

NFINITY CLOUD™ TERMS & CONDITIONS



1. No Ownership of Customer Data: nGenx represents that all Customer data is the exclusive property of the Customer and makes no claim of ownership of Customer's data. In the event of the expiration or proper termination of this Agreement, nGenx agrees to return Customer's applications and data in a commercially reasonable manner. In the event nGenx becomes insolvent or bankrupt, Customer shall be granted access to its licensed software and data. Customer is responsible for all hardware, software and IT support necessary for the return of applications and data, setup of such applications and data, and continued maintenance thereof. nGenx shall not be liable for any lost data or interruption of service.

2. Litigation Hold: Other than the backup and recovery procedure outlined in paragraphs 5 and 6 below, nGenx shall have no obligation to store or avoid the destruction of data pursuant to the Federal Rules of Civil Procedure, including but not limited to Rule 26 thereof, or other similar state law, regulation or judicial order. In the event that Customer reasonably believes or is notified that a hold on the destruction of data is or may be required, Customer may provide a written request to preserve its data on a going forward basis. Should Customer make a preservation request which nGenx accepts, subject to the terms set forth below, nGenx will preserve Customer's data. It shall be Customer's sole responsibility to review the preserved data and determine whether any particular preserved file or data is pertinent to Customer's needs. Additional fees may apply for all labor, additional hardware, additional tapes or other media and/or other items that may be necessary to comply with such request. nGenx may require a deposit or prepayment to insure payment of such additional fees. nGenx does not provide legal advice, and Customer is strongly encouraged to engage counsel. Customer agrees to work with nGenx in order to limit any disruption to nGenx's normal business operations. In the event nGenx determines, in its sole discretion, that a data preservation request is or may be too burdensome, nGenx may terminate this Agreement immediately.

3. Scheduled Maintenance: Hardware systems maintenance shall occur on a regular basis, but no less than once per month on each piece of hardware operated by nGenx in accordance with the manufacturer's specifications.

4. Emergency Maintenance: To the extent possible, nGenx shall provide at least one (1) hour notice to Customer prior to performing Emergency Maintenance. Circumstances may dictate that Emergency Maintenance be performed with minimal or no notice to Customer in order to protect the stability of Customer's applications and the integrity of Customer's data. nGenx shall not be responsible for any interruption of service or loss of data during such Emergency Maintenance procedures.

5. Backup Services: nGenx shall use all commercially reasonable efforts to backup Customer's data, on a routine and regular basis. Customer should note that the backup taken is a snapshot of the Customer's data on a given date, and should a new file be saved or an existing file edited since that snapshot was taken, but prior to the next backup, nGenx may be unable to restore it. nGenx shall not be liable for any lost data or its inability to restore Customer's data.

6. Data Storage & Recovery: nGenx stores data on a Storage Area Network or a similar storage device for a period of three (3) weeks from the date of the last modification of any system. nGenx also stores data on tape backup for at least one (1) year. Certain regulatory or legal conditions may require data to be maintained for longer or shorter periods of time, but nGenx shall have no responsibility to maintain data beyond one (1) year unless set forth in a document provided by Customer and acknowledged in writing by nGenx. An additional fee may be charged by nGenx for such service. nGenx shall provide recovery of data at no cost to Customer provided that such request is made within three (3) weeks from the date of last modification, but any request beyond this three (3) week period shall incur a flat fee of \$200.00 per occurrence whether or not such data can be recovered.

7. Operating System: nGenx will install, maintain, update and patch the operating system required to operate the server(s) housing Customer's files and data. Unless otherwise agreed to, nGenx will, in its sole discretion, select a Microsoft Windows version of its choosing to run the servers it operates.

8. Technical Support: nGenx provides technical support for nInfinity Cloud Services 24 hours a day, 7 days a week, 365 days a year. Technical support does not include consulting services or training on applications. nGenx shall not provide technical support arising from or related to an unauthorized use of the service, including but not limited to a violation of the AUPP. nGenx also does not provide technical support for any internet connectivity or network issues that Customer may experience in attempting to access the nGenx network. Should a Customer encounter any such issues, it is the Customer's sole responsibility to resolve them.

9. Software Licensing: Customer agrees that it is paying a monthly recurring charge to, in part, lease all or a portion of a server or servers, as necessary to manage the software. Customer acknowledges that it has paid all necessary and appropriate licensing fees and has a valid license for the software. Customer acknowledges that nGenx is not renting, sublicensing, assigning, loaning, reselling, transferring or distributing the software in violation of any end user license agreement between Customer and the licensor. In the event of any breach of the end user license agreement, Customer agrees to hold harmless, defend and indemnify nGenx pursuant to the applicable terms in the Master Service



Agreement.

10. User Acceptance Testing: Customer understands and accepts that all services requested in this Agreement are subject to user acceptance testing. The rates, terms and conditions of service may be altered or amended following testing as may be necessary. Any such alterations or amendments shall be set forth in the User Acceptance Testing form and approved by Customer prior to the Effective Date.