NexTech Software License Agreement

1.0 Introduction

1.1 <u>Parties</u>: This NexTech Software License Agreement ("Agreement") is entered into between NexTech Systems, Inc., a Florida corporation located at 5550 West Executive Drive, Suite 350, Tampa, Florida 33609 ("NexTech") and the customer of NexTech identified in the signature portion to this Agreement (the "Customer") (collectively the "Parties").

1.2 <u>Agreement</u>: This Agreement, together with each Supplemental Schedule, Purchase Agreement and/or any other annex or amendment made a part hereto, contains the terms and conditions under which the Customer agrees to acquire the right to use NexTech software.

2.0 Definitions

2.1 <u>Documentation:</u> means the relevant user guides, operational procedures, training materials, specifications and instruction material relating to the Software, including any copies thereof, in any form, as generally available from time to time in the ordinary course of NexTech's business.

2.2 <u>Electronic Data</u>: means all information regardless of form that the Customer has entered or transferred through the Software. Electronic Data shall include, but is not limited to, digital information regarding client data, Electronic Protected Health Information (as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) ("PHI"), and other information howsoever designated.

2.3 <u>Method of Software Acquisition</u>: means the method of access to the Software from time to time offered by NexTech and as selected by the Customer.

2.4 <u>Software</u>: means (a) the practice management, electronic medical records, and/or any other software product owned by NexTech and known as "NexTech Practice"; (b) related Documentation; (c) related Updates to the software and Documentation; (d) all modifications, improvement, translations, adaptations or derivations of such software, Documentation, and Updates; and (e) all copies of each of the foregoing. For the avoidance of doubt, the term Software shall be deemed to include any version of the Software made available to the Customer in accordance with the terms of this Agreement.

2.5 <u>Object Code</u>: means the machine-readable form of the Software.

2.6 <u>Support</u>: means the provision of Upgrades together with the provision of advice and consulting regarding the Customer's access to and use of the Software, as may be available, from time to time in the ordinary course of NexTech's business.

2.7 <u>Supplemental Schedule</u>: means a NexTech generated form, attached to this Agreement or subsequently made a part hereof, for the license of a specific version of the Software in accordance with the Customer's selected Method of Software Acquisition, supply of Support, or agreement to additional terms and conditions as may be entered into from time to time. Additional terms and conditions set forth in each Supplemental Schedule shall apply only to the subject matter of the Supplemental Schedule. The Customer may acquire the license of a specific version of the Software, and/or Support under this Agreement by submitting a then current and appropriate Supplemental Schedule, properly completed and signed.

As an additional Supplemental Schedule, the Parties shall, concurrent with the entering into of this Agreement, enter into a separate Business Associate Agreement ("BAA"), as that term is defined in the HIPAA Privacy Rule which shall apply only to PHI, including Electronic PHI, to which NexTech has been granted access by the Customer.

2.8 Upgrades: means error corrections, maintenance releases and improvements made to the Software and as may be available from time to time in the ordinary course of NexTech's business.

3.0 Software, Upgrades and Support

3.1 Grant of License: The Customer shall gain a right and license to gain access to and use of the Software by execution of this Agreement and the Supplemental Schedule appropriate to the Method of Software Acquisition selected by the Customer.

3.2 Ownership and Intellectual Property: The Customer acknowledges that the Software and all copyrights, patents, trade secrets and other rights, title and interest therein, are the sole property of NexTech and agrees that the Customer shall gain no right, title or interest in the Software by virtue of this Agreement and any Supplemental Schedule other than the non-exclusive right of use and access granted herein and therein. Without limiting the foregoing, Customer specifically acknowledges that NexTech has exclusive ownership rights to the intellectual property embodied in the Software and by operation of this Agreement assigns to NexTech any customer suggestions and/or content resulting in modification, improvement, translation, adaptation or derivation of the Software, therein.

3.3 Upgrades: Subject to availability in the ordinary course of NexTech's business, NexTech shall make available Software Upgrades in a manner described in a Supplemental Schedule.

3.4 Support: If the Customer has acquired Support and is current on its payment obligations, NexTech shall, unless specified otherwise in the Supplemental Schedule, make available remote technical support for the Software. Such Support shall be provided via unlimited access by the Customer to telephone and remote software support, currently between the hours of 7:00 a.m. and 8:00 p.m. Eastern Time, Monday through Thursday and 7:00 a.m. to 7:00 p.m. Friday (such days and times subject to change by NexTech), enabling the Customer to receive assistance with the installation, maintenance, and/or operation of the Software. Unless provided otherwise in a Supplemental Schedule, NexTech does not provide support for any hardware, networking, printers or any other software including, without limitation, third party products and Windows or other operating systems.

3.5 CareCredit® patient financing: NexTech may offer without charge, access to and use of the integration module containing CareCredit® patient financing. However, NexTech reserves all rights of ownership and availability of use of this module, including, but not limited to, the right to discontinue the integration or charge for its use. In addition, the integration module is provided on an "as is" "where is" basis without warranty of any kind whatsoever.

3.6 Software accessed through NexTech servers: NexTech reserves all rights of ownership and availability of use of integrated modules and services accessed through NexTech servers such as NexWeb, NexReminder, ePrescribing and NexTech Webinars. Such reserved rights include, but are not limited to, the right to discontinue the integration in the event of breach of this Agreement.

4.0 Term and Termination

4.1 Term: The term of this Agreement and each Supplemental Schedule shall be deemed effective on the date of signed acceptance by NexTech ("Effective Date") and shall continue in effect in perpetuity

(unless indicated otherwise in a Supplemental Schedule), subject to termination earlier in accordance with Section 4.2, below (or as may be specified in a Supplemental Schedule). The fees paid by the Customer are non-refundable and the Customer understands and acknowledges that NexTech has a "no return" and "no refund" policy.

4.2 <u>Termination</u>:   NexTech reserves the right to terminate this Agreement (together with any Supplemental Schedule) for cause upon thirty (30) calendar days written notice if the Customer breaches any of its obligations under this Agreement or a Supplemental Schedule and thereafter fails to cure such breach, if curable, to the reasonable satisfaction of NexTech within the first ten (10) days following the Customer's receipt of such notice of termination. Upon termination of this Agreement (or a Supplemental Schedule), the Customer shall, no later than the effective date of such termination: (a) discontinue the use of and purge all Software from all computer systems, terminals, personal computers, storage media, and any and all other devices and files with which the Software is used; (b) if applicable, return to NexTech all copies (including partial copies) of the Software (and all other Confidential Materials as defined in Section 8.2, below); and (c) if requested by NexTech, certify to NexTech in writing that it has complied with the foregoing obligations. The termination of this Agreement for any reason shall not extinguish or diminish the Customer's obligation under Section 8 to maintain the confidentiality of the Software (and all other Confidential Materials as defined in Section 8.2, below), which obligation shall continue and survive termination of this Agreement, including any Supplemental Schedule.

5.0 Limited Warranties, Disclaimers and Remedies

5.1 <u>Intellectual Property Rights</u>. NexTech warrants to the Customer that the Software does not violate any United States patent, copyright or other third party intellectual property right. If an action is brought against the Customer claiming that such Software infringes a patent, copyright or other third party intellectual property right, NexTech will defend the Customer in the infringement action (provided that NexTech is given prompt written notice of any third party claim and is given information, reasonable assistance and sole authority to defend or settle the claim). In connection therewith and as NexTech's sole obligation in respect of a breach of this warranty, NexTech shall either, at its option: (a) obtain for the Customer the right to continue using the affected Software or (b) modify or replace such Software so as to eliminate the infringement. NexTech shall not have any liability hereunder if any claim of infringement (i) is asserted by a subsidiary or affiliate of the Customer; (ii) results from the Customer's alteration of the Software; (iii) relates to a third party Software product not owned by NexTech; or (iv) results from use of any Software in combination with any non-NexTech product. This paragraph states the entire liability of NexTech and the Customer's sole and exclusive remedies.

5.2 <u>Software Limited Warranty and Disclaimer</u>: NexTech warrants for a period of ninety (90) days from the effective date set forth in a Supplemental Schedule or Purchase Agreement, that the Software will be capable of executing its programming instructions. In the event that the Software fails to execute its programming instructions during the warranty period, NexTech shall correct the defect provided that the Customer does not prevent NexTech from gaining access to the computer network on which the Software resides to enable NexTech to attempt resolution within a reasonable period of time based on the severity of the issue.   Such correction is not warranted nor guaranteed; however, NexTech will, during the warranty period, continue to provide warranty service (which may include an Upgrade to the Software) as deemed reasonably necessary by NexTech in its attempt to correct the defect(s).

5.3 <u>Exclusions</u>. The foregoing warranties shall not apply to the extent that any alleged infringement or defect derives from: (a) a combination of the Software with any program, equipment or device not supplied by NexTech or identified in a Supplemental Schedule; (b) any modification or customization of the Software by or on behalf of the Customer; or (c) the Customer's failure to properly use or access the

Software, as appropriate, or access or install any Upgrades. No employee or agent of NexTech is authorized to give a greater or different warranty than as expressly provided for herein.

5.4 <u>Disclaimer of Other Warranties</u>. **Except as provided in this Section 5, the Software, Services and any related Support from NexTech are provided to the Customer on an "as is" and "as available" basis and all warranties, conditions, representations, indemnities and guarantees, whether express of implied, arising by law, custom, oral or written statements of NexTech or otherwise (including, without limitation, any warranties of merchantability, fitness for a particular purpose, or of error-free and uninterrupted use) are hereby superseded, excluded and disclaimed. Neither this Agreement, any Supplemental Schedule or Purchase Agreement, nor any documentation furnished in relation to this Agreement or a Supplemental Schedule or Purchase Agreement is intended to express or imply any warranty that the Software, Support and/or any other services provided by NexTech will be uninterrupted, timely or error free.**

5.5 <u>Customer Undertakings</u>. The Customer assumes all rights and liabilities for results obtained by its use, access and/or implementation of the Software, whether such results are used singly or in combination with other hardware, software or products. The Customer will be responsible for use of all hardware, including but not limited to, operating procedures, audit controls, accuracy and security of input or output data, restart and recovery routines and other procedures necessary for the Customer's intended use of the Software. In addition, the Customer: (i) shall maintain back-up data necessary to replace critical Customer data in the event of loss or damage to such data from any cause and regardless of the cause of loss, NexTech shall not in any way be liable thereof; and (ii) shall ensure that its Licensed Users (and any other personnel gaining access to the Software) are, at all times, educated and properly trained in the proper use, access and operation of the Software Services and that the Software and Services is used in accordance with any and all applicable manuals, documentation and instructions.

5.6 <u>Additional Customer Warranty Rights</u>. **This Section 5 provides the Customer with specific legal rights and the parties acknowledge that the Customer may also have other rights which vary from State to State.**

5.7 <u>Warranty Service</u>. Warranty service may be obtained from NexTech at its corporate offices and by telephone at **888-417-8464**, during normal business hours. Only a Customer-assigned representative (whose name and contact information will be provided to NexTech from time to time) may obtain warranty service.

6.0 Remedy Limitations

6.1 <u>Limitation of Liability</u>: **In no event shall NexTech be liable for any special, incidental, indirect, punitive or consequential damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss), whether foreseeable or not foreseeable and whether arising out of breach of any express or implied warranty, breach of contract, negligence, misrepresentation, strict liability in tort or otherwise, and whether based on this Agreement, any Supplemental Schedule or any transaction performed or undertaken under or in connection with this Agreement including, but not limited to: (i) the use or access of or the inability to use or gain access to the Software, even if NexTech has been advised of the possibility of such damages and (ii) the use by the Customer and the Customer's practice of any documents, document templates and/or procedure specific content providing patient education and/or informed consent information either provided by NexTech in its original form or as modified by the Customer, whether or not distributed to Customer's patient(s).**

6.2 <u>Remedies</u>: **The Customer agrees that NexTech's total liability to the Customer or any third**

party for damages, regardless of the form of action, shall, in any event, not exceed one year's ongoing fees for using the Software.

6.3 <u>Applicable Law</u>: **Notwithstanding the foregoing, this Section 6 will not apply when and to the limited extent that applicable law specifically requires liability despite the foregoing exclusions and limitations.**

7.0 Electronic Data

7.1 <u>Ownership of Electronic Patient Data.</u> Electronic Patient Data entered into the Software by the Customer shall be owned by the Customer with the exception of anonymous patient-level data which may be accessed and used by NexTech for any purpose without notice to Customer.

7.2 <u>Liability</u>. **NexTech shall not be liable to Customer for any loss of any Electronic Data.**

7.3 <u>Down Time and Backup</u>. NexTech is providing a right and license to gain access to and use its Software. NexTech is not liable for any application problem whatsoever that might result in down time, inaccessibility to, or non-usability of the Software. **NexTech strongly recommends that the Customer routinely back up its Electronic Data and Customer acknowledges and agrees that NexTech shall not be responsible for any loss of data.**

8.0 Confidentiality

8.1 <u>Confidentiality</u>. The Customer acknowledges that the information and the intellectual property contained in the Software and content (and other Confidential Material, as defined in Section 8.3, below) is confidential and contains trade secrets and proprietary data belonging to NexTech, and that the presence of any copyright notices on the medium containing the Software does not constitute publication or otherwise impair the confidential nature thereof. The Customer shall implement all reasonable measures necessary to safeguard NexTech's ownership in, and the confidentiality of the Software, including, without limitation (a) allowing its employees, agents and third parties, to the limited extent permitted herein, access to the Software only to the extent necessary to permit the performance of their ordinary services to the Customer and to require, as a condition to such access, that such persons comply with the provisions of this Section 8; (b) cooperating with NexTech in the enforcement of such compliance by the Customer's employees, agents and third parties; (c) prohibiting the removal or alteration of any copyright or confidentiality labels or notices contained in the Software; (d) prohibiting the copying and use of the Software except as permitted in this Agreement and (3) refrain from building a competitive product or service or otherwise copying any ideas, features, functions or graphics of the Software. The Customer acknowledges that use or disclosure of the Software in violation of this Agreement may cause irreparable harm to NexTech. The Customer agrees therefore, that without limiting any other rights and remedies, including collection of monetary damages, in the event of a perceived breach by the Customer of this Section 8, NexTech shall be entitled to seek immediate injunction relief without posting of a bond. In addition, the Customer agrees to not (a) permit access to the Software by any third party or (b) otherwise disclose the Software to any party other than NexTech whose function is to provide the Customer with day-to-day support of the Software.

8.2 <u>Confidential Materials</u>. For purposes of this Section 8, "Confidential Materials" shall mean (i) this Agreement, each Supplemental Schedule, all price proposals, order forms, estimates and invoices sent to Customer by NexTech and any Software products, Support, Upgrades, the method of access to the Software and other services made available by NexTech, intellectual property, know-how, show how, technical data, specifications, product capabilities, instructions, manuals, guides, systems, processes,

designs, methods, practices, trade secrets, software, firmware, devices, diagrams, drawings, notes, sketches, videos, sales and technical bulletins, and all copies and electronic files thereof, and (ii) all other information, whether or not reduced to writing, relating to the design, creation, use, marketing, license, support and service related to the Software and the method of access to the Software, as well as any other information relating to the business of NexTech that may be divulged to the Customer that is not generally known in the trade and is confidential and/or proprietary to NexTech. No information or materials shall qualify as Confidential Materials if they (i) are or become, through no fault of the Customer, available to the public, (ii) are obtained by the Customer from a third party without breach of any agreement with, or obligation of confidentiality to, NexTech, or (iii) are required by law or a court or government agency to be disclosed.

8.3 Other Obligations of Customer

The Customer (a) shall not copy, modify, adapt, translate, create derivative works, disassemble, decompile or otherwise reverse engineer the Software and related services, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (b) agrees to not provide access to NexTech's proprietary database fields and the data contained in the Software to any party for whatever purpose without the prior written consent of NexTech; and (c) shall permit NexTech or its authorized representatives reasonable access to any premises and equipment where the Software is being used including, without limitation, access to any records maintained by or on behalf of the Customer which relate to the Customer's use of the Software, for the purposes of ensuring that the Customer remains in compliance with the terms of this Software License Agreement and any Supplemental Schedule;

9.0 Payment

9.1 <u>Payment of fees</u>. All fees are due and payable upon the payment terms specified in each Supplemental Schedule and/or Purchase Agreement signed by the without regard to any equity, set-off or counterclaim.

All prices are exclusive of taxes and other duties and charges howsoever designated, which, to the extent applicable, shall be borne exclusively by the Customer and, to the extent required by law, collected by NexTech from the Customer.

If the Customer fails to pay any amount payable by it, NexTech shall be entitled to: (a) charge the Customer interest on the overdue amount, from the due date up to the date of actual payment, after as well as before judgment, at the rate of one percent (1%) per month and/or (b) suspend all further service under this Agreement and/or any Supplemental Schedule until payment has been made in full.

10.0 Other Provisions

10.1 <u>Software and Documents do not constitute medical or legal advice</u>: The Customer acknowledges and agrees that nothing contained in the Software, Support and any other services made available by NexTech or in any of the documents, document templates or procedure-specific content provided in the Software database which is merged with document templates, is to be construed as medical and/or legal advice, and the Customer shall, with the Customer's specialized professional judgment and with competent legal counsel where appropriate, review such documents, document templates or procedure-specific content provided in the Software database before providing the output to any patient (or other party) of the Customer.

10.2 <u>Identification of NexTech</u>: The Customer may not display the name, trademark, logo or other identifying mark of NexTech on any output to any patient (or other third party) of the Customer.

10.3 <u>Transferability</u>: This Agreement (including each Supplemental Schedule), any rights under it, including without limitation the Software, Support and any other services provided by NexTech, may be assigned by NexTech without notice to the Customer. This Agreement (including each Supplemental Schedule), any rights under it, including without limitation the Software, Support and any other services made available by NexTech, may not be assigned, granted, sublicensed, or transferred by the Customer to a third party without prior written consent from NexTech.

10.4 <u>Governing Laws</u>: This Agreement and each Supplemental Schedule will be considered as having been entered into in the State of Florida, and will be interpreted exclusively in accordance with the laws of the State of Florida. The parties to this Agreement 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. Acknowledging that the damages sustained by NexTech as a consequence of any breach by the Customer of any of its obligations under this Agreement (including each Supplemental Schedule and/or Purchase Agreement) may be difficult or impossible to measure in monetary terms, the Customer hereby agrees that NexTech shall be entitled to: (i) an injunction temporarily and/or permanently restraining the commission or continuation of any such breach without any requirement to give an undertaking as to damages or in any way providing a bond or security for costs, (ii) an award of damages in an appropriate amount, and (iii) other available remedies, all remedies hereunder being cumulative.

10.5 <u>Notice and Delivery</u>: Notice under this Agreement and each Supplemental Schedule shall be in writing and addressed to the parties as indicated below, or as appropriately updated. Delivery under this Agreement occurs upon actual delivery or three (3) days after deposit with the U.S. Postal Service as Certified Mail, whichever is earlier.

10.6 <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 and each Supplemental Schedule if such delay or failure to perform is due to any cause or condition reasonably beyond that party's control.

10.7 <u>Headings</u>: The headings for the various Sections and sub-Sections shall not be considered part of this Agreement (or a Supplemental Schedule) and shall not be used in interpreting this Agreement (or a Supplemental Schedule.

10.8 <u>Unenforceability</u>: It is intended that this Agreement and each Supplemental Schedule shall not violate any applicable law. If, at any time or for any reason, any provision becomes unenforceable or invalid, the remaining provisions shall remain unaffected and continue with the same effect as if such unenforceable or invalid provision had not have been inserted herein.

10.9 <u>Compliance With Laws</u>: The Customer shall, at its own expense, use the Software in a careful and proper manner and shall comply with and conform to all laws, ordinances and regulations in any way relating to the possession, use and/or maintenance of the Software and Electronic Data, including but not limited to the applicable standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as published by the United States Department of Health and Human Services and those related to data privacy, international communications, consumer transactions and communications decency. Each party shall comply in all respects with the European Union Member State Data Protection Act (the "DPA"), if applicable, and all subordinate legislation made pursuant thereto including all applicable amendments, revisions and re-enactments when processing all personal data (as defined in the DPA). Use of the Software is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this Section 10.8.

10.10 <u>Survival</u>: Sections 3.2, 5, 6, 8 and 10 shall survive the expiration or termination of this Agreement and each Supplemental Schedule for any reason.

10.11 <u>Disclosure of Agreement</u>: The Customer shall not disclose the terms and conditions of this Agreement, the Purchase Agreement, all price proposals, estimates and invoices sent to Customer by NexTech, or any Supplemental Schedule to third parties (except the Customer's auditors, legal counsel or third parties whose review is mandated by law) without the prior written authorization of NexTech. NexTech may announce the entering into of this Agreement or any Supplemental Schedule with the Customer in a press release and at any time after its Effective Date, refer to the Customer business relationship in marketing literature and any other publication.

10.11 <u>Performance</u>: NexTech shall use its reasonable endeavors to perform its obligations within any time stated in this Agreement and/or each Supplemental Schedule. Any such time is, however, approximate only and time for such performance shall not be of the essence.

10.12 <u>Inconsistent terms</u>: The terms and conditions set forth herein shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or other document presented by Customer in connection with the entering of this Agreement, any Supplemental Schedule or the subject matter hereof, or otherwise implied by law, trade custom, practice or course of dealing. In addition, in the event of conflict between the terms of a Supplemental Schedule and the provisions of this Agreement, the terms of a Supplemental Schedule shall govern and control.

10.13 <u>Entire Agreement</u>: This Agreement and each Supplemental Schedule is the complete and exclusive agreement between the Customer and NexTech relating to the Software, Services, Support, and other subject matter as provided for herein, and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this Agreement. No variation of the terms of this Agreement or any different terms will be enforceable against the parties unless both parties give their express consent, including an express waiver of the terms of this Agreement, in writing signed by an authorize representative of each party.

Addendum to NexTech Software License Agreement
AMA Electronic Media Agreement

This Addendum to the NexTech Software License Agreement is made between NexTech Systems, Inc. (NEXTECH), a Florida corporation at 5550 W. Executive Drive, Suite 350, Tampa, FL 33609 and the undersigned user (User.) The NexTech Software License Agreement (Agreement) made between NEXTECH and the User and the Agreement is incorporated by reference into this Addendum.

1. **Grant of Rights Restrictions**
   (i) For the purposes of this Agreement, "Editorial Content" means content from the print publication *Current Procedural Terminology, Fourth Edition* ("CPT book") and the ASCII or EBCDIC data file of *Current Procedural Terminology* ("CPT data file") published by AMA in the English language as used in the United States (collectively, "CPT"), a coding work of nomenclature and codes for reporting of healthcare services together with (a) the data as contained in the ASCII or EBCDIC electronic data file published by the AMA of the *International Classification of Diseases 9th Revision Clinical Modification Volume 1* ("AMA's version of ICD-9-CM"); (b) the data as contained in the ASCII or EBCDIC electronic data file published by the AMA of the *Healthcare Common Procedure Coding System Level II* ("AMA's version of HCPCS").
   (ii) For the purposes of this Agreement, "Licensed Product(s)" means NexTech Systems' product(s) that incorporate Editorial Content.

(iii) The license granted is a nontransferable, nonexclusive license, for the sole purpose of internal use by the User within the Territory.

(iv) User may not publish, distribute via the Internet or other public computer based information system, create derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Licensed Products, or a copy or portion of Licensed Products.

(v) The updated Editorial Content in the Licensed Products is dependent on continuing contractual relationship between NexTech Systems and AMA.

(vi) Users with authorized access to the Licensed Products will comply with the provisions of this agreement.

2. **Notices**

   (i) CPT is copyrighted by the AMA and CPT is a registered trademark of the AMA.

   (ii) U.S. Government Rights

   This product includes CPT which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60610. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

3. **Back Up Rights**

   (i) Copies of the Licensed Product may only be made by the User for back up or archival purposes.

   (ii) All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made by the User.

4. **Miscellaneous**

   (i) This agreement will terminate in the event of default.

   (ii) This Agreement requires a license fee or other consideration.

   (iii) In the event a provision is determined to violate any law or is unenforceable the remainder of this Agreement will remain in full force and effect.

LIMITATION OF LIABILITY. AS PERMITTED BY APPLICABLE LAW, THE EDITORIAL CONTENT AS CONTAINED IN THE LICENSED PRODUCTS IS PROVIDED "AS IS" WITHOUT ANY LIABILITY TO THE AMA, INCLUDING WITHOUT LIMITATION, NO LIABILITY FOR CONSEQUENTIAL OR SPECIAL DAMAGES, OR LOST PROFITS FOR SEQUENCE, ACCURACY, OR COMPLETENESS OF DATA, OR THAT IT WILL MEET THE USER'S REQUIREMENTS, AND THAT AMA'S SOLE RESPONSIBILITY IS TO MAKE AVAILABLE TO NEXTECH SYSTEMS REPLACEMENT COPIES OF THE EDITORIAL CONTENT IF THE EDITORIAL CONTENT IS NOT INTACT; AND THAT AMA DISCLAIMS ANY LIABILITY FOR ANY CONSEQUENCES DUE TO USE, MISUSE, OR INTERPRETATION OF INFORMATION CONTAINED OR NOT CONTAINED IN EDITORIAL CONTENT.

IN NO EVENT SHALL NEXTECH BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT

LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE BY THE USER AND THE USER'S PRACTICE OF ANY EDITORIAL CONTENT.

IN ANY CASE, THE ENTIRE LIABILITY OF NEXTECH UNDER THE PROVISIONS OF THIS AGREEMENT AND ADDENDUM SHALL BE LIMITED TO THE COST OF ONE YEAR'S TECHNICAL SUPPORT.

This Addendum shall be interpreted under the laws of the State of Florida.

NEXTECH and the User hereby ratify all other terms and conditions of the Agreement which have not been modified by this Addendum, and such other terms and conditions shall remain in full force and effect.

Addendum to
NexTech Software License Agreement
Evaluation and Management Coding

This Addendum to the NexTech Software License Agreement is made between NexTech Systems, Inc. (NEXTECH), a Florida corporation 5550 W. Executive Drive, Suite 350, Tampa, FL 33609 and the undersigned user (User.)   The NexTech Software License Agreement (Agreement) made between NEXTECH and the User and the Agreement is incorporated by reference into this Addendum.

In the event the User purchases *NexTech Practice EMR* and uses the *NexTech Practice E&M Coding* features and algorithms to assist in calculating office visit service codes for billing, the User's license from NEXTECH to use the Software, and *NexTech Practice E&M Coding* in particular, is subject to the terms and conditions in the Agreement and the following additional terms and conditions. The User understands and accepts:

1. That *NexTech Practice E&M Coding* is based on *CMS 1997 Documentation Guidelines for Evaluation and Management Service* and the underlying algorithms can be extremely complex given the number of visit types, exam types, and coding levels. *NexTech Practice E&M Coding* permits the User full access to determine how the algorithms function.
   http://www.cms.hhs.gov/MLNEdWebGuide/25_EMDOC.asp
2. That nothing in the Software, or in any of the functions of *NexTech Practice E&M Coding,* is to be construed as medical advice, and the User and any person permitted by it to use *NexTech Practice E&M Coding* shall review the *CMS 1997 Documentation Guidelines for Evaluation and Management Service,* the underlying algorithms, and any E&M Coding checklists provided as part of *NexTech Practice E&M Coding* together with procedure specific content provided in the Software database before using this feature for medical billing.
3. That every clinician permitted by the User to use *NexTech Practice E&M Coding* should have a thorough understanding of the applicable documentation guidelines. *NexTech Practice E&M Coding* is solely a reference tool; it does not teach clinicians to code correctly and the User should conduct periodic coding audits to ensure regulatory compliance.
4. That the User and any person permitted by it to use *NexTech Practice E&M Coding* assume full responsibility for all billing codes associated with the patient encounter and electronic medical record. NexTech is not responsible for the diagnosis codes, service codes, E&M checklists, auditing, or algorithms chosen by the User.
5. The User further understands that the User may not display the name, trademark, logo or other identifying mark of NEXTECH on any output to any patient of the User.

LIMITATION OF LIABILITY. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NEXTECH BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE BY THE USER AND THE USER'S PRACTICE OF NEXTECH PRACTICE E&M CODING FEATURES INCLUDING ANY CHECKLISTS EITHER PROVIDED BY NEXTECH IN ITS ORIGINAL FORM OR AS MODIFIED BY THE USER, WHETHER OR NOT USED TO BILL PATIENT ENCOUNTERS OR MADE PART OF THE PATIENT'S RECORD.

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This Addendum shall be interpreted under the laws of the State of Florida.

NEXTECH and the User hereby ratify all other terms and conditions of the Agreement which have not been modified by this Addendum, and such other terms and conditions shall remain in full force and effect.

Addendum to NexTech Software License Agreement
NexForms and State Mandated Informed Consent

This Addendum to the NexTech Software License Agreement is made between NexTech Systems, Inc. (NEXTECH), a Florida corporation 5550 W. Executive Drive, Suite 350, Tampa, FL 33609 and the undersigned user (User.)   The NexTech Software License Agreement (Agreement) made between NEXTECH and the User and the Agreement is incorporated by reference into this Addendum.

The User has purchased *NexForms*, a comprehensive set of content-specific forms, letters and patient education documents, including informed consent documents from the American Society of Plastic Surgeons (ASPS) Patient Consultation Resource Book. *NexForms* is a module in the practice management software product known as "NexTech Practice" (Software.) User's license from NEXTECH to use the Software, and *NexForms* in particular, is subject to the terms and conditions in the Agreement and the following additional terms and conditions:

1. User understands that nothing in the Software, or in any of the documents, document templates or procedure specific content provided in the Software database which is merged with document templates, is to be construed as medical and/or legal advice. User shall review such documents, document templates or procedure specific content provided in the Software database, using the User's specialized professional judgment and with competent legal counsel where appropriate, before providing the output to any patient. The User further understands that the User may not display the name, trademark, logo or other identifying mark of NEXTECH on any output to any patient of the User.

2. User understands it may not display the name, trademark, logo or other identifying mark of NEXTECH on any output to any patient of the User.

3. User understands certain states have laws that specifically require informed consent and set forth specific procedures for obtaining medical informed consent from a patient. Some examples are Florida, Georgia and Texas. In at least one case [Texas,] state law has authorized creation of lists

of medical treatments and surgical procedures that do and do not require disclosure, and has prescribed forms to be used in obtaining informed consent.

4. Prior to using any of the informed consent documents contained in *NexForms*, the User shall, with the User's specialized professional judgment and with competent legal counsel where appropriate, review applicable state law and modify such informed consent documents to ensure compliance with state law.

5. The User understands that for each ASPS Informed Consent Form, the following copyright and User information paragraph applies: ©2005 American Society of Plastic Surgeons. Purchasers of the Patient Consultation Resource Book are given a limited license to modify documents contained herein and reproduce the modified version for use in the Purchaser's own practice only. All other rights are reserved by American Society of Plastic Surgeons®. Purchasers may not sell or allow any other party to use any version of the Patient Consultation Resource Book, any of the documents contained herein or any modified version of such documents.

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