthcare Information Systems, LLC., a California Corporation, (hereinafter referred to as “Company”),

Client, and Company’s Reseller, DAS Health Ventures, LLC, a Florida limited liability company (“Reseller” or “DAS”).

Agreement consists of the following terms and conditions, the Program Agreement, Client Order Form (“COF”), any other such agreement executed with Reseller, and Reseller’s then current Standard Incorporated Terms and Conditions (available at www.dashealth.com/documents) (collectively the “Agreement”). The Agreement will identify the Software licensed by Client and the license fees for that Software, as well as any hardware, third party software license(s) and services Client is purchasing from Company and/or Reseller. In the event of any conflict between this EULA and the Agreement, the terms of the Agreement shall prevail, but in no event shall reduce any protections afforded to Company or Reseller under this EULA.

In consideration of the promises and obligations made and undertaken herein, the parties covenant and agree as follows:

Terms and Conditions

1. Definitions. As used in this EULA and the Agreement, the terms set forth below shall have the following meanings:

Activation means that moment in time where Company has affirmed to Client that the License Key(s) has been provided to Client so that Client may begin to use the features of the Software as purchased by Client in the Agreement.

Affiliated Entities means any entity controlled by or controlling the company or under common control or ownership with the Company.

Affiliated Practice means each medical practice or physician group (including those having separate tax identification numbers) that: (A) is identified by Client in writing as owned or controlled by Client or (B)(i) is identified by Client in writing to Company, (ii) has entered into a management agreement with Client that creates a bona fide business relationship with Client to perform one or more management service functions that binds such medical practice to honor the terms and conditions of this EULA or (iii) has signed a copy of Company’s then-current, standard Software License & Services Agreement.

Business Hours means 8:30 am – 5:30 pm, Client local time, each business day, excluding weekends and holidays observed by Company.

Certified Professional means Client’s employee(s) who: (i) are actively involved in the day-to-day operation and support of the Software

within Client practice or organization, and (ii) have passed Company’s certification test.

Confidential Information means in its most expansive interpretation and usage, all proprietary, non-public or confidential information and data that concerns Company’s and its Affiliated Entities’ business, the Software, the User Materials, technology, systems, finances, personnel, operations, or other assets and activities of Company and its Affiliated Entities, including, but not limited to, trade secrets, ideas, processes, formulas, systems, source codes, data programs, other original works of authorship, know-how, improvements, discoveries, developments, designs, inventions, techniques, marketing plans, training and education materials and sessions (including but not limited to the elearning content), new products, licenses, rates, prices, costs, and customer lists not available to the public.

Designated Location means Client address set forth in the Agreement that is the location of the server on which the Practice License(s) is loaded.

eLearning means Company’s online learning subscription services used by Client to train End-users on the Software. Elearning allows End-Users to self-manage their own learning with a personal learning path and have access to courses and content that track that status of courses taken.

End-User means Client authorized users of copies of any portion of the Software, each such user sharing access to one copy of the Practice License that is installed at the Designated Location.

Hardware means the hardware set forth in any Agreement under heading “Hardware” and any other hardware subsequently purchased by Client from Company or Reseller.

Interface means Company’s portion of any software designed to exchange data between the Software and a third party’s software and/or hardware. Any Interface licensed by Client from Company shall be set forth in any Agreement under the heading “Interface” shall be deemed “Software” under this EULA and shall be used in accordance with and governed by the terms of this EULA.

License Key(s) means each encrypted alphanumeric code that is provided by Company to activate those features in the Software as purchased by Client from Company in the Agreement. Each License Key includes the server name, which by default is initially set to NGPROD for Client production server as one component of the key. Should Client desire to change the name of Client server, Company will provide Client, with a replacement License Key that will reflect such alternate server name.

NextGen[®] Knowledge Base Model (“KBM”) means the Company developed collection of templates, documents, and configuration

¹ Registered trademark of NextGen Healthcare Information Systems, LLC

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settings for use with the EMR Software that was installed on Client hardware at the time of Software Installation. The KBM is delivered "AS IS" but may be customized using the NextGen® EMR Template Editor.

Practice License means each distinct and separate sever Software license required for each tax identification number associated with Client and/or for each separate chart kept by Client practice with the electronic records software.

Provider means a person or group of persons who renders health care services directly to a patient or makes clinical decisions regarding a patient, namely and without limitation, physicians, DOs, optometrist, physical therapists, nurse practitioners and physician assistants. All Provider supporting staff will be included under the Provider License.

Provider License means a client-portion of the Software license granted to a Provider.

Software means that initial NextGen® software licensed by Client from Company, as set forth in the Agreement under the heading "Software" and subsequently provided Client are on Software Maintenance Services – as modified by any Update releases by Company, as set forth in any Agreement under the heading "Interface", as well as the server-portion of the Software as listed under the heading "Practice License Fee" as set forth in any Agreement.

Software Installation means that moment in time following completion of the physical installation of the Software on any of Client hardware at any of Client facilities, or if hosted by Company or Reseller at the hosted facility, when Company has affirmed to Client that the Software is ready for Client to begin implementation process or, if the physical installation has already occurred, when Activation has occurred. Should Client request that the Software Installation take place temporarily, such temporary installation shall be deemed Software Installation for the purposes of this EULA and Client agrees that additional service hours may possibly be required in order to perform the eventual permanent installation.

System means collectively, the Hardware, Third Party Software and Software set forth in the Agreement.

Territory means that geographic area contained within a 200 mile radius from Client Designated Location.

Third Party Software means the third party software set forth in any Agreement under the heading "Third Party Software" and any other third party software subsequently purchased by Client from Company.

Update means any improvement (i.e. enhancement) and/or changes to the Software offered by Company. Updates do not include: (1) additional modules and/or capabilities for which Company charges a separate license fee to its customers and (2) changes to the KBM made subsequent to installation on Client hardware.

User Materials mean any documentation provided and licensed by Company to Client or other organization using the Software to, among other things, describe (i) the Software functionality, capabilities, procedures, Updates, customizations, screens, data model and fields or (ii) how to train and/or install and/or implement the Software. User Materials may be provided in various forms, including paper, electronic media or in automated format (via the Internet or media). User Materials are Confidential Information of Company.

2. **License.** Under this EULA Client is purchasing through Reseller and Company grants solely to Client a non-exclusive, non-transferrable, limited use license, without any further right to sublicense, distribute, transfer or transmit the Software, for the Term set forth below to: (i) install the Software on a server at Client Designated Location and workstation(s) within Client facilities and (ii) for Client and Client Affiliated Practices to implement, use and execute the Software solely with the Territory and solely for internal business purposes. The total number of workstations accessing the Software shall not exceed five times the number of Provider License purchased by Client per Software product. Client loading of the Software by electronic means, by copying, downloading, accessing or otherwise using the Software shall be deemed Client affirmation to be bound by the terms of this EULA.

3. **Back Up Copies.** Client may make and use copies of the Software exclusively for non-productive backup purposes, such as quality control, development, testing and other non-production purposes. Client must reproduce and include Company's copyright notice and proprietary legend on each backup copy. If Client is running a hot backup/fail-over setup, Client may back up one or both of the backup copies on such setup that can be switched to a production basis on the failure of Client primary copy of the Software. Each backup copy must be stored in a safe, confidential and secure location and protected by Client using at least the same level of safety and security as Client uses for its own Client's own important data and software, but not less than a reasonable level of safety and security under the circumstances. All copies of all Software must be accounted for in writing by Client and a copy of such written accounting provided to Company and/or Reseller upon request from time to time.

4. **User Materials.** Company will provide Client with an electronic copy and one (1) hard copy set of the User Materials. Client may make and distribute to Client End-Users as many copies of the User Materials as is reasonably needed by Client to utilize the Software. If desired, Client may purchase additional hard-copy sets of the User Materials from Company. Under no circumstance may the User Materials be provided or distributed to any other than Client End Users or Client Certified Professionals unless otherwise approved, in writing, by Company which approval shall not be unreasonably withheld.

5. **Term of License.** This Agreement and any license to the Software granted under this EULA shall be for a term of 50 years

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from the Effective Date, unless otherwise terminated in accordance with the provisions of this EULA or the Agreement (the "Term").

6. **Hardware, Third Party Software & Services.** Should Client elect to purchase Hardware, Third Party Software and services from Company or Reseller, such items will be listed in the Agreement and subject to their respective terms under the Agreement.

Should Client desire to independently purchase on Client's own the required hardware and/or third party software needed to operate Software, any problems or issues dealing with the hardware, the operating system software and/or third party software, Client provided are outside the scope of any maintenance services provided by Company under this EULA. Client agrees that any hardware and/or third party software Client independently purchase will be compatible with the Software.

7. **Interface(s).** Each Interface purchased by Client shall be set forth in the Agreement. Client understands that development of a working interface may require programing, equipment or software to be provided by a third-party vendor, who *may* also impose additional fees with Client. Should Client or the third-party vendor fail to cooperate with Company in its development of the Interface(s), such failure shall not release Client from making the full payment due Company at Software Installation as set forth in Section 9. Company will not perform any modifications to the third-party vendor's software and/or equipment.

8. **Installation and Implementation.** Company does not provide any installation services or training under this EULA, though extensive services may be required to Install and Implement the Software.

9. **License Fees.** Client understands that the license granted to Client under this EULA is subject to Company receiving, either from Client or through the Reseller, the requisite Software License fees and/or such other fees that may be due Company from Client or from Reseller on Client's behalf.

10. **Miscellaneous Charges.** Client is responsible for all governmental taxes and fees associated with Client licensing, possession or use of the Software, including any use taxes, sales taxes, state or local property or excise taxes. Additionally, the fees set forth in the Agreement do not include the following payments or reimbursement of Company for which Client will be responsible (if applicable): (i) travel and living expenses for implementation meetings, installation and training attended by Company personnel; (ii) file conversion costs in addition to conversion costs, if any, listed in the Agreement; (iii) optional products and services; (iv) shipping charges; (v) consulting; (vii) cancellation fees imposed upon Company by third parties; (viii) cabling of Client premises; (ix) photocopying; (x) travel time; (xi) Client telephone calls; (xii) courier services; (xiii) annual renewal fees for any subscriptions/libraries set forth in the Agreement (including but not limited to diagnosis and procedure code sets, patient education and drug interaction databases); and (xiv) telecommunications termination equipment or other

communication equipment. (For travel time, Company agrees to not charge more than the equivalent of ¼ of a service hour for each hour actually spent traveling by Company's personnel to and from Client location). Client agrees to pay such reasonable fees and costs when the services are rendered and as the expenses are incurred, as invoiced by Company. In no event shall such reimbursements to Company be withheld for any reason, including for offset or fee dispute.

11. **Late Payment Charge.** If any payment due under this EULA or otherwise owing by Client to the Reseller to Company is not paid within thirty (30) days from its due date, and such payment due is not disputed in good faith, Company may, at its option, charge for its additional costs related to such delinquency at a rate of one and one-half percent (1 1/2 %) per month (eighteen percent (18%) per annum) or if such charges exceed that permitted by applicable law, the highest rate allowed by applicable law, from the date such payment first became due.

12. **Maintenance.** No Software maintenance services, or Software Updates are provided by Company to Client under this Agreement, though in Company's opinion, such maintenance services are necessary for the successful, ongoing operation of the Software. All Software maintenance services, or Software Updates must be purchased under a separate agreement.

13. **Electronic Data Interchange Transactions – Services & Fees.** Provided Client has licensed the applicable NextGen® Software, Client will have the ability to electronically create claims for submission to certain approved carriers and/or clearinghouses. Client further understands that charges for such submissions are in addition to the other fees set forth in the Agreement. The initial charges for submission are set forth in the Agreement or some other agreement in writing signed by both parties. After the first year period, Company may increase such charges by the lesser of 10% or the effective rate or the change in the Consumer Price Index plus 3%. Client agrees to pay Company in accordance with invoices provided by Company for such services. If electronic statements or other mailing services are listed in an Agreement. The pre-transaction fee shown includes paper, envelopes, postage and mailing services; however, such prices may be adjusted from time to time, including but not limited to, any applicable changes in postal rates.

14. **This section is intentionally left blank.**

15. **Client Responsibilities.** In addition to Client's other obligations, Agreements and responsibilities set forth in this EULA:

Client agrees to be responsible for the following: (a) Providing a proper physical environment and utilities for the computers on which the Software operates, including an uninterrupted power supply; (b) selecting and training Client's personnel so they can operate computers and related systems and so they are familiar with the accounts and records that serve as input and output for the Software; (c) procuring all communication and network services

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(including all cabling and cabling services) required to utilize the Software locally and, should Client so desire, in a remote environment consistent with this EULA; (d) preparing the Designated Location for installation of the Software, Third Party Software and Hardware, including compliance with special electrical, internet, communication or telephonic requirements (if applicable) and other tasks as may be necessary for the environment; (e) all data entry and loading; (f) providing related data and explaining internal procedures in writing to Company upon Company or Reseller's reasonable request; (g) establishing and maintaining adequate operational back-up and disaster recovery provisions for Client data in the event of a defect or malfunction that renders the Software or the computer systems on which it runs non-operational; (h) providing Company and Reseller's Personnel with the necessary physical access to the Designated Location, during normal working hours and as otherwise may be required by Company or Reseller to allow Company and/or Reseller to perform its obligations under this EULA. Company will use reasonable efforts to comply with all reasonable security and safety procedures of which Client has advised Company in writing; (i) providing Company with full-time, protected and secured high-speed internet access or other communications needs in regard to the Software and Hardware for purposes of performing Maintenance Services and/or audits under this EULA or any other Agreement with Company. Client will be responsible for all charges associated with providing such internet access, Company will use reasonable efforts to comply with all of Client's reasonable security and safety procedures associated with Company's remote access of the Software and/or Hardware, provided Client has advised Company in writing of such procedures; (j) appointing certain of Client's employees to become Certified Professionals and notifying Company of any change in Certified Professionals; (k) procuring and maintaining all device driver, third party operating systems and other products and services that may be required to operate the Software and that are licensed directly by Client from third-parties, including licenses to load third party CPT4 and ICD-9-CM code files; (l) results obtained from use and operation of the Software, provided however nothing contained in this subsection shall affect the limited warranty contained in Section 19 of this EULA; and (m) determining whether the Software, Hardware, and Third-Party Software Client has selected in the Agreement will achieve the results Client desires and the use and operation of such Hardware, Third-Party Software, and the Software.

16. **Proprietary Protection.** Company and/or its third-party suppliers have sole and exclusive ownership of all rights, title, and interest in and to the Software, User Materials and all other Confidential Information, subject only to the limited internal business use license expressly granted to Client herein. This EULA does not provide Client with the title or ownership of the Software or User Material, but only a license for limited, internal use. This EULA does not provide Client with any title interest or ownership in or any right to use Company's name, trademark or logo, or any goodwill now or hereafter associated therewith, all of which title, interest, ownership and goodwill is the property of and shall inure exclusively to the benefit of Company. Client may not use Company's name, trademark, logo and/or any part of the Software in any marketing or

other materials that will be distributed by Client to third parties without Company's prior written consent.

17. **Limitations on Use, Etc.** Notwithstanding any other provision of this EULA, Client shall not (i) reproduce, record, videotape, capture in electronic audio or video form, distribute, transmit, transfer, or disclose, directly or indirectly, in any form, by any means, or for any purpose, the confidential Information, except Client may disclose such Confidential Information to Client's employees who need to know such information in the performance of the job if they have been advised of the obligations of confidentiality set forth herein and have agreed to abide by same; (ii) disclose or disseminate Confidential Information to any third party; (iii) copy, modify, or distribute the Software (electronically or otherwise) or the User Materials, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Company in this EULA or in a separate written agreement signed by a duly authorized representative of the Company; (iv) use the Software for any purposes in any manner not permitted under this EULA; (v) decompile, reverse assemble or otherwise reverse engineer the Software; (vi) import, add, modify or delete data in the Software database by *any* method other than direct data entry through the application or through a Company-developed Interface, unless approved by Company in advance *and* in writing; (vii) use the Software to process anything other than Client data; (viii) sell, transfer, lease, assign, or sublicense Client Software license without Company's prior written consent, except for a transfer or the Software in its entirety to a successor in interest of Client's entire business who assumes, in a writing delivered to Company, the obligations of this EULA; (ix) install the server-portion of the Software anywhere but the Designated Location without Company's prior written consent (which will not be unreasonably withheld); or (x) take any other action in derogation of Company's intellectual property rights in respect of the Software, User Materials or other Confidential Information, provided that if absolutely necessary due to then exigent circumstances, Client may - following written notice to Company - temporarily transfer the Software to another location in the event of an interruption of computer operations at the Designated Location. Client authorizes Company to enter Client's premises in order to inspect the Software at any time during regular business hours to verify compliance with the terms of this Agreement.

18. **Data Conversion.** Though Client *may* use the Software productively by performing a manual data conversion of Client's existing patient data, Company can perform such conversion for Client if Client desires and if set forth in any Agreement. Client understands that any data conversion is subject to the possibility of human and machine errors and that Company shall not be liable for such errors. Clients are responsible to review and validate all data, reports, and generated forms (collectively "Outputs") that may be generated by the Software, and Client will notify Company immediately in writing if errors are found. Unless Company receives *any* such notifications within 30 days after performance of its conversion services, the conversion shall be deemed complete

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without errors. If any errors are the result of Company's mistakes in any conversion services it provides to Client, Company shall correct such errors at no additional charge. Client agrees prior to Company performing data conversion services to (i) procure the necessary resources to unload the data from Client's existing system, (ii) provide the record layouts, data and other information requested by Company; and (iii) provide all data to Company in pre-defined NextGen® ASCII delimited format.

19. **Warranties.** Company grants Client a limited warranty that (1) Company has developed, owns, and/or possess all rights and interests in the Software necessary to enter into this Agreement; (ii) Company has full authority to execute and perform this Agreement; and (iii) Company's execution and performance of this EULA will not materially violate any material law or materially breach any material agreement, known by and governing Company. Company also grants to Client a limited warranty for one (1) year from the date of Software Installation ("Warranty Period") that the Software, unless modified by or on Client's behalf or otherwise employed in a manner not permitted under this EULA, will substantially perform the material functions described in the User Materials when operated on Hardware and with the Third Party Software purchased from or pre-approved in writing by, Company in accordance with the User Materials (the "Express Warranty"). Such limited Express Warranty is subject to and conditioned upon performance of Client's responsibilities under Section 15 of this EULA. Company does not warrant that the Software will meet Client's requirements, that the operation of the Software will be uninterrupted or error-free, or that all Software errors can be corrected. Except for the limited Express Warranty during the Warranty Period, the Software is provided "AS IS." For any breach or the limited Express Warranty, Client's sole and exclusive remedy, and Company's and Reseller's entire liability and obligation, shall be, at Company's election to: (i) correct the Software or the User Materials or (ii) provide Client with an Update to the Software, whichever is, in the Company's sole determination, reasonably appropriate, provided that no change may be made hereunder to the User Materials which modifies or deletes any material function of the Software. IF ANY PROBLEM, OPERATIONAL FAILURE OR ERROR OF THE SOFTWARE HAS RESULTED FROM ANY ALTERATION OF THE SOFTWARE (EXCEPT IF DIRECTLY BY COMPANY OR UNDER COMPANY'S WRITTEN DIRECTION), ACCIDENT, ABUSE OR MISAPPLICATION, THEN, AT COMPANY'S SOLE OPTION, THIS WARRANTY SHALL BE NULL AND VOID.

Client warrants that: (i) Client's execution or this Agreement will not violate the terms or any pre-existing Agreement(s) between Client and a third party; (ii) Client has full power and authority and is duly authorized to execute and perform the financial and non-financial obligations under this EULA; and (iii) if Client is anything other than an individual signing on Client's own behalf, Client has taken all of the necessary corporate action in order to authorize and ratify Client's execution and delivery of this EULA and Client's performance under the EULA.

OTHER THAN AS EXPRESSLY SET FORTH ABOVE, COMPANY NOR RESELLER MAKES OR PROVIDES ANY EXPRESS OR IMPLIED

WARRANTIES, CONDITIONS, OR REPRESENTATION TO CLIENT OR ANY OTHER PERSON WITH RESPECT TO THE SOFTWARE, THE USER MATERIALS, OR ANY UPDATES, INTERFACES, SERVICES, OR WORKS OF AUTHORSHIP PROVIDED HEREUNDER, OR OTHERWISE REGARDING THIS EULA, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY AGAINST INFRINGEMENT, AND IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

COMPANY AND RESELLER PROVIDE NO WARRANTY ON ANY THIRD PARTY SOFTWARE AND/OR HARDWARE NOT MANUFACTURED BY COMPANY OR RESELLER, EXCEPT AS SET FORTH IN THIS AGREEMENT, COMPANY WILL NOT BE RESPONSIBLE FOR ANY THIRD PARTY SOFTWARE, THIRD PARTY SERVICES AND/OR HARDWARE IT PROVIDES TO CLIENT.

20. **Limitation of Liability; Exclusion of Consequential Damages.** CLIENT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL COMPANY OR RESELLER OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL, LOST PROFITS, LOST DATA OR LOST OPPORTUNITIES, IN ANY WAY RELATING TO THIS EULA OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY HARDWARE, THIRD PARTY SOFTWARE AND/OR SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF COMPANY OR RESELLER HAVE BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

IN THE EVENT THAT THE SOFTWARE OR ANY REPORT OR INFORMATION GENERATED BY THE SOFTWARE IS USED IN CONNECTION WITH ANY DIAGNOSIS OR TREATMENT BY CLIENT AND/OR ANY OF CLIENT'S EMPLOYEES, AGENTS, REPRESENTATIVES, AND THE LIKE, CLIENT AGREES TO ACCEPT ALL RESPONSIBILITY IN CONNECTION THEREWITH, INCLUDING RESPONSIBILITY FOR INJURY, DAMAGE AND/OR LOSS RELATED TO SUCH DIAGNOSIS OR TREATMENT, IRRESPECTIVE OF WHETHER SUCH INJURY, DAMAGE AND/OR LOSS RESULTS FROM CLIENT'S USE OF THE SOFTWARE.

IN NO EVENT WILL COMPANY OR RESELLER'S LIABILITY IN THE AGGREGATE FOR ANY DAMAGES FOR ANY MATTER ARISING UNDER THIS EULA EVER EXCEED THE SOFTWARE LICENSE FEES PAID BY CLIENT TO COMPANY HEREUNDER DURING THE PRIOR TWELVE CALENDAR MONTHS, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE PRODUCTS LIABILITY OR OTHERWISE.

Client represents and warrants to Company and Reseller that Client is a sophisticated purchaser and acknowledges and agrees that the allocation of risks in this EULA is reflected in the Software license fee, that Company nor Reseller is unable to test the Software under all possible circumstances, that Company and Reseller cannot control the manner in which Client shall use the Software, and that the

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allocation of risks under this EULA is reasonable and appropriate under the circumstances.

21. This section is intentionally left blank.

22. **Default, Termination.** Should Client fail to carry out any obligation under this EULA or any other Agreement with Company or Reseller or otherwise be in breach or violation of or in default under any provision, term, agreement, covenant, representation or warranty under this EULA or any other Agreement with Company or should Reseller fail to timely make the payments due for Client's Software licenses or such other monies owed to Company by Reseller on Client's behalf, Company may, at its option, in addition to other available remedies, terminate this EULA, discontinue any Hardware and Software Maintenance Services, and/or disable the Software, provided that Company first gives Client fifteen (15) days' prior notice of such default and that Client fails to cure the default within such fifteen (15) day period – except for violations of Section 16 and 17, which shall require no notice and allow for no cure period.

23. **Effect of Termination.** Termination of this EULA also terminates Client's license to the Software and User Materials. However, termination of any Hardware or Software Maintenance Services (which Client may have entered into separately with Company) does not, in and of itself, terminate the Software license granted to Client under this EULA. Upon termination of this EULA for any reason, Client is required to immediately return or destroy, as requested by Company, all copies thereof. Client agrees to certify, in writing, Client's compliance with such requirement upon request by Company.

24. **Rights to Injunctive Relief.** Recognizing and acknowledging that any use or disclosure of the Software and/or other Confidential Information by Client in a manner inconsistent with the provisions of this EULA may cause Company and/or Reseller irreparable harm for which other remedies may be inadequate, Client agrees that Company and/or Reseller shall have, in addition to all other rights and remedies or under applicable law, the right to immediate injunctive and/or other equitable relief from a court of competent jurisdiction as may be necessary and appropriate to prevent any unauthorized use or disclosure of any such Software and /or other Confidential Information (without bond or requirement for proof of actual or likely damages) and that, in connection therewith, Client shall not oppose such injunction on the grounds that an adequate remedy is available at law.

25. **Notices/Shipment.** All notices or communication required to be given pursuant to this EULA shall be in writing and delivered either personally, via nationally recognized overnight carrier, or by certified, return receipt requested, postage prepaid U.S. mail to Company at 795 Horsham Road, Horsham, PA 19044, Attn: President, or at such other address designated to Client by Company in writing. Notices delivered personally or via overnight mail shall be effective upon delivery, and notices delivered by regular U.S. mail shall be deemed effective five (5) business days after deposited in an official U.S. Postal Service mailbox. Prices are F.O.B. Origin, Freight

collected, and title and risk of loss shall pass to Client upon shipment by Company and/or its agents or suppliers/vendors.

26. **Governing Law, Jurisdiction and Venue.** This EULA is made under, and in all respects shall be interpreted, construed and governed by, and in accordance with, the laws of the State of California without reference to the choice of law principles thereof. Any cause of action arising out of or related to this EULA may only be brought in the local court of applicable jurisdiction in the State of California, Orange County, and Client hereby submits to the exclusive jurisdiction and venue of such court. The parties further agree that the United Nations Convention on Contract for the International Sale of Goods shall not apply.

27. **Modification and Waivers.** This EULA *may* not be modified except by a writing signed by authorized representative of all parties. A waiver by either party of its rights hereunder shall not be binding unless contained in writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision or right under this EULA shall not constitute or imply a waiver of such provision or right on any other occasions unless expressly so agreed in writing. It is agreed that no custom, usage, or other regular practice or method of dealing between the parties hereto shall be used to modify, supplement, or alter in any manner the terms of this EULA.

28. **Relationship of Parties.** This EULA shall not be construed to create any employment, partnership, joint venture or agency relationship between the parties hereto, or to authorize Client or Company to enter into any commitment or agreement with any third party that is binding on Company or Reseller.

29. **Binding Effect.** This EULA shall be (i) binding upon the parties' respective legal representatives, transferees, successors, and assigns; (ii) inure to the benefit of Company's transferees, successors, and assigns; and (iii) inure to the benefit of Client's transferees, successors, and assigns only to the extent any such transfer or assignment has been approved in writing by Company and such transferee, successor or assign has expressly assumed in writing delivered by Company, the obligation of this EULA.

30. **Force Majeure and Other Performance Delays.** Company and/or Reseller shall not be liable for failure to perform *any* of its obligations hereunder if such failure is caused by an event outside its reasonable control, including but not limited to, the act of God, act or threat of terrorism, shortage of materials and/or supplies, strike or labor action, war or threat of military or significant police action, or natural disaster or other cause beyond its reasonable control. Company is not responsible for the actions or inactions of Reseller. Client's or Reseller's delays or non-performance shall not excuse or relieve Client's obligation to make any payment to Company that may be due under this EULA, regardless of whether Software Installation has occurred and/or Client is using the Software.

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31. **Severability.** If any provision of this EULA is declared invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, so that the remainder of that provision and all remaining provisions of this EULA shall be valid and enforceable to the fullest extent permitted by law.

32. **Use of Personnel.** Subject to the remaining provision of this EULA, each party is solely responsible for determining which of its personnel will perform its obligations under this EULA. Additionally, Company, in its sole discretion, reserves the right to subcontract the performance of its obligation to a third party. If problems are encountered with the project manager and/or trainer assigned to Client's account, Company will use its reasonable efforts to swap such project manager and/or trainer with alternate personnel who Client can approve, which approval shall not be unreasonably withheld or delayed. Should Client exhaust Company's pool of available project managers and/or trainers, the parties shall renegotiate, in good faith, the time frames set forth in this EULA so as to prepare a new mutually acceptable implementation schedule. Client understands that there may be redundancy in the usage of Client's service hours to get the newly assigned project manager and/or trainer up-to-speed in the implementation of the Software for Client's practice.

33. **Client Cooperation.** Client consents to the public use by Company and/or Reseller of Client's name as a customer of Company and/or Reseller and to reasonably cooperate with Company and/or Reseller to assist Company and/or Reseller in licensing the Software to others. Such cooperation may include: (i) providing third parties with reasonable access to inspect the operation of the Software at the Designated Location, provided that such access shall not disrupt Client's normal business operations; and (ii) providing testimonials as to the quality, usefulness and relevance of the Software.

34. **Obligations that Survive Termination.** The parties recognize and agree that the termination, cancellation or expiration of this EULA does not excuse the parties from complying with their respective payment, confidentiality, non-disclosure, non-transfer, and non-solicitation obligations under this EULA, including, without limitation those contained in Section 9, 10, 11, 16, 17, 19, 36 and 39. Nor does the termination, cancellation, or expiration of this EULA affect any limitations, rights upon default, or provisions regarding litigation or interpretation of this Agreement, including without limitation those set forth in Sections 19, 20, 24, 26, 27, 28, 31, 35, 37, and 40.

35. **Uniform Commercial Code.** To the extent the Uniform Commercial Code of any jurisdiction applies to this EULA or any order, this EULA and the particular order, shall control where there is a conflict between the Uniform Commercial Code and such order or this EULA.

36. **Covenant not to Solicit to Hire.** Except within the other party's prior written permission, each party agrees that during the

term of this EULA and for two (2) years thereafter, it will not, whether for its own account or for the account of any other person or other business entity: (i) interfere with the other party's relationship with or (ii) endeavor to entice away from, solicit or deal with, any person or other business entity who which at any time during the term of this EULA was an employee, consultant, or agent of the other party.

37. **Ambiguities.** Each party and its counsel have materially participated in the drafting of this EULA, and consequently the rule of contract interpretation that ambiguities, if any, in the writing be construed against the drafter shall not apply.

38. **US Government Restricted Rights.** The Software and User Materials are provided with Restricted Rights, use, duplication, or disclosure by the U.S. Government is subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the commercial Computer Software – Restricted Rights at 48 CFR 52.227.19, as applicable.

39. **Export/Foreign Government Restriction.** Client may not export or re-export the Software without Company's prior written consent and without the appropriate United States and foreign government licenses. Under no circumstances may the Software or any technical data contained therein, or any portion thereof, be exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, or any other country to which the United States has embargoed goods; or (ii) to anyone in the United States Treasury Department's list of Specialty Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Client hereby represents and warrants that Client is not located in, under the control of, or a permanent or temporary resident of any such country or on any such list. Client further agrees to indemnify and hold harmless Company, Reseller, and its' officers, directors, shareholders, employees, agents and representatives against any and all costs, liabilities, damage, losses or expenses (including, without limitation, attorneys fees) arising from or relating to any asserted violation by Client of any of the laws and administrative regulations of the United States relating to the control of exports of commodities and technical data.

40. **Entire Agreement.** Each party acknowledges that it has read this EULA and agrees to be bound by its terms and that this EULA and the Agreement are the complete and exclusive agreement of the parties with respect to the Software. This EULA and the Agreement contain the entire understanding between the parties with respect to the subject matter set forth herein, and neither party is relying on any representations or warranties other than those found in this EULA; Client understands that the headings used in the EULA are solely for convenience of reference and are not intended to have any substantive significance in interpreting this EULA.