

SOFTWARE TRIAL LICENSE AGREEMENT

THIS SOFTWARE TRIAL LICENSE AGREEMENT (“**Agreement**”) is effective as of _____ (“**Effective Date**”) by and between NextEMR, LLC (“**Licensor**”) and _____ (“**Licensee**”).

RECITALS

WHEREAS, Licensor owns all right, title, and interest in and to that certain web-based medical records software, including its screen displays and documentation, printed or otherwise, marketed under the name NextEMR (“**Software**”);

WHEREAS, the Software is protected by the copyright laws of the United States and embodies various trade secrets and other proprietary information; and

WHEREAS, Licensor desires to grant Licensee the right to use the Software and Licensee desires to license the Software under the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree as follows:

1. Definitions

“**Affiliate**” means an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Licensee, where the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

“**Authorized User**” means each employee, staff member, contractor, consultant or third-party service provider, authorized by Licensee to use Software. Authorized User shall not include any Providers, as defined below.

“**Confidential Information**” shall mean the core Software code, information which concerns the management and business of either party, files maintained by either party, the business relationships and affairs of either party and its clients, patients, and referral sources, the internal policies and procedures applicable to either party’s personnel and the formulation of investment strategies and policies by either party. It also includes displays, designs, descriptions, procedures, formulas, discoveries, inventions, specifications, drawings, sketches, models, samples, codes, improvements, concepts, ideas and past, present and future research, development, business activities, products or services and any other information provided by either party to the other party that is identified as confidential at the time of disclosure. “Confidential Information” excludes the information explicitly excluded

under the terms of Section 18 as well as Protected Health Information as that term is defined in the Business Associate Agreement attached hereto as Exhibit 2.

“Licensee-Created IP” has the meaning given in Section 4 below.

“Provider” means Licensee or, if Licensee is not a natural person, any physician, nurse practitioner, physician assistant, nurse practitioner, licensed practical nurse, audiologist, physical therapists, psychologist, licensed social worker, midwife, nutritionist, dietitian, counselor, mental health practitioner, neurophysiologist, or podiatrist employed by or under contract with Licensee to provide services within the medical field. The term Provider shall not include Authorized Users, as defined above. For any category of practitioner not identified above, Licensor and Licensee shall agree in writing as to who is a Provider.

“Software” has the definition provided in the recitals above. “Software” does not include Licensee-Created IP.

2. License

Licensor hereby grants to Licensee a renewable, non-exclusive, nontransferable, limited (as provided in this Agreement) and worldwide license, without the right to sublicense, to use the Software for [REDACTED] Providers under Licensor’s copyrights as set forth in this Agreement.

3. Restrictions on Use of Software

Licensee shall not modify, copy, duplicate, reproduce, rent, lease, lend, give, allow the use of, license or sublicense the Software, or transfer or convey the Software or any right in the Software to anyone else. The license granted herein is not a sale of the Software.

Licensee shall not attempt to reverse engineer, reverse assemble, reverse compile, decompile or make any use whatsoever of the Software in any attempt to derive a replacement, in whole or in part, for the Software, nor will Licensee knowingly assist or encourage anyone else to do so. Nothing in this Agreement shall be construed to give Licensee any right to inspect, possess, use, or copy the source code or object code used to create or constituting the Software. Licensee shall not apply any process, technique, or procedure designed to ascertain or derive the source code of the Software, or attempt to do any of the foregoing.

Licensee recognizes that the Software, and elements thereof, constitute valuable trade secrets and other property of Licensor and that Licensor’s rights in and to the Software are protected by copyright and other laws of the United States and other countries and that the unauthorized use or disclosure of Confidential Information by Licensee may cause damage to Licensor, who may seek injunctive and other relief as permitted by law.

4. Ownership of Data and of Licensee-Created IP

Notwithstanding anything to the contrary in this Agreement, as between Licensee and Licensor, Licensee will be the sole owner of, and Licensor will have no right or interest of any kind in or to, the data and information generated by Licensee or Authorized Users of the Software in connection with their permitted use of the Software (collectively, the “**Licensee-Created IP**”).

5. Hardware Requirements

Licensee is responsible for installing and maintaining computer hardware in accordance with the minimum requirements set forth in Exhibit 1 prior to commencing use of the Software and during the term of this Agreement. Licensor will not provide maintenance for any Licensee hardware. Licensor may provide limited assistance in diagnosis of equipment malfunction as it relates to the functionality of the Software, however the final diagnosis of malfunction, repair and maintenance of Licensee’s hardware is the responsibility of Licensee.

6. License Fee

The license and the use of the Software shall be on a trial basis for the term set forth below (the “Trial Period”). No license fee will be due for the Trial Period. No migration or importation of Licensee’s existing data into the Software will be provided for the Trial Period.

7. User IDs

Licensor shall provide the Licensee with a limited number of user IDs for the Provider(s) and Authorized Users to reasonably utilize the Software.

8. Business Associate Agreement

Upon execution of this Agreement, the parties shall enter into a business associate agreement, substantially in the form attached hereto as Exhibit 2, as required by Health Insurance Portability and Accountability Act of 1996, (Pub. L. 104-191, August 21, 1996, 110 Stat. 1936), 42 U.S.C. § 1320d – 1320d-8, as amended (the “**Business Associate Agreement**”). The parties will maintain the Business Associate Agreement in good standing at all times during the term of this Agreement.

9. Warranty Disclaimer

LICENSOR PROVIDES THE SOFTWARE WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ALL RESPONSIBILITY OR LIABILITY FOR ANY DAMAGES CAUSED BY VIRUSES CONTAINED ANYWHERE WITHIN THE SOFTWARE, INCLUDING BUT

NOT LIMITED TO FORMS OR DOCUMENTS WITHIN THE SOFTWARE, IS DISCLAIMED.

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND LICENSEE UNDERSTANDS THAT IT ASSUMES ALL RISK OF ITS USE, QUALITY AND PERFORMANCE. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFIT, ARISING OUT OF OR RESULTING FROM USE OF THE SOFTWARE, DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FROM INTERRUPTION OF BUSINESS OR LOSS OF PROFITS OR BUSINESS OPPORTUNITIES.

THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT NOTHING IN THIS AGREEMENT CREATES ANY PHYSICIAN-PATIENT RELATIONSHIP BETWEEN THEM, THEIR AFFILIATES, OR ANY OF THEIR RESPECTIVE EMPLOYEES OR AGENTS. THE PARTIES ACKNOWLEDGE THAT NOTHING IN THIS AGREEMENT CREATES ANY JOINT VENTURE, PARTNERSHIP, EMPLOYMENT, OR AGENCY RELATIONSHIP BETWEEN THEM AND AGREE THAT THEY WILL NOT HOLD THEMSELVES OUT AS REPRESENTATIVES, AGENTS OR EMPLOYEES OF EACH OTHER BY VIRTUE OF THIS AGREEMENT, AND THAT NEITHER OF THEM WILL BE LIABLE BY REASON OF ANY REPRESENTATION, ACT OR OMISSION TO ACT BY THE OTHER ON ACCOUNT OF THIS AGREEMENT.

THIS SECTION 9 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR ANY REASON.

10. Limitation of Liability; Indemnification

Licensor assumes no responsibility with respect to use of the Software or documentation, or of any of the services performed by Licensor under this Agreement and made available to Licensee.

Licensee hereby agrees to indemnify, and does hereby indemnify, Licensor against any and all claims which may arise directly or indirectly out of the use or operation of the Software by Licensee. Licensee shall be responsible for verifying the accuracy of results produced using the Software. Licensee shall be responsible for following proper backup procedures for any other programming and all data to protect against loss or error resulting from use of any or all of the Software.

This Section 10 shall survive the termination or expiration of this Agreement for any reason.

11. Trademarks

Licensee recognizes the exclusive right of Licensor to all trademarks and trade names owned and/or used by Licensor in connection with the Software and agrees not to use such trademarks or trade names in any manner or for any reason without the prior written consent of Licensor.

12. Notice

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services to the other party at the following address or such other address as may be provided in writing from time to time:

If to Licensor: NextEMR, LLC
 303 Central Avenue
 Unit 4
 Egg Harbor Township, NJ 08234
 Attn: Alan H. Faustino, M.D.

With a copy to: K&L Gates LLP
 200 S. Biscayne Blvd. Ste. 3900
 Miami, FL 33131
 Attn: Marc H. Auerbach, Esq.

If to Licensee: _____

13. Governing Law

This Agreement shall be governed by, and construed solely and exclusively in accordance with, the laws of the State of New Jersey without reference to its conflicts of law principles. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the local and federal courts located within the State of New Jersey and Licensor and Licensee hereby consent to the jurisdiction of such courts and irrevocably waive any objections thereto, including without limitation, on the basis of improper venue or *forum non conveniens*.

This Section 13 shall survive the termination or expiration of this Agreement for any reason.

14. Term and Termination

This Agreement is effective from the Effective Date for a period of ____ month(s) or upon the termination of the Business Associate Agreement. Either party may

terminate this Agreement at any time by notifying the other party, in writing, of such termination. Any such termination shall be effective upon receipt of such notice.

Upon termination of this Agreement for any reason, Licensee shall not use, directly or indirectly, the Software. If Licensee has made any copies of the Software, Licensee shall either destroy or return to Licensor all such copies along with a certificate signed by Licensee that all such copies have been either destroyed or returned, respectively, and that no copy or any part of the Software has been retained by the Licensee in any form.

Termination of this Agreement for any reason shall not affect Licensor's right to recover damages for events occurring before termination.

The right to terminate this Agreement under this Section 14 shall not preclude any other rights and remedies provided by law or equity or this Agreement.

15. Return of Licensee-Created IP

Upon termination or expiration of this Agreement for any reason, upon written request from the Licensee, Licensor will provide Licensee with one copy of all Licensee-Created IP in the possession of the Licensor for a fee of \$_____. Such Licensee-Created IP shall be provided on commercially reasonable media in a flat file format.

16. Enforcement costs

If any legal action or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses incurred in that action or proceeding and at all levels of trial and appeal, in addition to any other relief to which such party may be entitled.

This Section 16 shall survive the termination or expiration of this Agreement for any reason.

17. No Assignment

Neither this Agreement nor any interest in this Agreement nor the license granted hereunder may be assigned or sublicensed by Licensee without the prior express written approval of Licensor. Licensor may assign this Agreement without the consent of the Licensee.

18. Confidentiality

Each party agrees to hold the other party's Confidential Information in strict confidence and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose such information to third-parties or to use

such information for any purposes whatsoever other than the provision or receipt of services as contemplated by this Agreement and to advise each of its employees who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential. Notwithstanding the above, either party may disclose the other party's Confidential Information upon the order of any competent court or government agency; provided that prior to disclosure, to the extent possible, the receiving party shall inform the other party of such order. It is understood and agreed that in the event of a breach of this provision damages may not be an adequate remedy and each party shall be entitled to injunctive relief to restrain any such breach, threatened or actual.

The term "Confidential Information" shall not include any information which: (a) is in the public domain at the time of disclosure or enters the public domain following disclosure through no fault of the receiving party, (b) the receiving party, through demonstrable evidence, can demonstrate knowledge prior to disclosure or (c) is independently developed by the receiving party without reference to the disclosing party's Confidential Information. This paragraph shall not be construed as granting a license less restrictive than any other license under which the Licensee has access to the Confidential Information.

This Section 18 shall survive the termination or expiration of this Agreement for any reason.

19. Entire Agreement

No representations or statements of any kind made by either party that are not expressly stated herein or in any written amendment hereto shall be binding on such party. The parties agree that this Agreement, the Business Associate Agreement, and any Exhibits and written modifications thereto shall constitute the complete and exclusive statement of the agreement between them and shall supersede all prior or contemporaneous proposals, oral or written, and all other communications between them relating to the subject matter hereof.

20. Waiver and Amendment

The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. No amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and it is signed by both parties.

21. Force Majeure

Neither party shall be responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control, including but not limited to, floods, riots, strikes, freight embargoes, acts of God, acts of war or hostilities of any nature, power outages, laws or regulations of any government (whether foreign or

domestic, federal, state, county or municipal) or any other cause beyond the reasonable control of the party affected.

22. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

23. Incorporation

The recitals and all exhibits are hereby incorporated into this Agreement by this reference.

24. Headings

Headings used in this Agreement are provided for convenience only and shall not be used to provide meaning or intent.

25. Counterparts

This Agreement may be executed in any number of counterparts, which may be delivered by facsimile or other electronic transmission, including email, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Licensor and Licensee have executed this Software License Agreement as of the Effective Date.

LICENSOR

NEXTEMR, LLC

By: _____
Alan Faustino, M.D.
President

LICENSEE

By: _____
Name: _____
Title: _____

Exhibit 1 – Hardware Requirements

Exhibit 2 - Business Associate Agreement