Nextech MedSpa Software Agreement

Last Modified: April 16, 2025

This Nextech MedSpa Software Agreement ("MSSA") is entered into by and between the person or entity that clicks to accept or agree to this MSSA (acting in their personal capacity or capacity as a representative of their company or other entity, as applicable) ("Customer") and Nextech Systems, LLC, a Florida corporation located at 4221 W. Boy Scout Boulevard, Suite 350, Tampa, Florida 33607 ("Nextech"). This MSSA is effective as of the date that Customer clicks to accept or otherwise agrees to this MSSA ("Effective Date").

Nextech provides a health records and practice management software platform for med spas. Customer desires to obtain, and Nextech agrees to provide, access to such software and related services in accordance with this Agreement. **By using the Services or by clicking to accept or agree to this MSSA, Customer accepts and agrees to be bound by this Agreement. If Customer does not want to agree to this Agreement, Customer must not access or use the Services. Customer acknowledges that this Agreement contains legally binding terms and conditions that affect Customer's legal rights and remedies**. Therefore, for good and valuable consideration, Nextech and Customer hereby agree as follows:

1.   **DEFINITIONS.**

Capitalized terms used in this Agreement have the meanings set forth in this Section 1 or as otherwise defined in this Agreement.

"Agreement" means (i) this MSSA, (ii) all attachments and other documents incorporated by reference into this Agreement, including documents available at web addresses, and (iii) Supplemental Schedules. The Parties intend for all parts of this Agreement to be interpreted so as to refer to the defined terms and concepts in this MSSA. For example, as used in any attachments and Supplemental Schedules, references to the "Nextech Master Software License Agreement" (and similar terms) mean this MSSA, references to "Software" (and similar terms) mean the Services, and references to a "Hosted Services License" mean the access and use rights granted to Customer under this MSSA.

"Business Associate Agreement" or "BAA" means any Business Associate Agreement between the Parties incorporated into this Agreement (if Customer is a Covered Entity under HIPAA).

"Confidential Materials" means any of the disclosing Party's confidential or proprietary information that is disclosed in any manner to the receiving Party and that, at the time of disclosure, either (i) is marked as being "confidential" or "proprietary," (ii) is otherwise reasonably identifiable as confidential or proprietary information, or (iii) under the circumstances of disclosure, should reasonably be considered as confidential or proprietary.

Nextech's Confidential Materials include this Agreement, the Services, the Documentation, the Professional Services, and all types of non-public proprietary technical or business information, including pricing and technical specifications. Customer's Confidential Materials include Customer Data.

Confidential Materials do not include information that (a) is or becomes public without breach of this Agreement through no fault of the receiving Party, (b) was lawfully and demonstrably in the receiving Party's possession prior to receipt from the disclosing Party, (c) was developed by the receiving Party independently and without use of or reference to the disclosing Party's Confidential Materials, as evidenced by the receiving Party's written records, (d) was received from a third party without any restrictions on disclosure and without breach of a nondisclosure obligation, or (e) any information governed by any BAA.

"Customer Data" means all information and data regardless of form entered, uploaded, submitted, or transferred by or on behalf of Customer to the Services or Nextech for provision of the Services or Professional Services.

"Documentation" means the relevant user guides, operational procedures, training materials, specifications and instruction materials relating to the Services and Professional Services, as made generally available from time to time to Customer in the ordinary course of Nextech's business.

"ECI" means the Employment Cost Index for total compensation (not seasonally adjusted) for private industry workers, management, professional and related occupations, excluding incentive paid occupations, December 2005 = 100, published by the U.S. Department of Labor, Bureau of Labor Statistics. Unless otherwise specified, the ECI published most recently before the Effective Date. In any year from the date of this Agreement when the percentage increase in the ECI is less than 1%, the percentage increase in the ECI will be deemed to be 1%. If the ECI is discontinued, Nextech will substitute a similar cost index.

"Governmental Authority" means any federal, state, provincial, municipal, local, territorial or other governmental department, regulatory authority, self-regulatory organization or legislative, judicial or administrative body.

"HIPAA" means the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996 and the regulations adopted thereunder, each as amended.

"Intellectual Property" means any and all patents, copyrights, trademarks, trade names, service marks, service names, trade secrets, moral rights, know-how, data rights, and any other proprietary right under any Law, including any registrations, extensions, applications, or renewals for any and all of the foregoing.

"Law" means all statutes, ordinances, rules, regulations, declarations, decrees, directives, legislative enactments, orders, and other binding restrictions of or by any Governmental Authority.

"Order Form" means a document executed or otherwise agreed to by both Parties that references this Agreement, lists the Services to be provided to Customer, and sets forth applicable Fees for such Services. The Order Form may set forth limitations on such Services, including maximum numbers of Users for such Services.

"Parties" means Customer and Nextech.

"Party" means Customer or Nextech.

"PHI" means "protected health information" as defined by 45 CFR § 160.103.

"Services" means the Nextech software platforms provided on a SaaS basis and described on an Order Form as being provided by Nextech to Customer under this Agreement.

"Supplemental Schedule" means any document that references this Agreement, is intended to be incorporated into this Agreement, and is executed or otherwise agreed to by both Parties, including the Order Form and any BAA. Supplemental Schedules may set forth additional terms related to the Services, Professional Services, or Purchased Equipment.

"Termination Fee" means the amount shown below, to be paid by Customer to Nextech, if Customer terminates this Agreement for convenience in accordance with Section 7.2, as a genuine pre-estimate of Nextech's damages and not as a penalty:

- If termination is prior to the first anniversary of the Effective Date, an amount equal to (i) 50% of the aggregate amount of Fees payable by Customer between the effective date of such termination and the end of the Initial Term, *plus*, (ii) $2,500; and

- If termination is after the first anniversary of the Effective Date, an amount equal to 50% of the aggregate amount of Fees payable by Customer between the effective date of such termination and (x) the end of the Initial Term (if termination is during the Initial Term), or (y) the end of the then current Renewal Term (if termination is after the Initial Term).

"Users" means any and all directors, officers, managers, employees, consultants, contractors, financial advisors, counsel, accountants, agents, and other personnel of Customer who (i) access or use the Services in connection with a Customer account or this Agreement, or (ii) Customer permits or allows to access or use the Services.

2.   SOFTWARE.

2.1.   Access. Subject to this Agreement and Customer's compliance with this Agreement (including timely payment of all Fees), Nextech hereby grants Customer a personal, limited, non-exclusive, non-sublicensable and non-transferable (except as set forth in Section 11.7) right during the Term, or another period of time set forth on the applicable Order Form, to access and use the Services and Documentation solely for Customer's internal business purposes. As set forth on the applicable Order Form, Nextech may only be obligated to provide certain Services for a period of time shorter than the full Term. Customer will not, and will ensure that its Users do not, use the Services in violation of this Agreement.

2.2.   Availability. Nextech will use commercially reasonable efforts to make the Service available for Customer's access and use except for (i) planned downtime for maintenance or upgrades or (ii) causes outside of Nextech's reasonable control, including internet failure, viruses or malicious third-party actors, Customer's actions, or the failure of Customer's equipment.

2.3.   Restrictions. Customer will not (i) copy the Services or any portion thereof, or use the Services to develop a competing product or service; (ii) use the Services other than on a SaaS or cloud basis, and other than in accordance with this Agreement and the Documentation; (iii) translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code of the Services; (iv) modify, adapt, translate or create a derivative work from the Services; (v) remove any proprietary notices, labels, or marks on the Services; (vi) permit or allow use of the Services by a natural or corporate person who is not an authorized User; (vii) assign, sublicense, sell, rent, lease, transfer, publish, or otherwise make available the Services to a third party that is not an authorized User or otherwise encumber the Services;

(viii) intentionally interfere with the functionality of the Services by transmitting or disseminating any material that contains software viruses or other code designed to interrupt, destroy, or limit the functionality of the Services, or causing the Services to act in a manner unintended by Nextech; (ix) interfere with or disrupt the integrity or performance of the Services or the use of the Services by any third party; (x) make the Services available on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties all or any part of the Services; (xi) penetrate or circumvent Nextech's or the Service's security measures or attempt to gain unauthorized access to any Nextech systems; or (xii) use the Services in a manner that violates any applicable Law or the rights of any third party or is otherwise libelous, defamatory, indecent, obscene or pornographic in nature . All rights not expressly granted hereunder are reserved to Nextech.

2.4.   Accounts. Customer will ensure that each User account and the associated login credentials are (i) kept confidential and secure, and (ii) used only by a single, designated User, and that Users do not share accounts or login credentials. Customer is solely responsible for any and all use of the Services by its Users. Customer will promptly, but at least within 48 hours, notify Nextech after becoming aware that any account credentials have been or are likely being used without authorization.

2.5.   Beta Services. From time to time, Nextech may offer features or services that are identified as beta or pre-release ("Beta Services"). Customer acknowledges that Beta Services are still in development, may have bugs or errors, may have incomplete features or functionality, may not operate correctly, may materially change prior to a full commercial launch, or may never be released commercially. Notwithstanding anything to the contrary, Customer's use of Beta Services is at Customer's own risk. THE BETA SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. Nextech's indemnification obligations in this Agreement, including as set forth in Section 9, do not apply to Beta Services. NEXTECH WILL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE BETA SERVICES, EVEN IF NEXTECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Beta Services are unsupported and Nextech has no obligation to provide support for Beta Services unless they are incorporated into the Services.

2.6.   Audit. Customer will keep and maintain full, accurate and detailed records regarding its and its Users' access and use of the Services sufficient for Nextech to verify Customer's compliance with this Agreement ("Customer Records"). At Nextech's written request, Customer will provide Nextech with a signed certification verifying that Customer's use and access of the Services is in accordance with this Agreement. Upon Nextech's reasonable request, and during Customer's regular business hours, Customer will permit Nextech to access the Customer Records, and Customer's other records and facilities as reasonably necessary, to verify Customer's compliance with this Agreement (such access, an "Audit"). During such Audits, Nextech will not unreasonably interfere with Customer's business activities. If an Audit reveals that Customer has underpaid Fees to Nextech, Customer will immediately pay Nextech the outstanding Fees. If the underpaid Fees exceed 5% of the Fees previously paid by Customer, then Customer will also pay all reasonable costs incurred by Nextech in connection with the Audit.

2.7.   Support. Subject to Customer's payment of all applicable Fees, Nextech will provide support to Customer as set forth in the Nextech Support Terms and Conditions, available at www.nextech.com/legal/SupportAgreement or as otherwise provided to Customer, and as updated by Nextech from time to time.

2.8.   Third Party Components. The Services may include components from third party providers ("Third Party Providers") subject to third party terms and conditions, which may require Customer to agree to additional terms and conditions from the Third Party Providers (collectively "Third Party Terms"). Customer hereby agrees to the Third Party Terms currently available at www.nextech.com/legal/ThirdPartyAgreement and the payment services terms available at www.nextech.com/legal/payments. Nextech may also make certain Third Party Terms available to Customer through the Services. Customer acknowledges that it must agree to those terms prior to using the corresponding third party components. Nextech may also require Customer to agree to amendments or updates to the Third Party Terms in order for Customer to continue using the corresponding third party components. Nextech may pass on to Customer any fees imposed on Nextech or Customer under the Third Party Terms.

2.9.   Professional Services and Equipment. As set forth in one or more Supplemental Schedules, (i) Nextech may provide Customer with certain professional services, including project management, training, and implementation services (together with the support services set forth in Section 2.7, "Professional Services"), and (ii) Customer may also purchase from Nextech computer equipment used for operation of the Services ("Purchased Equipment").

2.10.   Customer Systems. Customer is solely responsible for acquiring, installing, operating, and maintaining the hardware, services, and network infrastructure environment required for Customer to access and use the Services, including as set forth in the Documentation as Customer's responsibility.

3.   INTELLECTUAL PROPERTY.

3.1.   Ownership. As between the Parties, except as explicitly set forth in this Agreement, Nextech retains all right, title, and interest, including all Intellectual Property, in the Services (including related modifications and derivative works), any deliverables, and any other output or results of the Services or Professional Services except for Customer Data and Customer's Confidential Materials. Nextech's Intellectual Property includes any de-identified data created by Nextech from Customer Data. To the extent Customer holds any right, title, or interest in any of the foregoing in this section, Customer hereby assigns to Nextech all right, title, and interest, including Intellectual Property, in the foregoing.

3.2.   Feedback. Customer hereby assigns to Nextech all right, title, and interest, including Intellectual Property, in and to any and all suggestions, ideas, enhancement requests, feedback, recommendations, and other information provided by Customer or its Users relating to the Service or Professional Services.

4.   DATA.

4.1.   Ownership. Except as set forth in this Agreement, Customer retain ownership of all right, title and interest in and to Customer Data.

4.2.   License to Customer Data. Customer hereby grants to Nextech and its affiliates during the Term, a non-exclusive, non-transferable (except as set forth in Section 11.7 (Assignment)) license to (i) access, reproduce, prepare derivative works based upon, adapt, modify, distribute, display and otherwise process Customer Data to provide the Services and Professional Services under this Agreement, (ii) use and disclose Customer Data to create de-identified data in accordance with HIPAA and other applicable Law and to use such de-identified data for internal research purposes, for benchmarking purposes, to improve Nextech's products and services, to improve the quality of Nextech's analytics and algorithms, and for other purposes permitted by Law, and (iii) otherwise process Customer Data as permitted by any BAA.

4.3.   Use of Customer Data. Customer is solely responsible for obtaining, providing, updating, uploading, and maintaining all Customer Data for use with the Services. Without limiting the generality of the foregoing, Customer is solely responsible for the completeness, authenticity and accuracy of Customer Data and for obtaining and maintaining all necessary permits, licenses, and consents from any third parties and for securing all other rights related to Customer Data necessary for Nextech to provide the Services and Professional Services, including with respect to the processing of Customer Data. Nextech has no responsibility to monitor or verify Customer Data. Nextech may act, including by removing or disabling access to the Services and Customer Data, if Nextech reasonably believes that Customer Data does not comply with any of the foregoing in this section or otherwise violates any applicable Law.

4.4.   Security of the Services. Subject to Section 2.10 (Customer Systems), Nextech will maintain reasonable and appropriate technical, physical, and administrative safeguards for its systems used to deliver the Services in accordance with applicable Law.

4.5.   BAA. If Customer is a Covered Entity, Nextech will comply with the BAA available at www.nextech.com/legal/BAA.

5.   FEES.

5.1.   Payment. Customer will pay Nextech all fees and other amounts set forth in an Order Form, any other Supplemental Schedule, and elsewhere in this Agreement ("Fees") without any set-off or deduction. Customer will pay Nextech for the first two (2) months of fees upon contract signature. The next invoice will be issued sixty (60) days later. Invoices are due 30 days from the date of invoice unless otherwise indicated on the invoice.

5.2.   **Usage Commitment: Customer will ensure that Nextech is Customer's primary provider of digital payment processing services. If Customer fails to meet this usage commitment and fails to cure the breach within 30 days after Nextech notifies Customer of such breach, then in addition to all other available remedies, Nextech may charge Customer an additional non-usage fee of $299 per month at Nextech's sole discretion. For the avoidance of doubt, the non-usage fee charge shall be in addition to any subscription fees and payment processing fees incurred through ongoing usage by Customer. Costumer's usage commitment does not apply to payment methods that Nextech does not support.**

5.3.   Price Updates. After the Initial Term, no more than once in any rolling 12-month period, Nextech reserves the right to modify or change the frequency, cost or other terms of subscriptions and services fees in order to invest in product development, infrastructure, and adjust based on the market trends.

5.4.   Taxes. All Fees are exclusive of any applicable taxes, duties and similar governmental charges. Except with respect to Nextech's income taxes, Customer is responsible for all such amounts, including sales tax, value added tax, withholding taxes, export, import and other duties imposed by any Governmental Authority in connection with this Agreement.

5.5.   Late Payments. After the time period for payment specified in Section 5.1 has elapsed, all unpaid Fees will accrue interest at 1.5% per month or the maximum rate permitted by applicable Law, whichever is less, from the due date until paid. Customer will reimburse Nextech for all reasonable costs incurred in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees.

6.   CONFIDENTIALITY.

6.1.   <u>Duty of Confidentiality</u>. Each Party will use the same degree of care to protect the disclosing Party's Confidential Materials as it uses to protect its own Confidential Materials of a similar nature, but in no event less than a reasonable degree of care in light of applicable Laws regarding data security, privacy or confidentiality. In addition, each Party shall (i) hold in confidence the disclosing Party's Confidential Materials; (ii) use the disclosing Party's Confidential Materials only to perform its obligations or exercise its rights under this Agreement; and (iii) not transfer, display, convey or otherwise disclose or make available the disclosing Party's Confidential Materials to any natural person or entity except to the receiving Party's directors, officers, employees, agents, contractors, and other representatives who need to know the Confidential Materials and are under confidentiality obligations substantially similar to the terms in this Agreement. The receiving Party is responsible and liable for such representatives' handling and treatment of the disclosing Party's Confidential Materials. For clarity, Customer is responsible and liable for the acts and omissions of all Users with respect to Nextech's Confidential Materials.

6.2.   <u>Permitted Disclosure</u>. The receiving Party may disclose the disclosing Party's Confidential Materials in response to a valid court order, Law, or other governmental action, provided that (i) to the extent permitted by Law, the disclosing Party is notified in writing prior to disclosure of the Confidential Materials and given reasonable opportunity to obtain a protective order, and (ii) the receiving Party assists the disclosing Party, at the disclosing Party's expense, in any attempt to limit or prevent the disclosure of the disclosing Party's Confidential Materials.

6.3.   <u>Remedies</u>. The receiving Party will notify the disclosing Party in the event of any loss or other unauthorized access to, disclosure of, or use of the disclosing Party's Confidential Materials in violation of this Agreement ("<u>Confidentiality Event</u>") within one (1) business day of discovery by the Receiving Party. The receiving Party will cooperate with the disclosing Party to mitigate the harmful effects of such Confidentiality Event. Each Party acknowledges that use or disclosure of the disclosing Party's Confidential Materials in violation of this Agreement may cause irreparable harm to the other Party. Without limiting any other rights and remedies, including collection of monetary damages, in the event of a perceived breach by one Party of this Section 6, the other Party will be entitled to seek immediate injunctive relief without posting of a bond.

6.4.   <u>Protected Communications</u>. Notwithstanding anything to the contrary in this Agreement, so long as Nextech is a developer of certified health information technology subject to 45 C.F.R. part 170, Customer may make communications about Nextech's certified health information technology that are protected by Section 4002 of the 21st Century Cures Act and 45 C.F.R. § 170.403 (the "<u>Communications Condition</u>"). Customer shall ensure that any communications to third parties that involve any of Nextech's Confidential Material are within the scope of the subject areas protected under the Communications Condition and that each communication uses the least amount of Nextech's Confidential Material necessary to fulfill its purpose.

7.   TERM.

7.1.   <u>Term</u>. The initial term of this Agreement begins on the Effective Date and expires on the second anniversary of the Effective Date (the "<u>Initial Term</u>"). After the Initial Term, this Agreement will automatically renew for additional one-year periods (each, a "<u>Renewal Term</u>") unless a Party provides the other Party with notice of non-renewal at least 60 days prior to the end of the Initial Term or then-current Renewal Term. "<u>Term</u>" means the Initial Term and any Renewal Terms collectively.

7.2. <u>Termination</u>. Either Party may terminate this Agreement by providing notice of such termination if (i) the other Party materially breaches this Agreement and has not cured the breach within 60 days after receipt of written notice of the breach, (ii) the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency, or similar proceeding that is not dismissed within 60 days of filing, (iii) Customer fails to pay a Fee or other amount due under this Agreement within 10 days of notice that such amount is past due, or (iv) the other Party is excluded from Federal Health Care Programs (as defined in 42 U.S.C. § 1320a-7b(f)) or becomes subject to a regulatory prohibition that would prevent that Party from continuing to operate lawfully under this Agreement. Customer may terminate this Agreement for convenience with at least 60 days' prior written notice to Nextech, provided that Customer shall pay a Termination Fee to Nextech prior to the effective date of such termination.

7.3. <u>Effects of Termination</u>. The termination or expiration of this Agreement automatically terminates all outstanding Supplemental Schedules. Subject to Section 7.4 (Return of Customer Data), upon termination or expiration of this Agreement or a Supplemental Schedule, Customer shall, no later than the effective date of such termination, discontinue the use of all Services; and each Party will, at its own expense, (i) return or destroy all of the disclosing Party's Confidential Materials in its possession or control, and (ii) certify to the other Party in writing that it has complied with the foregoing obligations; except that each Party may retain copies of Confidential Materials stored on backups made in the ordinary course of business, and any retained Confidential Materials will remain subject to the confidentiality obligations set forth in this Agreement. If Customer is a Covered Entity, Nextech will return or destroy PHI in accordance with the BAA.

7.4. <u>Return of Customer Data</u>. In the event of termination or expiration of this Agreement, Nextech will keep all Customer Data available to Customer for a period of 60 days after such termination or expiration, after which Nextech may destroy or delete such Customer Data with no liability to Customer. During such 60 day period, upon written request by Customer, Nextech will provide Customer with electronic files containing all available Customer Data in accordance with industry standards.

7.5. <u>Suspension</u>. Nextech may suspend, at Nextech's sole discretion, part or all of Nextech's performance obligations under this Agreement (i) if Customer has not paid in full all amounts under this Agreement within 10 days after notice that an amount is past due, (ii) if Nextech reasonably believes that Customer's or its Users' use threatens the security or integrity of the Services or is in breach of this Agreement, or (iii) as required by Law, in each case until such incidents have been resolved.

7.6. <u>Survival</u>. The terms of Sections 1, 2.6, 3, 6, 7.3, 7.4, 9, 10, and 11 will survive expiration or earlier termination of this Agreement.

8.   WARRANTIES.

8.1. <u>Mutual Warranties</u>. Each Party represents and warrants that it has the right to execute and perform its obligations under this Agreement.

8.2. <u>Nextech Warranties</u>. Nextech warrants to Customer that (i) Nextech will perform the Professional Services in a professional and workmanlike manner; and (ii) the Services will materially comply with the Documentation that is current as of the time that the Services are delivered to Customer for a period of 90 days beginning on the effective date of the applicable Supplemental Schedule.

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8.3.   Customer Warranties. Customer represents and warrants to Nextech that Customer (a) has all rights, licenses, and consents necessary to allow Nextech to use Customer Data as contemplated by this Agreement, (b) implements and maintains commercially reasonable administrative, physical, and technical safeguards that meet or exceed industry standards to protect and prevent unauthorized access to, or the use or misuse of, the Services and (c) conducts its business and affairs in accordance with applicable Law.

8.4.   Remedies and Exclusions. Any warranty claim for the warranties set forth in Section 8.2 must be initiated by Customer, by written notice to Nextech, during the Warranty Period. Provided that the warranty issue is reproducible by Nextech, within thirty (30) days of Nextech's receipt of Customer's written notice and as Customer's sole and exclusive remedy and Nextech's entire liability for such warranties, Nextech will (i) promptly correct any errors or otherwise re-perform any Services that do not comply with those warranties, or (ii) if Nextech reasonably determines that re-performance is not practicable, refund paid Fees attributable to the nonconforming component of the Services during the Warranty Period. In no event will Nextech be responsible for any performance failure to the extent such failure results from (a) the acts or omissions of Customer or any employee, agent, or contractor of Customer, (b) hardware, software, services processes or other materials not licensed or provided to Customer by Nextech or (c) failures not attributable to Nextech's negligence.

8.5.   Disclaimer. EXCEPT FOR THE WARRANTIES STATED IN THIS SECTION 8, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS," AND NEXTECH EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, TERMS AND CONDITIONS, WHETHER IMPLIED BY OPERATION OF LAW OR BY CUSTOM, STATUTE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, TERM OR CONDITION OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR PARTICULAR PURPOSE, IN EACH CASE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NEXTECH DOES NOT WARRANT THAT THE SERVICES WILL BE PROVIDED ERROR-FREE, BUG-FREE, UNINTERRUPTED, SECURE OR VIRUS-FREE.

8.6.   No Medical or Legal Advice. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY CONTENT OR OTHER INFORMATION CONTAINED IN OR MADE AVAILABLE VIA THE SERVICES SHOULD BE REVIEWED BY A QUALIFIED PHYSICIAN OR OTHER HEALTHCARE PROFESSIONAL PRIOR TO USE AND IS NOT INTENDED AS A SUBSTITUTE FOR THE KNOWLEDGE, EXPERTISE, SKILL AND JUDGMENT OF HEALTHCARE PROFESSIONALS IN MAKING DECISIONS WITH RESPECT TO HEALTHCARE. NEXTECH DISCLAIMS ALL LIABILITY FOR THE USE OR MISUSE OF THE SERVICES AND PROFESSIONAL SERVICES IN CARING FOR PATIENTS. ALL INFORMATION AND DATA, REGARDLESS OF FORM, MADE AVAILABLE BY NEXTECH IN CONNECTION WITH THE THIS AGREEMENT DO NOT CONSTITUTE BILLING OR CLINICAL ADVICE, REIMBURSEMENT GUIDANCE, OR CLINICAL OR MEDICAL RECOMMENDATIONS OR ADVICE. ACCESS TO SUCH CONTENT PROVIDED BY NEXTECH OR ITS AFFILIATES DOES NOT CREATE ANY PHYSICIAN-PATIENT RELATIONSHIP. IN ADDITION, NOTHING PROVIDED BY NEXTECH UNDER THIS AGREEMENT, INCLUDING THE SERVICES AND PROFESSIONAL SERVICES, IS LEGAL ADVICE.

8.7.   Practice of Medicine. Customer acknowledges and agrees that Nextech is not engaged in the practice of medicine and is not determining appropriate medical use of the Services. Patient care and treatment, and diagnostic decisions, including those arising from the results of any use of the Services are solely Customer's responsibility. Customer will not use the Services as a single source for patient care or treatment, or diagnostic decisions. Customer assumes all rights and liabilities for results obtained by its use, access and/or implementation of the Services. Customer will ensure that its Users are, at all times, educated and properly trained in the proper use, access and operation of the Services.

9. INDEMNIFICATION.

9.1. Indemnification by Nextech. Nextech will defend Customer and Customer officers, directors, employees, agents and representatives ("Customer Indemnified Parties") against any third-party claim, action, suit or demand alleging that the Services or Professional Services as provided by Nextech infringes any United States Intellectual Property of a third party ("Customer Claim"), and will indemnify and hold harmless the Customer Indemnified Parties from and against (i) any fines, penalties, and final award of damages against the Customer Indemnified Parties to the extent based on the Customer Claim, and (ii) any reasonable out-of-pocket defense-related costs (other than attorneys' fees for Customer Indemnified Parties' counsel) incurred by Customer Indemnified Parties related to a Customer Claim. Nextech may settle, at its own expense, any Customer Claim. Nextech will not, without Customer's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed, effect any settlement of any Customer Claim unless that settlement (a) does not include a financial obligation on Customer, (b) includes a release of the applicable Customer Indemnified Party from all liability on Customer Claims that are the subject matter of such proceeding, and (c) requires no admission of wrongdoing by the applicable Customer Indemnified Party.

9.2. Resolution of Customer Claims. In the event of a Customer Claim or if Nextech believes a Customer Claim is likely, Nextech may, at its option and at no expense to Customer, (i) obtain for Customer, by license or other release from the Customer Claim, the right to continue to use the Services or Professional Service in accordance with this Agreement, (ii) provide Customer with a substitute, substantially functionally equivalent and non-infringing version of the Services or Professional Service, or (iii) modify the Services or Professional Service to make it non-infringing and substantially functionally equivalent. If, despite the exercise of prompt and commercially reasonable efforts, Nextech is unable to accomplish any of options (i), (ii) or (iii) above, then Nextech may terminate this Agreement by providing Customer with at least 30 days' prior written notice.

9.3. Limitations and Restrictions. Nextech will have no obligation to defend, indemnify or hold Customer or any Customer Indemnified Party harmless for any Customer Claim to the extent it arises out of or results from (i) Customer specifications or directions; (ii) materials provided by Customer or on Customer's behalf; (iii) use of the allegedly infringing item in combination with hardware, software, services, processes, or other materials not licensed or provided to Customer by Nextech; (iv) the modification of or addition to (or attempted modification of or addition to) any item by anyone other than Nextech or on Nextech's behalf; (v) Customer's failure to use or allow installation of required updates, or (vi) the use of the item other than in compliance with applicable Documentation or the rights granted under this Agreement. Customer will take reasonable actions to mitigate damages for which Nextech is obligated to indemnify Customer or any Customer Indemnified Party. This Section 9 states Nextech's sole and entire liability, and Customer sole and exclusive remedy, in respect of Customer Claims.

9.4. Indemnification by Customer. Customer will defend, indemnify and hold harmless Nextech, its affiliates and their respective officers, directors, employees, agents and representatives from and against any and all damages, liabilities, costs, expenses (including reasonable attorneys' fees) or other losses arising from any third-party claim resulting from (i) any personal injury, death, malpractice, misdiagnosis, or any other health care treatment matter in connection with the use by Customer, Users, Customer affiliates or any third parties, of the Services or Professional Services, (ii) Customer's reliance on results obtained through the use of the content or information provided by the Services, or (iii) Nextech's use of Customer Data as permitted under this Agreement, including any claim that Customer Data violates any third-party rights or applicable Law.

9.5.   Procedure. The Party seeking indemnification (the "**Indemnitee**") must notify the Party with the indemnification obligation (the "**Indemnitor**") in writing, with reasonable promptness, of any claim under this Section 9. Failure to provide prompt written notice will relieve the Indemnitor of its obligation solely to the extent it is materially prejudiced by such failure. The Indemnitee shall reasonably cooperate with the Indemnitor in the Indemnitor's defense or settlement of any claim. For purposes of this Section 9, the Indemnitee may participate in the defense of any claim at its expense and through counsel of its own choosing.

10.   LIMITATION OF LIABILITY.

IN NO EVENT WILL NEXTECH BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT, DATA, USE, INCOME OR SAVINGS, EVEN IF ADVISED OF THAT POSSIBILITY. [EXCEPT WITH REGARD TO CLAIMS ARISING UNDER SECTION 9 (INDEMNIFICATION)] (i) IN NO EVENT WILL NEXTECH'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF FEES PAID BY CUSTOMER TO NEXTECH DURING THE 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

11.   GENERAL.

11.1.   Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding this Agreement's subject matter and supersedes all oral or written prior agreements, representations, proposals, discussions, and communications related to this Agreement's subject matter.

11.2.   Notices. Any notices or other communications under this Agreement must be in writing and will be deemed given effective: upon personal or courier delivery, charges prepaid, signature required; or four business days after deposit into the U.S. mail (certified mail, return receipt requested), properly addressed to the other Party at their respective address set forth [on the Order Form] or at another address as a Party may indicate by written notice to the other party in accordance with this Section.

11.3.   Independent Contractors. Each Party is an independent contractor, and neither Party has the authority to bind, represent or commit the other to any obligation to a third party except as expressly set forth in this Agreement. Nothing in this Agreement is intended to create an employment or co-employment relationship, a joint venture, a partnership, or any agency relationship between the Parties.

11.4.   No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement, and, except as explicitly set forth, nothing in this Agreement is intended to confer on any person other than the Parties any rights, remedies, obligations or liabilities.

11.5.   No Implied Licenses. There are no implied licenses under this Agreement, and any rights not expressly granted hereunder are reserved.

11.6.   Reference. Nextech may announce the entering into of this Agreement with Customer in a press release and at any time after the Effective Date and may refer to Customer in marketing materials. Customer will not display the name, trademark, logo or other identifying mark of Nextech on any output to any patient of the Customer or any third party.

11.7.   <u>Assignment</u>. Customer may not assign any right or obligation under this Agreement without the prior written consent of Nextech. Any merger, acquisition, change of control, sale of all or substantially all of Customer's assets or other similar transaction involving Customer (regardless of whether or not Customer is the surviving entity) will be considered an "assignment" under this section subject to Nextech's consent. Nextech may assign its rights and obligations under this Agreement without Customer consent. This Agreement is binding on the parties and their successors and permitted assigns. Any assignment in contravention of this subsection is void.

11.8.   <u>Export Laws</u>. Customer will not remove or export from the United States or allow the export or re-export of the Services or anything related thereto, or any direct product thereof in violation of any Laws of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

11.9.   <u>Arbitration and Governing Law</u>. This Agreement is governed by and will be interpreted according to the laws of the State of Florida without regard to conflict of laws principles. CUSTOMER WILL SUBMIT ANY DISPUTES ARISING FROM THIS AGREEMENT OR THE SERVICES, INCLUDING DISPUTES ARISING FROM OR CONCERNING THEIR INTERPRETATION, VIOLATION, INVALIDITY, NON-PERFORMANCE, OR TERMINATION, TO FINAL AND BINDING ARBITRATION UNDER THE COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION APPLYING FLORIDA LAW. THE SEAT OR LEGAL PLACE OF ARBITRATION WILL BE IN HILLSBOROUGH COUNTY, FLORIDA. [CUSTOMER AGREES TO ARBITRATE IN CUSTOMER'S INDIVIDUAL CAPACITY ONLY – NOT AS A REPRESENTATIVE OR MEMBER OF A CLASS – AND CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS ACTION BASIS. FURTHERMORE, UNLESS CUSTOMER AND NEXTECH AGREE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OF CLASS PROCEEDING.] ALL ARBITRATION PROCEEDINGS ARE CONFIDENTIAL. ARBITRATION ORDERS AND AWARDS REQUIRED TO BE FILED WITH APPLICABLE COURTS OF COMPETENT JURISDICTION ARE NOT CONFIDENTIAL AND MAY BE DISCLOSED BY THE PARTIES TO SUCH COURTS. A PARTY WHO IMPROPERLY DISCLOSES CONFIDENTIAL INFORMATION WILL BE SUBJECT TO SANCTIONS. THE ARBITRATOR AND FORUM MAY DISCLOSE CASE FILINGS, CASE DISPOSITIONS, AND OTHER CASE INFORMATION AS REQUIRED BY A COURT ORDER OF PROPER JURISDICTION. Except as otherwise set forth in this Section, the Parties irrevocably and unconditionally consent to the exclusive jurisdiction and venue of the state and federal courts located in Hillsborough County, Florida in connection with any action related to this Agreement.

11.10.   <u>Limitation on Time to File Claims</u>. ANY CAUSE OF ACTION OR CLAIM CUSTOMER MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

11.11.   <u>Amendment; No Waiver</u>. No amendment, waiver, or discharge of this Agreement will be valid unless in writing and signed by an authorized representative of the Party against which such amendment, waiver, or discharge is sought to be enforced. Either Party's waiver of a breach or a default of any provision of this Agreement will not be construed as a waiver of any subsequent breach of the same or any other provision. A Party's delay or failure to exercise or avail itself of any right will not operate as a waiver of any right by that Party.

11.12. <u>Severability</u>. If any provision of this Agreement is illegal or unenforceable, then that provision is deemed to be restated to reflect as nearly as possible the Parties' original intentions in a manner that complies with applicable Law. All other provisions of this Agreement will remain in full force and effect.

11.13. <u>Conflicts</u>. This Agreement is to be interpreted as a single agreement so that all of the provisions are given as full an effect as possible. If any terms of this Agreement conflict, the order of precedence is as follows (items with a lower number having priority over, and controlling in the event of a conflict with, items having a higher number): (1) the BAA; (2) the Supplemental Schedule, including any attachments incorporated therein (but only with respect to Services or other obligations under that Supplemental Schedule); (3) the body of this MSSA; and (4) any other attachments incorporated into this MSSA.

11.14. <u>Construction</u>. The word "including" shall mean "including, without limitation". Each Party acknowledges that it has had the opportunity to be advised and represented by legal counsel in the negotiation, execution and delivery of this Agreement, and accordingly agrees that if any ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any Party solely because such Party was the drafter of any such provision. Whenever the context requires, terms used in the singular shall include the plural and the plural shall include the singular.

11.15. <u>Force Majeure</u>. Except for the Customer's payment obligations, a Party shall not be liable for any delay or failure to perform its obligations in this Agreement if such delay or failure to perform is due to any cause or condition beyond that Party's reasonable control.

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