



SUPPLEMENTAL ORDER FORM

Please email the signed Order Form to Ordermanagement@nextgen.com or fax to 866-903-6415

<i>Internal Use Only</i>	Order Type: Add-on Sale	Sold to ID: 0000126356	Ship to ID: 0000126356	Bill to ID: 0000126356
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Company	Quote Details	Sales Contact
NextGen Healthcare Inc. Product Portfolio	Quote #: PG-2026-329604 Revision #: 2 Proposal Date: 01/29/2026	Mary Meadows mmeadows@nextgen.com Phone: +1 215-385-7793 Fax: 866-903-6415 Valid Until: 03/31/2026 Payment Terms: Net 30

Sold To:	Ship To:	Bill To:
County of Monterey, on behalf of County of Monterey Health Department 1270 Natividad Rd. Salinas, CA 93906 Richard Wagreich wagreichr@countyofmonterey.gov	County of Monterey, on behalf of County of Monterey Health Department 1270 Natividad Rd. Salinas, CA 93906	County of Monterey, on behalf of County of Monterey Health Department 1270 Natividad Rd. Salinas, CA 93906 hdadminfinance@ countyofmonterey.gov

Company Software	SKU	Quantity	Unit Price	Net Amount
APP MGMT Consls Virtual V1000 M2M Mirth Appliance platform for running Mirth application software in a VMware virtual environment. License Term: Perpetual License Metric: Unlimited interfaces for Production use Product: Mirth Connect Environment: Production	100-810-600105	1	\$13,000.00	\$13,000.00
APP MGMT V1000 - M2M MNTNC Software Maintenance for Mirth V1000-M2M Appliance. Service Term Start: Commencing upon Effective Date Service Term End: 06/30/2026 Pro-rated cost to be calculated upon order processing.	100-400-600390	1	\$2600.00	\$2600.00
APP MGMT V1000 - M2M MNTNC Renewal Software Maintenance for Mirth V1000-M2M Appliance. Service Term Start: 07/01/2026 Service Term End: 06/30/2027	100-400-600390	1	\$2,600.00	\$2,600.00
APP MGMT V1000 - M2M MNTNC Renewal Software Maintenance for Mirth V1000-M2M Appliance. Service Term Start: 07/01/2027 Service Term End: 06/30/2028	100-400-600390	1	\$2,600.00	\$2,600.00
APP MGMT V1000 - M2M MNTNC Renewal Software Maintenance for Mirth V1000-M2M Appliance. Service Term Start: 07/01/2028 Service Term End: 06/30/2029	100-400-600390	1	\$2,600.00	\$2,600.00

Subscriptions/Ongoing Fees	SKU	Quantity	Unit Price	Net Amount
Connect Enterprise, 4 DL CNCTD HLTH	700-805-600360	1	\$10,000.00	\$10,000.00



<p>Mirth Connect Enterprise Dynamic License to include 1 Production Instance and 3 Non-Production Instances, 20 support cases, and 50 channel entitlements for the *Mirth® Command Center</p> <p>Service Term Start: Commencing upon Effective Date Service Term End: 06/30/2026 Pro-rated cost to be calculated upon order processing.</p>				
<p>Connect Enterprise, 4 DL CNCTD HLTH Renewal</p> <p>Mirth Connect Enterprise Dynamic License to include 1 Production Instance and 3 Non-Production Instances, 20 support cases, and 50 channel entitlements for the *Mirth® Command Center</p> <p>Service Term Start: 07/01/2026 Service Term End: 06/30/2027</p>	700-805-600360	1	\$10,000.00	\$10,000.00
<p>Connect Enterprise, 4 DL CNCTD HLTH Renewal</p> <p>Mirth Connect Enterprise Dynamic License to include 1 Production Instance and 3 Non-Production Instances, 20 support cases, and 50 channel entitlements for the *Mirth® Command Center</p> <p>Service Term Start: 07/01/2027 Service Term End: 06/30/2028</p>	700-805-600360	1	\$10,000.00	\$10,000.00
<p>Connect Enterprise, 4 DL CNCTD HLTH Renewal</p> <p>Mirth Connect Enterprise Dynamic License to include 1 Production Instance and 3 Non-Production Instances, 20 support cases, and 50 channel entitlements for the *Mirth® Command Center</p> <p>Service Term Start: 07/01/2028 Service Term End: 06/30/2029</p>	700-805-600360	1	\$10,000.00	\$10,000.00

Due to rounding, annual amounts shown may differ slightly from prorated period amounts. Actual billing is based on the prorated period calculation.

Grand Total	
Currency:	USD
Subtotal:	\$63,400.00
Discount:	\$0.00
Total Minimum:	\$63,400.00

Note: Total is exclusive of any applicable sales tax.

Terms and Conditions

*The Mirth Command Center software is intended for use only by End Users located within the United States. Access or use of the Mirth Command Center software from outside the United States is prohibited.

Connected Health Solutions Billing Terms: 3 yr Maint/Sub; Annual Billing
Year 1's subscription and maintenance invoiced at Contract Execution (Net 30). Year 2's subscription and maintenance invoiced at the end of Year 1's term (Net 30). Year 3's subscription and maintenance invoiced at the end of Year 2's term (Net 30)

By signing below Client indicates its acceptance of the terms and conditions of the Master Agreement and that the Master Agreement is the complete and exclusive agreement between the parties. The Master Agreement: (i) contains the entire understanding between the parties with respect to the subject matter set forth herein, and neither party is relying on any representations or warranties other than those found in the Master Agreement, (ii) supersedes all prior and contemporaneous negotiations, agreements, contracts, commitments and understandings, both verbal and written, between the parties, and (iii) does not operate as an acceptance of any conflicting terms or conditions and shall prevail over any conflicting provisions of any purchase order, request for proposal, request for information or any other instrument. Client understands that the headings used in the Master Agreement are solely for convenience of reference and are not intended to have any substantive significance in interpreting the Master Agreement. The Master Agreement shall not be binding upon either party unless authorized representatives of both parties sign it. Signed counterparts shall not be deemed binding.



SCHEDULE:	APPLICABLE TO:	VERSION:
MIRTH® CONNECT BY NEXTGEN HEALTHCARE AGREEMENT	Company's provision of Mirth® CONNECT BY NEXTGEN HEALTHCARE	Attached
MIRTH® CONNECT BY NEXTGEN HEALTHCARE Dynamic Licensing	Company's provision of Mirth® CONNECT BY NEXTGEN HEALTHCARE Dynamic Licensing	Attached

FOR CLIENT

Signature Printed Name Title Date

Signed by: *Nicole Mitchell* 356A467DD9EF4A0... Nicole Mitchell Vice President 02/19/2026 | 12:50:02 PST

Approved as to Form:

Approved as to Fiscal Provisions:

DocuSigned by: *Stacy Saetta* C0ECE1B99F444A9... Stacy Saetta
Chief Deputy County Counsel
2/23/2026 | 1:05 PM PST

DocuSigned by: *Patricia Ruiz* E79EF64E57454F6... Patricia Ruiz
Auditor Controller Analyst I
2/23/2026 | 4:07 PM PST



Business Associate Agreement

BACKGROUND

- Covered Entity, as defined below, is either a “covered entity” or “business associate” of one or more covered entities as each are defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the HITECH Act and the related regulations promulgated by HHS (collectively, “HIPAA”) and, as such, is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information (“PHI”);
- The Parties have entered into or will enter into one or more agreements under which Business Associate, as defined below, provides or will provide certain specified Services to Covered Entity (collectively, the “Master Agreement”);
- In providing Services pursuant to the Master Agreement, Business Associate may have access, use or disclose PHI of Covered Entity;
- Both Parties are committed to complying with all federal and state laws governing the confidentiality and privacy of health information, including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Part 160 and Part 164, Subparts A and E (collectively, the “Privacy Rule”); and
- Both Parties intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the terms of this Business Associate Agreement (“BAA”), HIPAA and other applicable federal and state laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and the continued provision of PHI by Covered Entity to Business Associate under the Master Agreement in reliance on this BAA, the Parties agree as follows:

1. DEFINITIONS.

- 1.1. **Catch All Definitions.** The following terms used in this BAA shall have the same meaning as those terms set forth in the Privacy Rule, the Security Rule, and the HITECH Act, including: Breach, Business Associate, Covered Entity, Data Aggregation, Designated Record Set, De-Identify, Disclosure, Health Care Operations, Individual, Limited Data Set, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“PHI”) as applied to the information created or received by Business Associate from or on behalf of Covered Entity, electronic PHI (“ePHI”), Required by Law, Secretary, Subcontractor, Unsecured Protected Health Information (“Unsecured PHI”), and Use. Terms used in this Agreement not otherwise defined herein shall have the meanings ascribed to them in the HIPAA Rules or the Master Agreement between Covered Entity and Business Associate, as applicable.
- 1.2. **“Business Associate”** shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this BAA, shall refer to **Company** as defined in the Master Agreement between the Parties.
- 1.3. **“Covered Entity”** shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this BAA, shall refer to the **Client** as defined in the Master Agreement between the Parties.
- 1.4. **“HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 1.5. **“Successful Security Incident”** shall mean a security incident that results in the unauthorized access, use, disclosure, modification, or destruction of PHI. For the avoidance of doubt, Successful Security Incident shall NOT mean a security incident that does not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for example, and not for limitation, pings on Business Associate’s firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses).

2. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- 2.1. Business Associate may use or disclose PHI as necessary to perform the Services for, or on behalf of Covered Entity, as set forth in this BAA or in the Master Agreement between the Parties.
- 2.2. Business Associate may use or disclose PHI as Required by Law.
- 2.3. De-Identification of PHI. Business Associate may de-identify PHI only to the extent necessary to perform Services authorized under the Master Agreement or this BAA, in accordance with 45 C.F.R. § 164.514(b).
- 2.4. Business Associate may use or disclose PHI for its proper management and administration or to carry out the Business Associate’s legal responsibilities, provided the disclosures are Required by Law, or Business Associate has obtained reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate shall not use PHI to train, fine-tune, or otherwise develop or improve artificial intelligence or machine learning models, whether directly or via third-party tools or platforms, unless explicitly authorized in writing by Covered Entity.



Business Associate Agreement

3. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

Business Associate agrees to:

- 3.1. Except as otherwise permitted in this BAA, only use or disclose PHI as reasonably necessary to provide the Services described in the Master Agreement, and to undertake other activities of Business Associate permitted or required of Business Associate by this BAA, or as Required by Law;
- 3.2. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this BAA or the Master Agreement. Business Associate operates under the HITRUST Common Security Framework (CSF) to leverage industry recognized standards outlined further in the Information Security Program found [here](#), and which may be updated from time-time;
- 3.3. Report to Covered Entity any use or disclosure of PHI not permitted under this BAA or the Master Agreement of which Business Associate becomes aware, including a Breach of Unsecured PHI as required at 45 C.F.R. § 164.410 and any Successful Security Incident without unreasonable delay, but in no event longer than seventy-two (72) hours after any Breach or Successful Security Incident. When applicable, and as soon as reasonably possible, Business Associate shall supplement with a written report containing any information known to the Business Associate at that time;
- 3.4. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractor(s) that creates, receives, maintains, or transmits PHI on behalf of Business Associate for Services provided to Covered Entity, agrees to substantially similar restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI;
- 3.5. To the extent Business Associate has PHI contained in a Designated Record Set, Business Associate agrees to make such PHI available to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524 within fifteen (15) business days of receipt of such written request; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Business Associate, or inquires about his or her right to access, Business Associate shall direct the Individual to Covered Entity and any decision to disclose will be the sole responsibility of Covered Entity;
- 3.6. To the extent Business Associate has PHI contained in a Designated Record Set, Business Associate agrees to make such PHI available to Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526; To the extent Business Associate has PHI contained in a Designated Record Set, it agrees to make such information available to Covered Entity for amendment pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526. If an Individual makes a request for an amendment pursuant to 45 C.F.R. § 164.526 directly to Business Associate, or inquires about his or her right to an amendment, Business Associate shall direct the Individual to Covered Entity and any decision to amend will be the sole responsibility of Covered Entity;
- 3.7. In accordance with 45 C.F.R. § 164.509, when Business Associate receives a request for PHI potentially related to reproductive health care purposes specified in 45 C.F.R. §§ 164.512(d), (e), (f), or (g)(1), Business Associate shall direct the requestor to Covered Entity to obtain a valid attestation as required by 45 C.F.R. § 164.509(b)(1), and any decision to disclose such information will be the sole responsibility of Covered Entity;
- 3.8. Make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528 by providing such information within thirty (30) business days of receipt of such written request;
- 3.9. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, it shall comply with the requirements of Subpart E that would similarly apply to Covered Entity in the performance of such obligation(s);
- 3.10. Cooperate in good faith in all respects with Covered Entity in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry;
- 3.11. To the extent practicable, cooperate in good faith with Covered Entity's efforts to mitigate a harmful effect that is known to Business Associate of a use or disclosure of PHI not provided for in this BAA;
- 3.12. Request, use and disclose PHI, to the extent practicable, as a Limited Data Set or limited to the minimum amount of PHI necessary to carry out the intended purpose of the use or disclosure, in accordance with 45 C.F.R. § 164.514(d); and



Business Associate Agreement

- 3.13. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining compliance with the HIPAA Rules.

4. **OBLIGATIONS OF COVERED ENTITY.**

Covered Entity agrees to:

- 4.1 Promptly notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
- 4.2 Promptly notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI;
- 4.3 Promptly notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI;
- 4.4 Cooperate in good faith in all respects with Business Associate in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry;
- 4.5 Not make a request of Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except that Business Associate may use or disclose PHI for management and administration and legal responsibilities as described herein; and
- 4.6 Abide by the Client General Requirements outlined in the Information Security Program found [here](#), and which may be updated from time-to-time.

5. **TERM AND TERMINATION.**

- 5.1 **Term.** The term of this BAA shall commence as of the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by, Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 5.3.
- 5.2 **Termination for Cause.** At such time as Covered Entity reasonably determines in good faith that Business Associate has violated a material term of this BAA and Business Associate has not cured the breach or ended the violation within thirty (30) business days after written notice from Covered Entity of the violation, Covered Entity may elect to terminate the Master Agreement and this BAA for cause.
- 5.3 **Obligations of Business Associate Upon Termination.**

Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall return to Covered Entity or destroy the PHI received by Business Associate on behalf of, Covered Entity. In the event Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall continue to extend the protections to such PHI as required by the HIPAA Rules and limit further use and disclosure for so long as Business Associate retains such PHI. If Business Associate so retains any PHI upon termination of this BAA as provided above, Business Associate shall:

- A. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- B. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained;
- C. Return to Covered Entity or destroy the remaining PHI that Business Associate still maintains in any form;
- D. Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and
- E. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI.



Business Associate Agreement

6. **Survival.** The respective rights and obligations of Business Associate under Section 5.3 of this BAA shall survive the termination of this BAA and the Master Agreement.
7. **Effect of BAA.** In the event of any inconsistency between the provisions of this BAA and the Master Agreement, the provisions of this BAA shall control. In the event of inconsistency between the provisions of this BAA and mandatory provisions of the Privacy Rule, the Security Rule or the HITECH Act, as amended, or their interpretation by any court or regulatory agency with authority over Business Associate or Covered Entity, such interpretation shall control. Provided, however, that if any relevant provisions of the Privacy Rule, the Security Rule or the HITECH Act is amended in a manner that changes the obligations of Business Associate or Covered Entity that are embodied in the terms of this BAA, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this BAA to give effect to such revised obligations. Where provisions of this BAA are different from those mandated in the Privacy Rule, the Security Rule or the HITECH Act, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this BAA shall control.

In the event of inconsistency between the provisions of this BAA and state law, applicable to Covered Entity's operations, the Parties agree to abide by the more stringent requirement, unless otherwise prohibited by federal law. The Parties will negotiate in good faith appropriate terms or amendments to this BAA to give effect to any obligations of Business Associate or Covered Entity required by the applicable state law. If either Party becomes aware of any changes in applicable state law that may affect the obligations of Business Associate or Covered Entity under this BAA, it shall notify the other Party.

8. **General.** This BAA is governed by, and shall be construed in accordance with, the laws of the State that govern the Master Agreement between the Parties. Covered Entity shall not assign this BAA without the prior written consent of Business Associate, which shall not be unreasonably withheld. If any part of a provision of this BAA is found illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this BAA shall not be affected. All notices relating to the Parties' legal rights and remedies under this BAA shall be provided in accordance with the Notice Section of the Master Agreement and shall reference this BAA. This BAA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. Nothing in this BAA shall confer any right, remedy, or obligation upon anyone other than Covered Entity and Business Associate. This BAA is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter.



Mirth® Connect by NextGen Healthcare Dynamic Licensing Schedule

To the extent there is a conflict between other sections of the Connect Agreement and this Schedule, then, solely as it relates to the Mirth® Connect by NextGen Healthcare Dynamic Licenses, this Schedule shall prevail. Capitalized terms shall have the meanings set forth in the Connect Agreement with Company.

1. Client is obtaining License(s) to certain Mirth Connect through the Dynamic Licensing model, as are specifically set forth in the applicable Order Form. Client may purchase additional Mirth Connect Licenses through the Dynamic Licensing model through a supplemental Order Form with Company
2. **Term and Termination.** This Mirth® Connect by NextGen Healthcare Dynamic Licensing Schedule shall become effective on the Effective Date of the applicable Order Form until the expiration of the applicable License Term, unless terminated earlier under the Connect Agreement.
3. Client is required to keep all Dynamic License Instances connected to the internet unless granted a written exception by Company to use the Dynamic License Instances via an Offline Deployment, where Offline Deployment is defined as a client who uses Company’s offline validation process to perform license key validation. The following terms and conditions for use of Dynamic Licenses shall not be applicable to clients utilizing the Dynamic Licenses via an Offline Deployment. Such clients shall be subject to the Non-Dynamic License terms and conditions for use of their Dynamic Licenses until such client moves to an Online Deployment, where Online Deployment is defined as a client whose Dynamic License Instances are continually connected to the internet to validate client’s Dynamic License(s).
4. For each Instance Client will utilize in a Production environment, Client must purchase a Bundle, which is defined as a group of four (4) total Instances. In addition, all additional Instances purchased must be purchased as a Bundle.
5. For purposes of clarification, Client may exceed the allowed Capacity on any given calendar day, provided Client does not exceed the Capacity for that calendar month.
6. For example, if Client has four (4) Instances active for 30 days in a month, then on the 31st day Client scales to 80 Instances, Client’s monthly breakdown is as follows:
 - Capacity: 8 Instances
 - 30 days x 4 Instances = 120 Active Instances
 - 1 day x 80 Instances = 80 Active Instances
 - Cumulative "Active Instances" for the Month: 200 **Active Instances**
 - Average per day: $200 / 31 = 6.45/\text{day}$ (**Daily Average Utilization**)

Since Client’s Daily Average Utilization is less than 8 Instances/day, Client is within the contractual parameters for utilization of the Dynamic Licenses.

7. Should Client exceed its defined monthly Capacity, Client may either purchase an additional Bundle, which is defined as a group of four (4) total Instances via a supplemental Order Form, or pay a monthly overage for its usage as follows:
 - $1.5 * (\text{Monthly Bundle cost} / 4 \text{ Instances per Bundle}) * \text{Number of Instances exceeding Capacity}$ (“Overage Fees”).

Should Client fail to either purchase an additional block of four (4) Instances via a supplemental Order Form or pay such Overage Fees within thirty (30) days of the due date for such fees, Company may reduce Client’s daily allowed Capacity as follows:

Number of Days after Due Date of Overage Fees	Daily Allowed Capacity
30 calendar days	1.5x contracted Capacity
60 calendar days+	No Overage above Capacity allowed

8. Company recommends Client remain current on releases of the Connect Offering for security reasons and to stay compliant with requirements to receive Software Maintenance Services.
9. **Amendment.** This Mirth® Connect by NextGen Healthcare Dynamic Licensing Schedule may only be amended by Client upon mutual written agreement. Company may amend this Schedule at any time via Company posting a revised version on its website or within Success Community. The revised version will be effective at the time Company posts it. Client will be considered as having expressly consented to all changes to this Schedule if Client continues to use the Mirth® Connect by NextGen Healthcare Dynamic Licenses. Client accepts the responsibility of a continuing review of the content of NextGen Healthcare’s website and Success Community to determine whether any amendments or modifications have occurred. The parties hereto agree not to contest the validity of the Schedule under the provisions of any applicable law requiring documents to be in writing and signed by the party to be bound thereby.

Mirth® CONNECT BY NEXTGEN HEALTHCARE AGREEMENT

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

SCHEDULE:	APPLICABLE TO:	Version #:
End User License Agreement (“EULA”)	All End Users of the Connect Offerings	EULA – which may be amended from time to time
Business Associate Agreement (“BAA”)	All dealings with Company that involve PHI and/or ePHI.	BAA – which may be amended from time-to-time

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

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

GENERAL TERMS

1. PAYMENT OF FEES

1.1 Payment. Unless otherwise set forth in an Addendum, payment terms are as outlined in the applicable Order Form. The Client agrees to pay all fees for the entire Service Term set forth on an applicable Order Form. The Client’s payment obligations for the entire Service Term, as set forth on each applicable Order Form, are binding, non-cancelable, and irrevocable. Payment obligations commence as stated on the Order Form, regardless of the Client’s actual start of use of the Products or Services and continue through the entire Service Term. The Client shall certify the invoice provided by Company, either in the requested amount or in such other amount as the Client approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. Any billing requirements needed by the Client on Company invoices must be submitted to the Company (via opening a support case through www.community.nextgen.com/SuccessCommunityLogin) within 10 days from the Effective Date, and any agreed to invoice changes will only be effective for invoices prospectively issued. Any undisputed fees that are owed as of the date of termination or expiration of this Connect Agreement will be immediately due and payable. All fees and subscriptions (including but not limited to Maintenance Services) may be increased each calendar year during the initial Service Term or any Renewal Period by the lesser of 5% or the change in the Consumer Price Index, for all Urban Consumers (CPI-U) – US City Average, All Items. Additionally, Company reserves the right to modify its fees and subscriptions, effective as of the beginning of the next applicable Term with sixty (60) days prior notice to the Client. If paying by credit card or eCheck, the Client expressly authorizes Company to charge the Client’s credit card or bank account information each month for an amount equal to the Client’s current balance. If either: (A) the Client’s credit card or bank account information changes, (B) the Client’s credit card or bank account information becomes expired, or (C) the Client is notified by Company of an unsuccessful attempt by Company to charge the Client’s credit card or bank account for the Client’s invoice total, then the Client agrees to update its account with valid credit card or bank account information as soon as possible but, in no event, later than five (5) days. If, at any time, the Client revokes its credit card or bank account authorization, then such revocation shall be considered a material breach of this Agreement. To the extent permitted by applicable Law, payments made by credit card are subject to a processing fee equal to the fee charged to Company by the credit card processor or the amount permitted by applicable law. Payments made by eCheck transfer shall not be subject to a processing fee. Except as otherwise provided in an Order Form, Schedule, Addendum or Statement of Work, Implementation Services and Consulting Services are supplied on a time and materials basis (and not on a fixed fee basis) at the rates and estimated amounts set forth in the Order Form, Schedule, Addendum or Statement of Work. Pre-paid Implementation Service hours are non-refundable, and all Implementation and/or Consulting Service Hours automatically expire if not used within 12 months after the applicable Effective Date.

1.2 Billing Disputes. If the Client believes in good faith that Company has incorrectly billed the Client, Client must notify Company in writing, in reasonable detail, of the dispute through Company’s [Success Community](#) prior to the date payment is due. Invoices for which no such timely notification is received shall be deemed accepted by the Client as true and correct, and the Client shall pay all amounts due under such invoices within the applicable due date. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, each Party shall continue to fulfill its obligations under this Connect Agreement during any such dispute, including, without limitation, payment by the Client of all undisputed amounts/fees due and payable.

1.3 Failure to Pay. If the Client fails to make any payment when due then, in addition to all other remedies that may be available, Company may charge interest on the past due amount at the rate of 1.5% per month or, if lower, the highest rate permitted under applicable Law, beginning from the payment due date until paid in full. If any charge owing by the Client under this or any other agreement is thirty (30) days or more overdue, Company may, without limiting its other rights and remedies, (A) accelerate the Client’s unpaid fee obligations under such agreements for the remainder of the applicable Service Term so that all such amounts become immediately due and payable, (B) suspend or restrict Services until such amounts are paid in full, provided that, Company will give the Client at least 10 days’ prior notice that its account is overdue, before suspending or restricting Services to the Client, (C) prospectively discontinue any currently provided discount for the affected Company Products and Services, and (D) discontinue any future right to purchase Products and Services, whether at a discount price or otherwise and/or withdraw any previously granted, non-standard payment terms. For items (C) and (D), the Company will provide an adjusted invoice that reflects the applicable list price and revise the associated payment schedule as applicable to reflect the new remaining balance and/or payment terms. Unless otherwise agreed to by the Parties in

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writing, the Company's failure to invoice for any item outlined in the Order Form shall not relieve the Client's obligation to pay for the item once the Company subsequently invoices the Client for the same. However, the Company will not exercise its rights under items (A) through (D) above or apply any interest charge if the Client is disputing the applicable charges in good faith in accordance with the Billing Disputes Section above and is cooperating diligently to resolve the dispute.

1.4 Taxes. Prices do not include applicable taxes. Company will invoice the Client for any applicable taxes, and the Client agrees to pay these taxes. Where applicable, the Client must provide any tax-exemption claim to Company before, or contemporaneously, when, placing an order.

2. CLIENT RESPONSIBILITIES

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

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

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

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

2.5 Limitations on Use. Except to the limited extent expressly permitted in this Connect Agreement, the Client will not: (A) sell, transfer, lease, assign, or sublicense any Product or Services; (B) use any Product 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, password, or otherwise make an End User's ID, login or password available to any Third Party; (D) use any Product or Service to process anything other than the Client's, Affiliated Organizations', or an End Users' data; (E) bypass any privacy and/or security measures Company may use to prevent or restrict access to the Products 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.

3. CONFIDENTIALITY

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

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

4. PRIVACY

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

4.2 Personal Data.

- A.** If the Client orders Services that require the Client to provide to Company any Personal Data that is protected under any Data Protection Laws, the Parties agree to enter into a mutually agreed upon Data Processing Agreement. To the extent that any Data Protection Laws are not applicable to Client Data, this Section shall not apply.
- B.** To the extent Company, in its role as a Service Provider under CCPA (including as it may be amended by the California Privacy Rights Act, “CPRA”), receives Personal Data that constitutes “personal information” under CCPA, Company will not (i) sell (as defined in CCPA) such Personal Data; (ii) shall not retain, use, or disclose such Personal Data for any purpose other than performing the Services under the Connect Agreement or as otherwise permitted under CCPA; (iii) retain, use, or disclose the Personal Data for a commercial purpose other than providing the Services unless otherwise permitted under the Agreement; or (iv) retain, use, or disclose such Personal Data outside of the direct business relationship between the Client and Company.

5. CONNECT OFFERINGS LICENSE.

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

- (A) install and implement the Connect Offerings on Authorized Server(s) and, where applicable, Authorized Workstation(s) solely for use by End Users for internal operations in quantities as set forth in the Order Form and/or applicable Schedule
- (B) and in accordance with applicable Metrics and User Materials; and
- (C) use, copy and distribute internally User Materials as reasonably required for permitted use of the Connect Offerings. Any such copies of the User Materials must contain the same copyright and other proprietary notices that appear in the original User Materials.

5.2 Non-Production Use.

- (A) Dynamic License(s).** Applicable Terms and conditions for use of Dynamic License(s) will be as outlined in the Order Form and the Dynamic Licensing Schedule.
- (B) Non-Dynamic License(s).** Unless stated otherwise in the Order Form, for each Production Instance purchased by the Client: (i) Client may only operate one Production Instance of the Connect Offerings in a Client-owned or leased location located within the U.S.A, that is identified to Company, if requested by Company; and (ii) Client may also operate up to a maximum of three (3) Non-Production Instances (e.g. backup, development, quality assurance/test, etc.) of the Connect Offerings not to exceed any limit set forth in the Order Form and/or applicable Schedule, each of which may be installed in a Client-owned or leased location separate from where the Production Instance is installed, provided such location is located within the U.S.A and is identified to Company, if requested by Company.

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

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

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

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

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

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

6. CONSULTING SERVICES AND IMPLEMENTATION SERVICES.

6.1 Self-Implementation and/or Consulting Services. The Client understands the Connect Offerings come with no implementation and consulting services and the Connect Offerings are self-installed. However, the Client may purchase such services under a separate supplemental Order Form. Company will perform Implementation and/or Consulting Services set forth in any Order Form in accordance with a mutually agreed to Statement of Work and, if applicable, additional terms within the Order Form, applicable Schedule and/or addenda. Each Statement of Work will include an implementation project plan and target timeline that: (A) best utilizes the Implementation and/or Consulting Services purchased and/or (B) identifies the date of achievement of mutually agreed to milestones tied to the deployment of the Product or Service.

7. SOFTWARE MAINTENANCE SERVICES.

7.1 Software Maintenance Tiers. Company offers four tiers (Enterprise, Silver, Gold or Platinum) of Maintenance Services, as specifically selected by the Client in the applicable Order Form to help End Users maintain the Connect Offerings that it makes available to its client, as outlined here: [Connect Maintenance Services](#).

7.2 Software Maintenance Service Term; Termination of Maintenance. The Software Maintenance Service Term for the Connect Offerings will be as outlined in the applicable Order Form. For Software Maintenance Services provided under perpetual license(s) for the Connect Offerings, the Software Maintenance Service Term will be outlined separately in the Order Form. For Software Maintenance Services provided under non-perpetual license(s) for the Connect Offerings, the Software Maintenance Service Term shall be coterminous with the License Term for such Connect Offerings.

7.3 Software Maintenance Service Fees. The Order Form sets forth the applicable Software Maintenance Services fees. For Software Maintenance Services provided for perpetual license(s) purchased for the Connect Offerings, Software Maintenance Service fees will be billed separately. For Software Maintenance Services being provided for non-perpetual license(s) for the Connect Offerings, Software Maintenance Services are included in the fee for such Connect Offerings. Such fees are non-refundable and due annually, in advance unless stated otherwise in the applicable Schedule or Addendum.

8. DATA USE POLICY. Client Data may be used by Company in accordance with the Company's Data Use Policy, attached hereto.

9. TERM AND TERMINATION

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

9.2 Termination with Cause.

(A) Material Breach by Either Party. If either Party commits a material breach of this Connect Agreement, the non-breaching Party must give written notice describing, in reasonable detail, the nature and basis of the breach to the breaching Party. Except as otherwise allowed under this Connect Agreement, if the breach is not cured within 30 days of the notice date or such other mutually agreed, in writing, extension thereof, the non-breaching Party may immediately terminate this Connect Agreement. All notices by the Client pursuant to this Section must be submitted in the Company's [Success Community](#) with a copy sent to the Company's legal department via legal@nextgen.com. In the event this Connect Agreement is terminated by Company in accordance with this Section, all undisputed fees that would have become payable had the Connect Agreement remained in effect until expiration of the remainder of the term of all Order Forms will become immediately due and payable, and the Client shall pay such fees, together with all previously accrued but not yet paid fees, on receipt of Company's invoice therefor.

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

(C) Client's Government Funding. The Client's payments to Company under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of Products and/or Services, then the Client may give written notice of this fact to Company, and the obligations of the Parties under this Agreement shall terminate immediately, or on such date thereafter, as the Client may specify in its notice, unless in the meanwhile the Parties enter into a written amendment modifying this Agreement. Client represents that, as of the Effective Date of the Connect Agreement, as defined in Section 16.20, funds have been fully appropriated and are available for payment of the costs of the items and services during Client's Fiscal Year 2025-26 only. Client's obligations for any period beyond June 30, 2026 are expressly contingent upon the appropriation and availability of funds by Client's governing body in subsequent fiscal years. Nothing in this Agreement shall be deemed to constitute a commitment or obligation of Client to expend funds beyond the current fiscal year.

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

10. PROPRIETARY RIGHTS

10.1 Ownership. Company and/or its licensors retain all right, title, and interest in and to the Company Technology. No Company Technology is ever sold to the Client but rather the Client is either purchasing a license thereto or obtaining access and use of the Company Technology under a SaaS subscription model. Unless specifically stated, in writing, by the Company to the contrary, the Client has no right to use the Company's or any third party's name, trademarks or logo, or any goodwill now or hereafter associated therewith, all of which is the sole property of and will inure exclusively to the benefit of Company or such Third Party. The Client will not use the Products and/or Services in a manner that violates any third-party intellectual property, contractual or other proprietary rights.

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

10.3 Feedback. The purpose of this section is to avoid potential misunderstandings or disputes when Company's products and/or marketing strategies might seem similar to ideas submitted or feedback given to Company. Feedback means any comments, submissions or other feedback the Client may provide to Company, at its sole discretion, concerning the functionality and performance of the Company Technology, including identification of potential errors and improvements. By submitting any Feedback, (1) Company will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such Feedback as Company sees fit, without any obligation or restriction of any kind to the Client, (2) there is no obligation for Company to review Feedback, and (3) there is no obligation to keep any Feedback confidential.

11. LIMITED WARRANTIES

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

11.2 Compliance. Each Party represents and warrants that to the best of its knowledge: (A) it, its affiliates and its Personnel are not under or subject to a "Corporate Integrity Agreement" or any other restriction or investigation by any payer, government agency or industry self-regulating organization; (B) neither it nor any of its affiliates, directors or Personnel are (i) listed on the General Services Administration's Excluded Parties List System or (ii) suspended or excluded from participation in any Government Payer Programs; and (C) there are no pending or threatened governmental investigations against such Party or any of its affiliates, directors or Personnel that may lead to suspension or exclusion from Government Payer Programs or may be cause for listing on the General Services Administration's Excluded Parties List System. Breach of this Section will be a material breach of the Connect Agreement and entitle the non-breaching Party to immediately terminate the Connect Agreement.

11.3 Implementation & Consulting Services. If separately purchased as outlined in the Connect Offerings License Section above, Company warrants for 90 days from performance of the Implementation Services and/or Consulting Services, as applicable, that each such Service is performed in a professional and workmanlike manner. The Client must notify Company during such 90-day period, in writing, and in reasonable detail of any breach of this warranty. To the extent permitted by Law, the Client's sole and exclusive remedy and Company's sole liability under or in connection with this warranty will be re-performance of the relevant Service. No warranty is provided for any self-installation or self-training of the Connect Offerings.

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

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

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13. LIMITATION OF LIABILITY

13.1 EXCEPT FOR EXCLUDED CLAIMS AS DEFINED IN SECTION 16.24, NEITHER PARTY SHALL BE LIABLE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE OR PRODUCT LIABILITY), FOR ANY OF THE FOLLOWING ARISING OUT OF OR CONCERNING THIS CONNECT AGREEMENT, HOWEVER CAUSED: CONSEQUENTIAL, SPECIAL, MORAL, INCIDENTAL, INDIRECT, RELIANCE, PUNITIVE OR EXEMPLARY DAMAGES; LOSS OF GOODWILL, PROFITS, USE, OPPORTUNITIES, REVENUE OR SAVINGS; BUSINESS INTERRUPTION; OR LOSS ARISING FROM THEFT OR CORRUPTION OF DATA, VIRUSES, OR SPYWARE.

13.2 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO PERSON OR ENTITY OTHER THAN THE PARTIES TO THIS AGREEMENT SHALL HAVE ANY LIABILITY TO EITHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT. NOTHING IN THIS SECTION 13 SHALL LIMIT ANY LIABILITY ARISING UNDER APPLICABLE LAW FOR A PARTY'S OWN GROSSLY NEGLIGENT ACTS OR OMISSIONS.

13.3 EXCEPT FOR: (I) EXCLUDED CLAIMS AS DEFINED IN SECTION 16.24, (II) COMPANY'S BREACH OF ITS OBLIGATIONS UNDER THE BUSINESS ASSOCIATE AGREEMENT, OR ITS OBLIGATIONS TO PROTECT CLIENT'S PROTECTED HEALTH INFORMATION, (III) COMPANY'S INDEMNIFICATION OBLIGATION UNDER SECTION 14, (IV) COMPANY'S BREACH OF ITS OBLIGATIONS ASSOCIATED WITH CLIENT'S CONFIDENTIAL INFORMATION, OR (V) A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT (WHICH FOR (II), (III) AND (IV) SHALL BE SUBJECT TO A MAXIMUM, AGGREGATE LIABILITY CAP OF ONE MILLION DOLLARS), EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR EACH AND ALL CLAIMS (INDIVIDUALLY AND TOGETHER) ARISING OUT OF OR CONCERNING THIS AGREEMENT, OR ITS SUBJECT MATTER, IS LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE OF FEES PAID OR OWED BY THE CLIENT WITHIN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

14. INDEMNIFICATION

14.1 Duty to Indemnify. Company will defend any Third-Party Claim against the Client during the License Term for the applicable Company-developed Connect Offerings or Services for any Infringement Claim. Company will pay the Client the Losses (including reasonable legal fees) that are directly attributable to an Infringement Claim and are either finally awarded by a court of competent jurisdiction against the Client or agreed to in a written settlement agreement signed by Company. The remedies in this Section are the Client's sole and exclusive remedies and Company's sole liability regarding the subject matter giving rise to any Claim that the Connect Offerings or Services infringe or misappropriate any Third Party's intellectual property rights.

14.2 Company's Options. In the defense or settlement of any Infringement Claim, Company may, at its sole option and expense: (A) procure for the Client a license or, if applicable, subscription to continue using the Indemnified Technology under the terms of this Connect Agreement; (B) replace or modify the alleged infringing Indemnified Technology to avoid the infringement; or (C) terminate this Connect Agreement concerning the infringing part of the Indemnified Technology if neither of the foregoing is commercially reasonable and, solely as it relates to the affected license purchased, a pro-rata portion of the applicable fees equal to five (5) years paid by the Client for the infringing technology.

14.3 Exclusions. Company will have no liability for any Infringement Claim to the extent that it arises from: (A) use of the Indemnified Technology in violation of this Connect Agreement; (B) modification of the Indemnified Technology by anyone other than Company or a party authorized in writing by Company to modify the Indemnified Technology; (C) failure by the Client to install the latest updated version of the Indemnified Technology as requested by Company to avoid infringement; (D) installation or use of Indemnified Technology contrary to the specifications and directions contained in the User Materials or other reasonable instructions of Company; (E) Third Party products, services, Hardware, software, or other materials, or combination of these with Indemnified Technology if the Indemnified Technology would not be infringing without this combination.

14.4 Conditions to Indemnification. Company will have no liability for any Infringement Claim if the Client fails to: (A) notify Company in writing of the Infringement Claim promptly upon the earlier of learning of or receiving a notice of the infringement claim, to the extent that Company is prejudiced by this failure; (B) provide Company with reasonable assistance requested by Company for the defense or settlement (as applicable) of the Infringement Claim; or (C) provide Company with the exclusive right to control and the authority to settle the Infringement Claim (the Client may participate in the matter at its own expense) provided that Company shall not settle any Infringement Claim that requires the Client to admit fault without the Client's prior written consent.

15. GENERAL PROVISIONS

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

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

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

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15.4 Choice of Law. This Connect Agreement will be governed by the laws of the state of California; venue shall be Monterey County, California, without regard to its conflicts of laws principles.

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

15.6 Assignment; Binding Effect; Subcontractors. This Connect Agreement is personal to the Client, and the Client may not delegate and/or assign this Connect Agreement, including but not limited to any and all Connect Offerings and/or Services thereunder, or any of the Client's rights or duties hereunder without the advance, written consent of Company, which shall not be unreasonably withheld. Any attempted delegation, assignment, or transfer by the Client in violation of the provisions of this Section will be deemed void and of no force and effect. Company may assign this Connect Agreement or its rights and/or duties to its affiliates or to its successor in the event of a sale of all or substantially all of its assets, voting securities, or the assets or business related to the Products or Services provided under this Connect Agreement. Subject to the foregoing, this Connect Agreement will be binding upon and inure to the benefit of the Parties' respective permitted transferees, successors, and assigns. Company and Client shall not assign, sell, or otherwise transfer their interest or obligations in this Agreement without the prior written consent of the other Party. None of the Services covered by this Agreement may be subcontracted by Company to Third Parties without Client's prior written approval, which shall not be unreasonably withheld, but in such cases, Company shall remain responsible for the performance of its subcontractors.

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

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

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

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

15.11 U.S. Government Licensing. For US Government End Users: the Client acknowledges that Connect Offerings and Services are either "Commercial Products," Commercial Services," or "Commercial (COTS) Item(s)," as those terms are defined at 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable and has been developed exclusively at private expense. The Client agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (A) only as Commercial Items; and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.

15.12 Export Rules. The Client acknowledges that the Connect Offerings may be subject to the U.S. Export Administration Regulations and other export laws and regulations, and the Client will comply with all applicable export and import control Laws and regulations of the United States and the foreign jurisdiction in which the Company Technology is used and, in particular, the Client will not export or re-export the Connect Offerings without all required United States and foreign government licenses.

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

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

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- 16.1** **“Active Instances”** represents the number of Instances running in a 24-hour period. An Instance is considered active the day it starts and any day after that it remains active for even a portion of the day. If an Instance is started on Monday at 6am and stopped on Wednesday at 10am, it is considered an Active Instance on Monday, Tuesday, and Wednesday.
- 16.2** **“Affiliated Organization”** means a company, practice, group and/or other legal entity (including those having separate tax identification numbers) located within the United States that has entered into a written agreement with the Client that binds it and its End Users to comply with the applicable terms of this Connect Agreement and are either: (i) owned by the Client; or (ii) in which the Client has entered into a management agreement with such company, practice and/or other legal entity that creates a bona fide business relationship with the Client to perform one or more management service functions.
- 16.3** **“Analytics Database”** means Company’s collection of Client Data from various customers of Company.
- 16.4** **“Authorized Server”** means a Hardware server owned or leased by the Client and located in a location as set forth in the Connect Offerings License Section above. Except as otherwise agreed by Company in writing, Authorized Servers will not be used for the benefit of any party other than the Client, its Affiliated Organizations, and End Users.
- 16.5** **“Authorized Workstation”** means a desktop, tablet or laptop computer located within the United States and used by an End User.
- 16.6** **“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.
- 16.7** **“Capacity”** is defined as the maximum Daily Average Utilization the Client is allowed without incurring additional fees, if any, or requiring the purchase of additional Instances via a supplemental Order Form to meet the Client’s Daily Average Utilization. Capacity is calculated as the number of Instances contracted for, which is the number of Bundles purchased multiplied by four (4) total Instances per Bundle.
- 16.8** **“CCPA”** means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq.
- 16.9** **“Certified Professional”** means any Client Personnel who: (A) is actively involved in the day-to-day operation and support of the Connect Offerings and Services within the Client’s organization, (B) has suitable education and experience to understand the Connect Offerings and Services; (C) has successfully completed the applicable Company Connect certification tests (if any); and (D) if a contractor and not an employee of the Client, has entered into a separate agreement with Company to become a Third Party Certified Professional.
- 16.10** **“Claim”** means a claim, action, proceeding, or demand made against a person or entity, however arising and whether present or future, fixed or unascertained, actual, threatened or contingent.
- 16.11** **“Client Data”** means the compilation of the Client’s, its Affiliated Organizations’, subsidiaries’, and/or parent entity’s data from all Data Sources.
- 16.12** **“Company Software”** means software in object code form licensed under an Order Form, 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.
- 16.13** **“Company Technology”** means the Products, Services and User Materials made available by Company, including all Interfaces, templates, forms, software tools, algorithms, software (in source code and object code forms), user interface designs, architecture, toolkits, extensions, objects, documentation, network designs, Docker images, ideas, processes, know-how, methodologies, formulas, systems, data, heuristics, designs, inventions, techniques, trade secrets, and any related intellectual property rights throughout the world included therein, as well as any derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.
- 16.14** **“Confidential Information”** means all information disclosed by a Party (“Discloser”) to the other Party (“Recipient”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of the Client includes Client Data; Confidential Information of Company includes the Services, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each Party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. Notwithstanding the foregoing, Confidential Information does not include PHI which shall be governed by the BAA, or any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a Third Party without knowledge of any breach of any obligation owed to the Discloser, or (iv) was independently developed by the Recipient without use of Confidential Information of the other Party.
- 16.15** **“Consulting Services”** means services provided or to be provided by Company under one or more Order Forms to create reports and forms, customize certain aspects of the Client’s system and provide other technical and provisional services, as more specifically set forth in the Consulting Services Section above.
- 16.16** **“Daily Average Utilization”** is defined as the total number of Active Instances used by the Client in a calendar month, divided by the number of calendar days in that month.
- 16.17** **“Data Protection Laws”** means the CCPA together with the European Data Protection Laws, or any other applicable data protection Laws and regulations which may be promulgated in the future.
- 16.18** **“Data Source”** means a single feed of aggregated personal, medical, financial and/or other data that is imported into any Company Technology.
- 16.19** **“Dynamic License”** is a license mechanism that allows the Client to dynamically utilize up to a certain number of active *Mirth® Connect by NextGen Healthcare* Instances, inclusive of Non-Production and Production environments.
- 16.20** **“Effective Date”** means the date signed on the applicable Order Form by the Client; or, if multiple parties will be signing, then the date last signed on the applicable Order Form by the authorized representative of all parties. (While each Order Form may have its own Effective Date, the Effective Date of the “Connect Agreement” shall be the Effective Date of the first Order Form entered into between the parties.)
- 16.21** **“End User(s)”** means Personnel who are: (A) authorized by the Client or an Affiliated Organization to use any portion of the Products or Services or (B) an authorized member of a community using the Software for purposes of health information exchange or care coordination. Unless specifically stated otherwise in the applicable User Material, each End User will be assigned a unique ID and password.

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- 16.22** **“Environment”** means the Facilities & Equipment that Company deems necessary for operating the Connect Offerings under a SaaS or Hosted model and making it available for the Client’s use through the Client’s internet connection, all as specified in the applicable Statement of Work and/or Order Form.
- 16.23** **“European Data Protection Laws”** means the Data Protection Act 1998 (the “1998 DP Act”), the General Data Protection Regulation (EU 2016/679) as it applies in all EU member states and the UK (the “GDPR”, and together with the 1998 DP Act).
- 16.24** **“Excluded Claims”** means claims arising from (a) fraud or fraudulent misrepresentation; (b) gross negligence, intentional, willful, or criminal misconduct; (c) death, personal injury, or tangible property damage caused by a Party’s gross negligence; (d) Company’s express indemnification obligations under section 14 of this agreement; or (e) the Client’s breach of the Payment, Limitations on Use, Confidentiality, Term, Proprietary Rights and No Modifications sections herein..
- 16.25** **“Facilities & Equipment”** means a Client data center with all infrastructures, security controls, connectivity, systems, including back-up and recovery capabilities to avoid loss of data in the event of any failure, as well as all computers, background technology and equipment (including appropriate chipsets, processing speeds, RAM, storage, operating systems, connectivity, services, data, subscriptions, software, configurations and other components necessary to operate the Products and/or Services.
- 16.26** **“Fulfillment Date”** means the earlier of the: (i) date of Fulfillment set forth in the Order Form, Exhibit, or (ii) the stated number of days (as specifically stated in the Order Form, Addendum or Exhibit) after the Effective Date, which if no stated amount of days is specifically identified, then 60 days.
- 16.27** **Hardware”** means Company hardware and Third-Party hardware.
- 16.28** **“Help Desk Support”** means the support services provided by Company help desk under its then current Maintenance Program.
- 16.29** **“Implementation Services”** means services provided, or to be provided, by Company under one or more Order Forms to configure, install and implement Software for the Client’s use as more specifically set forth in the Consulting Services Section above.
- 16.30** **“Indemnified Technology”** means the applicable Connect Offerings and Services paid for by the Client but excludes any Third-Party Software, Hardware, sample code, SDK, open source, trial or LGR versions of the Connect Offerings and/or Services.
- 16.31** **“Infringement Claim”** means any Claim that alleges that the Indemnified Technology directly infringes a Third Party’s United States patent, copyright, or trademark.
- 16.32** **“Instances”** means a single installation of Company Software running on any physical or virtual server the Client may provide.
- 16.33** **“Interface”** means the part of any Company Software designed to exchange data between or among Company Software components and other software or between Company Software and Hardware.
- 16.34** **“Law”** means those applicable federal and state statutes, regulations, codes, ordinances, agency directives, binding court orders and other binding government requirements.
- 16.35** **“License Key”** means each encrypted alphanumeric code needed to activate the Connect Offerings and/or features in the Connect Offerings.
- 16.36** **“License Term”** means the period set forth in an Order Form for which the Client has purchased the applicable Software license.
- 16.37** **“Lives”** means the net number of individuals whose data is stored in the database of Company Software, as measured by the master patient index.
- 16.38** **“LGR” or “Limited General Release”** means versions of the Software and/or Services made available by Company on a limited general release basis.
- 16.39** **“Loss”** means any damage, loss, cost, expense, or liability incurred by a person or entity.
- 16.40** **“Maintenance Services”** means those support services made available by Company on the Products and Services as more fully delineated here: [Connect Maintenance Services](#)
- 16.41** **“Metric”** means each standard specified by Company in the Order Form or applicable Schedule that describes either: (i) the scope of the Client’s rights to use the Software and/or Services, as applicable or (ii) the measure by which the Client’s use of the applicable SaaS offering will be calculated and charged as reported to the Client in periodic reports.
- 16.42** **“Non-Production Instance”** means an additional installation of Company Software used to directly support one or more Production Instances – including, but not limited to, system used to test or stage software configurations or interfaces prior to deployment in a Production Instance, development environment, passive standby or failover system, or a demo/training system.
- 16.43** **“Order Form”** means each executed sales order form for the Client’s procurement of Connect Offerings and Services.
- 16.44** **“Party”** means Company or Client, as applicable.
- 16.45** **“Personal Data”** shall have the combined meaning of (a) Personal Data as defined in the “European Data Protection Laws”, and (b) “Personal Information” as defined in the “CCPA”.
- 16.46** **“Personnel”** means, with respect to each Party, such Party’s officers, employees and contractors.
- 16.47** **“Products”** means one of the Connect Offerings obtained by the Client from Company.
- 16.48** **“Production”** means use of the Connect Offerings to support actual business operations of the Client and its Affiliated Organizations and excludes training, backup, development, quality assurance and similar non-productive uses.
- 16.49** **“Production Instance”** means an Instance that is used to serve the primary purpose for which the Client has purchased a license to use the Connect Offerings - including but not limited to, primary system housing or handling live production data, secondary system used for reporting purposes, additional active system used to distribute or segregate load.
- 16.50** **“SaaS”** means Company services that (A) make Software functionality accessible to the 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.
- 16.51** **“Schedule”** means a written document executed by both Parties or incorporated by reference into an Order Form, which describes additional terms, related to the Connect Offerings and Services.
- 16.52** **“Service(s)”** means each service procured from Company under one or more Order Forms, including Implementation Services, Software Maintenance Services, Consulting Services, SaaS Services and hosting services as such terms are defined in the applicable Schedule.
- 16.53** **“Service Hour(s)”** means all such time and materials service hours included within an Order Form, including but not limited to for, implementation, training, consulting and/or conversions.
- 16.54** **“Service Term”** means the Initial Term and any Renewal Term set forth in an Order Form or applicable Schedule for which the Client has purchased the applicable Service.

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- 16.55** “**Software**” means the applicable Connect Offering(s).
- 16.56** “**Special Program**” means any governmental or non-governmental program, project, grant, incentive-based opportunity, extension, extension use case or other program relating to the Client’s business.
- 16.57** “**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).
- 16.58** “**Success Community**” means Company’s online client communication system.
- 16.59** “**System**” means collectively, the applicable Connect Offering(s), appropriate Third Party database software, operating system software and other hardware, software and items described in an applicable Statement of Work functioning together as a single system.
- 16.60** “**Third Party**” means any person or entity other than Company or Client.
- 16.61** “**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 a Third Party charges a separate license fee.
- 16.62** “**User Materials**” means the general-released, available documentation provided by Company relating to the general released versions of Connect Offerings 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.
- 16.63** “**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.

17. Insurance Requirements:

17.1 Evidence of Coverage: Prior to commencement of this Agreement, the Company shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained.

17.2 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A- VII, according to the current A.M. Best’s Rating Guide or a company of equal financial stability.

17.3 Insurance Coverage Requirements: Company agrees to secure and maintain the following minimum insurance coverages at its sole cost and expense for the entirety of this Master Agreement:

- **Commercial General Liability:** With a limit of at least USD \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury (including death) and property damage. Such insurance shall be broad form, including, but not limited to, contractual liability, products and completed operations liability and personal injury liability.
 - This coverage shall apply to claims arising from Company’s negligence, gross negligence, or willful misconduct and shall correspond to the Excluded Claims set forth in Section 16.24.
- **Commercial Auto:** With a limit of at least USD \$1,000,000 combined single limit (for claims by usage of any non-owned or hired motor vehicles). Such insurance shall cover injury (or death) and property damage arising out of maintenance or use of any private passenger or commercial vehicles and of any other equipment required to be licensed for road use.
- **Workers Compensation:** As required by law in the state where any operations relating to this agreement are located. In no event shall amounts for Workers’ Compensation be less than statutory, where required by the state, and Employers’ Liability be less than \$1,000,000 per accident, \$1,000,000 for each employee and \$1,000,000 for the policy limit.
- **Professional Liability Insurance** - Professional Liability \$3,000,000 aggregate/\$1,000,000 occurrence.
 - This coverage shall apply to claims excluded from the limitation of liability under Section 13.3, subdivisions (1), (2), and (3).
- **Umbrella:** With a limit of at least \$5,000,000 per occurrence/annual aggregate over and above, and no less broad than detailed above.
- **Tech E&O/Cyber Insurance:** \$5MM in Tech E&O/Cyber coverage for technology vendors.
 - This coverage shall specifically apply to claims excluded from the limitation of liability under Section 13.3.

17.4 Other Requirements:

All insurance required by this Agreement shall be issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date COMPANY completes its performance of Services under this Agreement.

Each policy shall provide coverage for Company and additional insureds with respect to claims arising from each subcompany, if any, performing work under this Agreement.

The insurance limits required herein shall not be construed as a limitation of Company’s liability or indemnification obligations, including for Excluded Claims under Section 13.3 and Section 14.

1. Additional Insured Status:

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The County of Monterey, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the auto liability policy for liability arising out of automobiles leased, hired or borrowed by or on behalf of the Company.

The County of Monterey, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the COMPANY including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the COMPANY'S insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

2. Primary Coverage:

For any claims related to this Agreement, the COMPANY'S insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the Client, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Client, its officers, officials, employees, agents, or volunteers shall be excess of the COMPANY'S insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

3. Workers' Compensation Waiver of Subrogation:

The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against CLIENT, its officers, officials, employees, agents, or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by COMPANY. Should COMPANY be self-insured for workers' compensation, COMPANY hereby agrees to waive its right of subrogation against CLIENT, its officers, officials, employees, agents, or volunteers.

Prior to the execution of this Agreement by the Client, COMPANY shall file certificates of insurance with the Client's contract administrator and County's Contracts/Purchasing Division, showing that the COMPANY has in effect the insurance required by this Agreement. Thereafter, Client may request a copy of the Company's insurance certificate, in writing. COMPANY shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement. Failure by COMPANY to maintain such insurance is a default of this Agreement, which entitles the Client, at its sole discretion, to terminate this Agreement immediately.