



nFINITY ADVANCED DESKTOP™ TERMS & CONDITIONS

BE ADVISED THAT YOU SHOULD REVIEW THE TERMS AND CONDITIONS SET FORTH IN THIS DOCUMENT PRIOR TO USING THE PRODUCT IDENTIFIED ABOVE. THIS IS A LEGALLY BINDING AGREEMENT. YOUR USE OF THE PRODUCT SHALL AT ALL TIMES BE GOVERNED BY THE TERMS AND CONDITIONS SET FORTH BELOW, AND YOU AGREE TO BE BOUND TO THE SAME.

1. **Definitions.** Any term defined in this section shall be assumed to have the meaning ascribed, regardless of whether the first letter is capitalized, unless context clearly calls for a different meaning. The singular shall include the plural, and the plural shall include the singular, unless context clearly calls for a different meaning.

(a) **"Agreement"** means the terms and conditions set forth in this document, along with any documents incorporated herein by reference, including without limitation any Service Order, our General Terms & Conditions, any relevant click-through agreement, our Privacy Policy, our Acceptable Use Policy, and our Service Level Agreement. The General Terms & Conditions, Privacy Policy, and Acceptable Use Policy are all located at <http://www.ngenx.com/legal>.

(b) **"Device"** refers to a smartphone, tablet or personal computer designed to run a fully functioning web browser.

(c) **"Product"** refers to our nInfinity Advanced Desktop product.

(d) **"Terms"** means the terms and conditions set forth in this document.

(e) **"You"** or **"your"** means the person or entity that is entering into this Agreement and anyone who accesses the Product through your account.

(f) **"Users"** means you and/or your entity's designated end-users.

(g) **"We", "us", "our", and "nGenx"** all refer to both nGenx Corporation and/or any of its affiliated entities.

2. **Acceptance.** You accept this Agreement when you do any of the following: (a) give us your written or electronic signature, (b) tell us orally or electronically that you accept (i.e., by clicking the "I Accept" button), (c) give us your written or electronic signature on another agreement that incorporates these Terms, or (d) use any of the Services. If you have never used the Services before and do not wish to be bound by this Agreement, do not begin using them and notify us immediately.

3. **License.** Subject to the terms hereof, we hereby grant you a limited, non-exclusive, non-transferable, terminable limited purpose license to use the Product strictly for your internal employees throughout the term specified in the Agreement.

4. **Minimum Requirements.** The Product has the following minimum requirements: (a) Your Device must have internet access with 100 kbps of minimum bandwidth available per user; (b) Your Device must be capable of running a supported web-browser. Please see www.ngenx.com/support for additional bandwidth recommendations and other requirements.

Should you fail to satisfy the foregoing requirements, the Product may not perform as anticipated and we will not provide any technical support, neither of which shall constitute a breach of the Agreement on our part nor provide a basis for the termination of the Agreement by you.

5. **Technical Support.** We provide technical support for the Product 24 hours a day, 7 days a week, 365 days a year. We may not be able to provide technical support for "line of business" applications, but assuming we can, there will be an additional charge for any such support provided. Technical support does not include consulting services or training on applications. We also will not provide technical support arising from or related to any unauthorized use of the Product, including but not limited to your failure to meet the minimum requirements specified in paragraph 4. Under no circumstances will we provide technical support for any of your equipment or hardware.

6. **Scheduled Maintenance.** We will perform system updates in accordance with Microsoft and Citrix published best practices. Hardware systems maintenance will occur on a regular basis, but no less than once per month on each piece of hardware operated by us in accordance with manufacturer's specifications. Your "line of business" applications, if any, are not included in our schedule maintenance plans unless otherwise agreed in writing by both you and us. Scheduled maintenance notices will be provided electronically.

7. **Emergency Maintenance.** If commercially practicable, we will provide at least one (1) hour notice to you prior to performing any emergency maintenance. Circumstances may dictate that emergency maintenance be performed with minimal or no notice to you. We shall not be responsible for any interruption of service, a loss of data, or any other adverse impact a maintenance event may impose upon you. Emergency maintenance notices will be provided electronically.

8. **Backup Services.** We will use commercially reasonable efforts to backup your files and data on a regular basis, and

shall retain those backup copies in accordance with our then standard policies and procedures.

9. Line of Business Applications. To the extent you have requested we manage your licensed software on our servers, this paragraph shall apply. You agree that you are paying a monthly recurring charge to, in part, lease all or a portion of a server or servers on a month to month basis as necessary to manage the software. You warrant and represent that you have paid all necessary and appropriate licensing fees and that you have a valid license for the software. You acknowledge that we are not renting, sublicensing, assigning, loaning, reselling, transferring, or otherwise distributing the software in violation of any end-user license agreement between you and the licensor. In the event our hosting and managing your licensed software is alleged to be a breach of the end user license agreement or otherwise unlawful by a third party, you agree to indemnify, defend, and hold us harmless pursuant to paragraph 21 of the General Terms & Conditions.

10. Acknowledgments. You acknowledge and agree (a) that you are solely responsible for ensuring your usernames and passwords are kept confidential and under your control; (b) that you may not attempt to access any account or data that does not belong to you; (c) that we retain all rights not expressly granted herein; (d) that we cautioned you to determine for yourself whether the Product is suitable for your intended purpose; (e) that the Product may contain technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or with applications in which a failure thereof could lead to death, personal injury, or severe physical property or environmental damage; (f) that this Product operates over a broadband internet connection. The speed and stability of that underlying connection, the processing speed of the hardware used to access it, and the local software and operating system may all affect the performance of the Product; (g) that we will not support or accept any responsibility for your LAN, PCs, tablets, phones, broadband connection, or any other hardware or software required for you to use or access the Product; (h) that the rights granted hereunder are at all times contingent upon us having the underlying right to grant them, and should we lose those underlying rights, this Agreement shall automatically terminate with us having no liability to you; and (i) that you will comply with all applicable international and national export laws that apply to the Product, including the U.S. Export Administration, and/or Israeli Regulations, as well as end-user,

end-use and destination restrictions issued by U.S. and other governments.

11. Exhibits. This Agreement incorporates by reference, and you agree to be bound by the following: (a) Exhibit A – Microsoft Licensing; and (b) the terms specified in the Citrix End User License Agreements located at http://www.citrix.com/site/resources/dynamic/salesdocs/XAF_EUL_A_English.pdf.

12. Intellectual Property. All title and intellectual property rights in and to the Product (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the Product) are owned by us or our vendors, which include Microsoft Corporation, and Citrix Systems, Inc. among others. Therefore, unless otherwise authorized by applicable law, you are not permitted to: (1) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to discern the source code incorporated into the Product, or its individual components; (ii) sell, resell, rent, lease, or distribute the Product or its individual components; (iii) remove, obscure, or obfuscate any copyright, trademark or other proprietary notice, label or marking on the Product or its individual components; or (iv) modify, translate, or sublicense the Product or its individual components.

13. Representations & Warranties. You represent and warrant the following to us:

(a) You are 18 years of age, or older, and have the right and authority to enter into this Agreement on your own behalf, or if you are entering into this Agreement on behalf of your company, organization or educational institution, and that you have the right to legally bind said entity; and

(b) You will comply with all federal, state, and local laws, ordinances, regulations and rules now or hereafter in effect, relating to your acts of commission and omission.

(c) You will be solely responsible for all costs, expenses, losses, liabilities, and activities undertaken by you.

14. Modification. We may desire to update these Terms from time to time to reflect changes in the Product, changes in the law impacting the Product, or for other reasons. We will make reasonable efforts to notify you of any such modifications, however, notwithstanding anything herein to the contrary, we reserve the right to make those changes unilaterally, and your continued access to or use of the Product shall constitute your consent to such modification.

[EXHIBITS TO IMMEDIATELY FOLLOW]

Exhibit A – Microsoft Licensing

This section applies to any Microsoft software, which includes computer software provided to you by us as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “Software Products”). We do not own the Software Products and the use thereof is subject to certain rights and limitations of which we need to inform you. Your right to use the Software Products is subject to your Agreement with us, and to your understanding of, compliance with and consent to the following terms and conditions, which we do not have authority to vary, alter or amend.

A. Definitions.

- i. “Client Software” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.
- ii. “Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, smart phone, or other electronic device.
- iii. “Server Software” means software that provides services or functionality on a computer acting as a server.
- iv. “Redistribution Software” means the software described in subparagraph d (“Use of Redistributed Software”) below:

B. Ownership of Software Product. The Software Products are licensed to us from an affiliate of Microsoft. All title and intellectual property rights in and to the Software Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated in the Software Products) are owned by Microsoft or its suppliers. The Software Products are protected by copyright laws and international copyright treaties, as well as other intellectual laws and treaties. Your possession, access, or use of the Software Products does not transfer any ownership of the Software Products to you.

C. Use of Client Software. You may use Client Software installed on your Devices by us only in accordance with these instructions, and only in connection with the services provided by us. This paragraph 39 permanently and irrevocably supersedes the terms of any Microsoft End User License Agreement which may be presented in electronic form during your use of the Client Software.

D. Use of Redistributed Software. In connection with the service provided to you by us, you may have access to certain “sample”, “redistributed”, and/or software development (“SDK”) code and tools (individually and collectively “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO US, WHICH TERMS MUST BE PROVIDED TO YOU BY US. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by us.

E. Copies. You may not make copies of the Software Products; provided, however, that you may (a) make one (1) copy of the Client Software on your Device as expressly authorized by us; and (b) you may make copies of certain Redistribution Software in accordance with subparagraph d (Use of Redistribution Software) above. You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your Agreement with us, upon notice from us, or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Software Products.

F. Limitations on Reverse Engineering, Decompilation and Disassembly. You may not reverse engineer, decompile or disassemble the Software Products, accept and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

G. No Rental. You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Software Products to any third party, and you may not permit any third party to have access to and/or use the functionality of the Software Product.

H. Termination. Without prejudice to any other rights, we may terminate your rights to use the Software Products if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the Software Products, and destroy all copies of the Software Products and all of its component parts.

I. NO WARRANTIES, LIABILITIES, OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY US AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

J. Product Support. Any product support for the Software Products is provided to you by us and is not provided by Microsoft or its affiliates or subsidiaries.



K. **NOT FAULT TOLERANT.** THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

L. **Export Restrictions.** The Software Products are of U.S. origin for purposes of U.S. Export control laws. You agree to comply with all applicable international and national laws that apply to the Software Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://microsoft.com/exporting>.