

NEXTGEN FEDERAL SYSTEMS, LLC
WEATHER ANALYST® (WxA) SOFTWARE LICENSE AGREEMENT

The following Software License Agreement (SLA), including the applicable supplemental terms in the following addenda, applies to the Weather Analyst® software product.

Addendum 1 – Node-locked License

Addendum 2 – Server Product License

Addendum 3 – Annual Support and Upgrades Agreement

NOTICE TO USER: PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND NEXTGEN FEDERAL SYSTEMS, LLC ("NextGen"), A FLORIDA CORPORATION, LOCATED AT 1399 STEWARTSTOWN ROAD, SUITE 350, MORGANTOWN, WV 26505. BY USING ALL OR ANY PORTION OF THE SOFTWARE, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY OF THESE TERMS, DO NOT USE THIS SOFTWARE. IF YOU ACQUIRED THE SOFTWARE WITHOUT AN OPPORTUNITY TO REVIEW THIS AGREEMENT AND YOU DO NOT ACCEPT THIS AGREEMENT, YOU MAY OBTAIN A REFUND OF THE AMOUNT YOU ORIGINALLY PAID FOR THE SOFTWARE PROVIDED THAT YOU: (A) DO NOT USE THE SOFTWARE, (B) DO NOT MAKE OR KEEP ANY COPIES OF THE SOFTWARE, AND (C) RETURN IT WITHIN THIRTY (30) DAYS OF THE ORIGINAL PURCHASE DATE ALONG WITH EVIDENCE OF THE DATE OF PURCHASE AND ORIGINAL PURCHASE PRICE.

By using the Software, you ("You" or "Your" as applicable) represent, acknowledge, and agree that You are of age under the laws of Your jurisdiction (usually 18+ years) and/or lawfully able to enter into this Agreement. If You are not of age (a "Minor"), You represent that You are using the Software with the consent of Your parent or legal guardian and that You have received Your parent's or legal guardian's permission to use the Software and agree to these Terms. If You are a parent or legal guardian of a Minor, You hereby consent to the use of the Software by a Minor, agree to bind the Minor to these Terms and to fully indemnify and hold NextGen harmless if the Minor breaches any of these Terms. If You are not legally able to enter into contracts, You may not use the Software at any time or in any manner. If You enter into this Agreement on behalf of a company or legal entity, you must have the authority to bind that entity to these Terms. In that case, "You" refers to such entity.

1. DEFINITIONS

"Client" means a Designated Computer that connects to and makes requests of a licensed installation hereunder.

"End-Users" means a licensed user of the Software.

"Documentation" means the licensed specifications, user manuals, installation instructions and other supporting materials, including additional, updated or revised materials, if any, that are provided by NextGen in connection with the Software in any Product Configuration.

"Library" means a software library that is a collection of software functions that can be called by a higher-level program, individually or as part of a collection from Weather Analyst®.

"Weather Analyst®" means a NextGen software product that retrieves, process, and displays weather data and effects. "Weather Analyst®" includes all Software, Software Developer Resources, any Library, and other artifacts provided with WxA installed binary files.

"Ordering Documents" means a sales quotation, purchase order or other contractual document that identifies the Software and Product Configuration ordered, license term and price, and/or annual support fees.

"Product Configuration" means the totality of the Software being licensed in the specific configuration ordered.

"Software" means the NextGen product ("Weather Analyst®"), its software modules, extensions for the software and all contents of the files, disks(s), CD-ROM(s) or other downloadable media provided under this Agreement, including but not limited to (i)

NextGen or third party computer information and executable software code (excluding source code); and (ii) digital images, stock photographs, video, clip art, sound(s) or other works or materials.

"Software Developer Resources" means the Documentation, installation utilities and "Weather Analyst® " reference applications, as provided and licensed by NextGen.

"Supplemental Terms" means additional terms and conditions applicable to the specific Software being licensed.

"Third Party Content" means software (whether embedded or not) and other materials owned and licensed by third parties that is supplied by NextGen with the Software.

"Use or Using" means to access/open, install, download, copy, or otherwise benefit from the Software or the Documentation.

2. GRANT OF LICENSE

2.1 NextGen grants You a personal, non-exclusive, non-transferable license solely to use the Software, as set forth in the applicable Ordering Document(s): (i) for which the applicable license fees have been paid, and (ii) in accordance with the terms and conditions set forth in this License Agreement and the Addenda applicable to the Software You have ordered or as otherwise expressly authorized in writing by NextGen.

2.2 Permitted Uses

For each license purchased, You may:

- a. Install and use the Software on a computing device; or
- b. Move the Software in the licensed Product Configuration to a replacement computer.

2.3 Acknowledgements

For each license purchased, You shall give proper acknowledgement of and not delete or obscure the copyright(s) and other proprietary notices of NextGen and its third party licensors.

2.4 Uses Not Permitted

You shall not:

- a. Distribute, license, sublicense, lease, sell, assign, transfer or otherwise disseminate through any means now existing or later developed, Weather Analyst®, or distribute, license, sell, or transfer any component of Weather Analyst® ;
- b. Use the Software to transfer or exchange any material where such transfer or exchange is prohibited by applicable intellectual or any other law;
- c. Remove, delete or obscure any NextGen or its third-party contributors' patent, copyright, trademark, confidentiality or other proprietary rights notices contained in or affixed to the Software or Library;
- d. Separate, unbundle or remove any component(s) of the Software for independent use;
- e. Use, copy (other than make a reasonable number of (i) backup copies of the Software and (ii) copies of the Documentation), modify or transfer the Software or Documentation or any copy, modification or merged portion thereof, in whole or in part, except as expressly provided in this Agreement. Furthermore, You may not reverse engineer, disassemble, decompile or otherwise attempt to reconstruct or discover any Library, source code, data, digital certificates, passwords, underlying ideas, or algorithms. of the Software, or allow others to attempt any of the foregoing;
- f. Share any Library or any source code of Weather Analyst® over a network or otherwise, or access to Weather Analyst® over a network to any unlicensed Clients for any purpose; or
- g. Distribute any of the Software Developer Resources provided by NextGen,

2.5 All rights not specifically granted under Section 2.2 and 2.3 hereof are strictly prohibited.

3. DISCLAIMER OF WARRANTY

THE SOFTWARE AND PRODUCT CONFIGURATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACCEPT ALL RESPONSIBILITY AND LIABILITY RESULTING FROM THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS. YOU ASSUME THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE. NEXTGEN DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, SPATIAL, SPECTRAL AND TEMPORAL ACCURACY IS NOT GUARANTEED.

4. LIMITATION OF LIABILITY

4.1 YOU ALSO ACCEPT ALL RESPONSIBILITY AND LIABILITY RESULTING FROM THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE, AND FOR RELIANCE ON THE RESULTS OBTAINED.

4.2 IN NO EVENT WILL NEXTGEN OR ITS THIRD-PARTY CONTRIBUTORS, DISTRIBUTORS, OR DEALERS BE LIABLE TO YOU OR OTHER PARTY FOR ANY INDIRECT INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST SAVINGS, COSTS OF REPROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM THE USE OR INABILITY TO USE THE SOFTWARE, OR A LOSS OF DATA OR PROFITS, WHETHER IN AN ACTION FOR BREACH OF CONTRACT, NEGLIGENCE, OTHER TORTIOUS CONDUCT OR ADDITIONAL THEORIES OF ANY KIND, EVEN IF NEXTGEN OR ANY AUTHORIZED NEXTGEN BUSINESS PARTNER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.3 NEXTGEN'S OBLIGATIONS UNDER THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY OR CONTRIBUTION, SHALL NOT EXCEED THE AMOUNT OF THE APPLICABLE LICENSE FEE PAID BY YOU FOR THE SOFTWARE OR PART THEREOF GIVING RISE TO SUCH LIABILITY.

5. INFRINGEMENT INDEMNIFICATION

5.1 NextGen shall indemnify You against any liability, cost, or expense, including reasonable attorney's fees, that You incur as a result of any claims, actions, or demands by a third party alleging that Your licensed use of the Software infringes a third party U.S. patent, copyright, trade secret or trademark or misappropriates a U.S. trade secret of a third party, provided that:

- a. NextGen is notified in writing within thirty (30) days of such claim;
- b. You provide NextGen with documents setting forth the allegations of infringement;
- c. NextGen has the right but not the obligation to participate in the U.S. Government's defense of any action and negotiation related to the defense or settlement of any claim; and
- d. The Government: agrees that any litigation or settlement negotiation (i) shall not bind the Contractor, in any way, to the final outcome of any such litigation or settlement; (ii) shall not impair the Contractor's own rights, defenses, or claims against the claimant, and (iii) shall not impact the NextGen's right to settle any claim itself or make any admissions or waive any defenses on NextGen's behalf.

5.2 If the Software, or any part thereof, is found to infringe a third party U.S. patent, copyright, or trademark or misappropriate a U.S. trade secret of a third party, NextGen shall, at its sole option and at its own expense, either: (i) obtain for You the right to continue using such Software or part thereof, or (ii) modify the allegedly infringing elements of such Software while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and You shall uninstall and return the infringing Software to NextGen. NextGen's entire liability shall then be to indemnify You pursuant to Section 5.1 and refund to You the amounts actually paid by You to NextGen for the affected Software less depreciation for beneficial use determined on a straight-line basis over a five-year useful life.

5.3 Notwithstanding the foregoing, NextGen shall have no obligation to indemnify You for any claims or demands alleging direct or contributory infringement to the extent arising out of: (i) the operation, combination or integration of the Software with other software, a product, hardware, system or process not supplied by NextGen or specified by NextGen in its Documentation;

(ii) alteration of the Software by someone other than NextGen; or (iii) use of the Software after modifications have been provided by NextGen for avoiding infringement; or use after a return is ordered by NextGen under Section 5.2.

5.4 NEXTGEN'S OBLIGATIONS UNDER THIS SECTION 5 ARE SOLELY FOR INFRINGEMENT DAMAGES AND COSTS AWARDED AGAINST YOU. IN NO EVENT SHALL ANY OTHER LIABILITY OF NEXTGEN TO YOU EXCEED THE AGGREGATE AMOUNT OF THE APPLICABLE LICENSE FEE RECEIVED BY NEXTGEN FOR THE ALLEGEDLY INFRINGING SOFTWARE, OR PART THEREOF. YOU AGREE THAT THE FOREGOING STATES YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY ALLEGED PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION.

5.5 RESERVED

6. EXPORT CONTROL REGULATIONS

The parties acknowledge that U.S. Government is not subject to U.S. Export Control Regulations and Laws, including but not limited to the Export Administration Regulations (EAR) and as may be applicable, the International Traffic in Arms Regulations (ITAR). To the extent third parties acting on behalf of the U.S. Government are subject to such Regulations and Laws in connection with their use or distribution of the Software and Product Configurations provided under this Agreement, You agree to inform such parties and to require that they must strictly comply with all such laws and regulations.

7. TERMINATION

The license granted under this Agreement is effective for the term set forth herein unless earlier terminated. You may terminate this license at any time by destroying all copies of the Software in Your possession and providing written notice of such termination and destruction to NextGen. The license granted under this Agreement will terminate upon written notice from NextGen if You violate any of the terms and conditions of this Agreement, including without limitation, failure to pay the license fees and any other sums when due NextGen pursuant to this Agreement, and a final determination of such violation is adjudicated under the dispute resolution provisions of this Agreement. You agree, upon such termination, to promptly destroy all copies of the Software in Your possession and to certify in writing to NextGen that such action has been taken.

For the U.S. Government End-User, any alleged violations of this License Agreement (or any other claims) shall be treated as a dispute under the Contract Disputes Act 41 U.S.C. Chapter 71 which establishes procedures and requirements for asserting and resolving contract disputes between Contractors and the Government.

8. GOVERNING LAW AND DISPUTE RESOLUTION; ARBITRATION FOR CERTAIN INTERNATIONAL CUSTOMERS

8.1 This Agreement shall be governed and construed in accordance with United States federal law. This Agreement shall not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is expressly excluded. Any dispute under this Agreement will be adjudicated in accordance with United States federal law.

8.2 For customers other than the U.S. Government, who order Software and Product Configurations outside of the United States and its Territories, any dispute arising out of or relating to this Agreement or the breach thereof that cannot be settled through negotiation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said rules. The language of arbitration will be English. The place of the arbitration shall be Washington, DC. Either party shall, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

9. ASSIGNMENT

None of Your rights, duties or obligations under this Agreement may be sold, sublicensed, assigned, rented, licensed, loaned or otherwise transferred without the prior written consent of NextGen, and any attempt to so sell, sublicense, assign, rent, lease, loan or transfer without NextGen's prior written consent is void.

Notwithstanding the foregoing provision, NextGen shall permit transfers of this Agreement from U.S. Government prime contractors to U.S. Government End Users, provided the original software purchase transaction was completed pursuant to a valid contract, and You have obtained NextGen's prior written consent, which shall not be unreasonably withheld.

10. NOTICES

Any notices regarding this Agreement shall be sent to:

NextGen Federal Systems, LLC
Attn: Contracts Department
1399 Stewartstown Road, Suite 350
Morgantown, WV 26505
contracts@nextgenfed.com

11. INTELLECTUAL PROPERTY AND OWNERSHIP

11.1 NextGen and its third-party licensors and contributors respectively retain ownership of all rights, title and interest in and to all intellectual property rights associated with the Software and Documentation. This Agreement shall not be construed in any manner as transferring any rights of ownership or license to the Software, and/or to the features or information therein except as may be explicitly stated in writing in this Agreement. All rights not expressly granted by NextGen are reserved. The Software and Documentation are protected by copyright and other intellectual property laws and treaties.

11.2 You must reproduce and include the copyright and other proprietary notices of NextGen on any copy of all or any portion of the Software and Documentation, and all such copies shall be subject to all the terms and conditions of this Agreement.

12. U.S. GOVERNMENT END USER RIGHTS

12.1 The Software, Product Configuration, and Documentation are "Commercial Items," as defined in FAR 2.101, consisting of Commercial Computer Software and Commercial Computer Software Documentation. Government software and technical data rights in the Software and its Documentation include only those rights customarily provided to the public, as set forth in this License Agreement.

12.2 The use, duplication of or disclosure of the Software, Product Configuration and its Documentation by the U.S. Government is subject to the restrictions set forth in FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and, for Department of Defense purchases, DFARS 252.227-7015 (Technical Data — Commercial Items) and 227.7202-3 (Rights in Commercial Computer Software or Commercial Computer Software Documentation), as applicable. Accordingly, all U.S. Government End Users acquire the Software and its Documentation with only those rights set forth herein. The developer and manufacturer is NextGen Federal Systems, LLC, located at 1399 Stewartstown Road, Suite 350, Morgantown, WV 26505.

12.3 The U.S. Government is entitled to make a reasonable number of copies of the Software Documentation to support operation, maintenance, installation, and training activities. The Government is also entitled to make a reasonable number of backup copies of the Software for operational purposes.

13. THIRD PARTY CONTENT

The Software includes Third-Party and Open Source Software, subject to the terms and conditions of such respective third parties. Third party terms, conditions and copyright attributions are included with the Software installation files. Any further requests or inquiries regarding Third Party Content can be made to wxa-support@nextgenfed.com.

14. ACKNOWLEDGEMENTS

14.1 YOU HAVE READ THIS ENTIRE AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

14.2 THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE UNDERSTANDING AND CONTRACT BETWEEN US AND SUPERSEDES ANY AND ALL PRIOR ORAL OR WRITTEN COMMUNICATIONS OF ANY KIND RELATING TO THE SUBJECT MATTER HEREOF.

14.3 THIS AGREEMENT MAY NOT BE MODIFIED, AMENDED OR IN ANY WAY ALTERED EXCEPT BY A WRITTEN AMENDMENT TO THIS AGREEMENT SIGNED BY BOTH YOU AND NEXTGEN.

14.4 ANY AGREEMENT PROVISION FOUND BY A COURT OF LAW OR ARBITRATOR TO BE ILLEGAL, INVALID, OR UNENFORCEABLE SHALL AUTOMATICALLY BE DEEMED CONFORMED TO THE MINIMUM REQUIREMENTS OF LAW AND IT, WITH ALL OTHER PROVISIONS, SHALL BE GIVEN FULL FORCE AND EFFECT. WAIVER OF A PROVISION IN ONE INSTANCE SHALL NOT PRECLUDE ITS ENFORCEMENT ON FUTURE OCCASIONS. SUCH FINDINGS OF ILLEGALITY, INVALIDITY, AND/OR UNENFORCEABILITY OF ONE OR MORE OF THE PROVISIONS HEREIN SHALL NOT AFFECT THE REMAINING PROVISIONS.

14.5 RESERVED.

15. RELATIONSHIP OF THE PARTIES

This Agreement does not create a partnership, joint venture or any relationship between NextGen and You. You do not have any right, power or authority to act as a legal representative of NextGen.

Addendum 1 – Node-locked License

This Node-locked License Addendum ("Addendum") sets forth the Supplemental Terms that apply to Your use of the Software under a Node-locked License Product Configuration, and includes the NextGen Software License Agreement, which is incorporated herein by reference in its entirety. This Addendum will take precedence over any conflicting terms of the Software License Agreement.

1. DEFINITIONS

In addition to the definitions provided in the Software License Agreement, the following definitions apply to this Addendum:

"Designated Computer" means a single electronic device for displaying, storing, and processing data.

"Host Identification" or "Host ID" means the unique, physical address for the computer hardware.

"Node-locked License" means a license tied to a specific computer based on that computer's Host ID.

2. GRANT OF LICENSE

The following supplements Section 2, Grant of License, of the Software License Agreement:

2.1 For each Node-locked License purchased, You may and You agree to:

- a. Use the Software only on a Designated Computer at any one time; and
- b. As a condition to the installation and use of the Software, provide NextGen the Host ID of the Designated Computer. You further acknowledge and agree that in order to operate the Software on a different, newly Designated Computer, You will promptly obtain NextGen's written consent to do so and uninstall the Node-locked License from the then current Designated Computer. You will also provide NextGen with the Host ID of the newly Designated Computer.

2.2 All rights not specifically granted herein or not specifically granted in the Software License Agreement are prohibited.

Addendum 2 — Server Product License

This Server Product License Addendum sets forth the Supplemental Terms that apply to Your use of the Software under a Server Product License Product Configuration.

This Addendum includes the NextGen Software License Agreement, which is incorporated herein by reference in its entirety. This Addendum will take precedence over any conflicting terms of the Software License Agreement.

1. DEFINITIONS

In addition to the definitions provided in the Software License Agreement, the following definitions apply to this Addendum:

"End Users" means individuals that connect to the server-hosted Software through a browser or web service interface.

"Server Product License" means a term license with annual subscription access based on the number of active users.

2. GRANT OF LICENSE

The following supplements Section 2, Grant of License, of the Software License Agreement:

2.1 For each Server Product License purchased:

- a. You may use this Product Configuration on one authorized Server at a time using the License Key provided by NextGen.
- b. The Product Configuration may be used by End Users only based on the number of licensed End Users for an authorized Server Computer specified in the License.

2.2 All rights not specifically granted herein or not specifically granted in the Software License Agreement are prohibited.

Addendum 3— Annual Support and Upgrades Agreement

This Annual Support and Upgrades Agreement Addendum ("Addendum") sets forth the Supplemental Terms that apply to Your purchase of Annual Support and Upgrades associated with the Software (as defined in the applicable NextGen Software License Agreement).

This Addendum includes the NextGen Software License Agreement, which is incorporated herein by reference in its entirety. This Addendum will take precedence over any conflicting terms of the Software License Agreement.

1. BENEFITS

The following benefits are available to You under this Addendum:

1.1 Technical Support

Technical Support is available in a variety of areas in support of Software usage including licensing, installation and configuration support; and other technical problem analysis.

Technical Support is typically provided remotely by NextGen's centralized technical support staff but may be supplemented with onsite support, as needed, at NextGen's discretion.

Technical Support is available from NextGen's centralized technical support staff via email at: wxa-support@nextgenfed.com

1.2 Software Upgrades

Software Upgrades consist of new product releases which are issued periodically in NextGen's discretion, and may include new functionality, enhancements, and bug fixes. Software Upgrades are provided only for standard hardware platforms and operating systems supported by NextGen as described in the Documentation. Software Upgrades will apply only to unmodified Software and commercially released updated versions of the Software. You are responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

Software Upgrades are provided subject to the terms and conditions of the then current and applicable NextGen Software License Agreement. All major product releases and interim maintenance releases may be obtained by contacting the renewal team at wxa-support@nextgenfed.com.

You may upgrade to the latest product version at any time during the term of the Annual Support and Upgrades Agreement. If You opt not to renew the Annual Support and Upgrade Agreement, You have 60 days from the end of the Annual Support and Upgrades Agreement term to upgrade to the latest product version available prior to the end of the Annual Support and Upgrades Agreement term. If You request an upgrade beyond this 60-day period, You will be required to renew the Annual Support and Upgrades Agreement in order to upgrade to the latest product version.

1.3 Software Transfers

If the Annual Support and Upgrades Agreement is active, Software may be transferred at no additional charge from one computer (or server)/user to another within any Annual Support and Upgrades Agreement period (see Section 2). If the Annual Support and Upgrades Agreement is inactive, Software transfers are subject to a transfer fee dependent upon the number and type of licenses subject to transfer.

1.4 Technical Support Life Cycle

If the Annual Support and Upgrades Agreement is active, NextGen shall provide Technical Support for a previous version of the Software, up to 5 years from the release of that version of the Software. This shall apply to all versions of the software other than maintenance releases. Upon request, at NextGen's discretion, Technical Support for versions beyond 5 years from the release may be available.

2. AGREEMENT TERM, RENEWAL AND REINSTATEMENT

The term of the Annual Support and Upgrade Agreement shall be annual from the applicable anniversary date, unless otherwise stated in the applicable Ordering Documents, and must be renewed annually for ongoing access to the above support. If the Annual Support and Upgrades Agreement is not renewed by the end of the Annual Support and Upgrades Agreement term, all the rights and privileges associated with the Annual Support and Upgrades Agreement shall terminate. Thereafter, the Annual Support and Upgrades Agreement may be renewed; however, payment for the entire inactive term (i.e. the number of days the Annual Support and Upgrades Agreement is inactive) will be required in order to renew the Annual Support and Upgrades Agreement. In addition, a 2.5% reinstatement fee shall be applied for any inactive term of more than 30 days but less than 90 days. A 5% reinstatement fee shall be applied for any inactive term of 90 days or longer.

3. LIMITATION OF LIABILITY AND REMEDIES

During the term of the Annual Support and Upgrades Agreement, NextGen will use commercially reasonable efforts to provide You with Technical Support to address any material issue or problem determined to be in the Software. While it is NextGen's goal to provide answers or solutions which address such issues or problems, NextGen is unable to guarantee that every issue or problem can or will be resolved. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, NEXTGEN DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED, TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT WILL NEXTGEN BE LIABLE TO YOU FOR ANY, INDIRECT OR OTHER DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO TECHNICAL SUPPORT, OR A LOSS OF DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, EVEN IF NEXTGEN OR ANY AUTHORIZED NEXTGEN BUSINESS PARTNER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL NEXTGEN BE LIABLE FOR ANY SIMILAR CLAIM AGAINST YOU BY ANY OTHER PARTY. NEXTGEN'S OBLIGATIONS UNDER THE ANNUAL SUPPORT AND UPGRADES AGREEMENT, UNDER ANY THEORY OF LIABILITY OR CONTRIBUTION, SHALL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE APPLICABLE ANNUAL SUPPORT AND UPGRADE AGREEMENT TERM.

4. APPLICABLE LAWS

The Annual Support and Upgrades Agreement shall be governed in accordance with United States federal law without reference to conflict of laws principles.

5. ENTIRE AGREEMENT

The Annual Support and Upgrades Agreement is the complete and exclusive statement of the understanding and contract between us and supersedes any and all prior oral or written communications of any kind relating to the subject matter hereof. This Annual Support and Upgrades Agreement may not be modified, amended or in any way altered except by a written agreement signed by both You and NextGen.