

# NextGen<sup>®</sup> Mobile Solution

Effective April 2021

As it relates to Client's use of the NextGen<sup>®</sup> Mobile Solution obtained through any third-party vendor, in conjunction with the terms of the Partner's agreement with Client, Client agrees to the following additional terms and conditions. The NextGen<sup>®</sup> Mobile Solution offering ("Mobile Solution") is provided under a SaaS model and accessed and used through the App. To the extent of any conflict between the Partner's agreement and these terms and conditions, the terms of this document shall prevail.

**Subscription.** Client is entering into a subscription, through Partner, to access and use the Mobile Solution offering made available by NextGen Healthcare in a Software as a Service Model. ("SaaS"). During the Service Term for Mobile Solution, Client will have the right to access and use the Mobile Solution offering set forth in the applicable Order Form. Each subscription is personal to Client, non-exclusive and non-transferable; however, within a practice Client may transfer subscriptions between its End Users but it may never have more Registered End Users than subscriptions purchased by Client. The subscription(s), and its associated Fee for the Mobile Solution offering includes: (i) the access and use of the Mobile Solution offering (excludes the use of the Editor Platform, which is separately priced), (ii) non-administrative access to the NextGen Healthcare controlled System upon which the Mobile Solution offering is operated, and (iii) Software Maintenance Services on the Mobile Solution offering. No license to the Mobile Solution offering is granted to Client or Partner under a SaaS subscription.

**Service Term.** The initial Service Term for Mobile Solution commences on the earlier of: (i) the initial date of Fulfillment for the practice or (ii) 120 days from the Effective Date of the initial order form under which Client is obtaining the Mobile Solution offering; and will continue for 4 years. For each subsequently added Mobile Solution subscription, the subscription will commence on the first day of the month following the execution of the applicable supplemental order form and be coterminous with the date of the initial Service Term (or the current Renewal Term) for Mobile Solution. Upon expiration of the initial Service Term for Mobile Solution offering, the Service Term will automatically renew for successive 1-year terms, unless a Party provides written notice of its intent not to renew at least 3 months prior to the end of the then-current Service Term for Mobile Solution offering. Client acknowledges that if Partner's relationship with NextGen Healthcare terminates and/or expires, NextGen Healthcare may, at its sole discretion, continue to allow Client to operate the Mobile Solution under a direct agreement with Company. In all such cases, the parties agree to work cooperatively so as to minimize the impact of any such transition.

**Effect of Termination; Transition; Return of Client Data.** Upon termination of **all** Client's Mobile Solution subscriptions: (A) Client's right to access and use the Mobile Solution offering and all related functionality therein, immediately terminates and (B) Client must, at its expense, remove and delete all copies of the App, if any. However, termination of an individual Registered End User's Mobile Solution subscription is not, per se, a complete termination of the Mobile Solution offering; rather upon termination of **all** Client's Mobile Solution subscriptions: (A) Client's right to access and use Mobile Solution and all related functionality immediately terminates and (B) Client will remove and delete all copies of the App from its equipment.

**The App.** NextGen Healthcare offers, through a download from the Internet, a mobile plug-in software application that allows health care Providers to access, via the Internet, Mobile Solution from supported mobile devices (the "App"). Use of Mobile Solution and the App is subject to the terms of the Partner's agreement, the App's *End User License Agreement* and the following additional restrictions: (A) access to and use of Mobile Solution and the App shall be limited to Registered End User(s). Client, not NextGen Healthcare, is responsible for downloading the App and registering its End Users. If NextGen Healthcare reasonably believes that Client is in violation of this section, NextGen Healthcare may suspend or terminate Client's and/or its Registered End Users' access to Mobile Solution and the App immediately upon notice to Client; and, (B) neither Client nor any End User shall use, or permit the use of, Mobile Solution or the App for any procedures or services performed or goods provided by any party other than Client and the Registered End Users.

**Encryption.** Protected Health Information (PHI) transmitted through Mobile Solution via approved mobile devices will be encrypted in a commercially reasonable manner (whether in transit or on the device's storage) to protect against accidental or unintended disclosure.

**Implementation & Training; Modifications.** Under the Mobile Solution offering, Client will have two options for Implementation and/or training on the offering, which shall be performed by NextGen Healthcare and not Partner.

- **Option 1 – Self-Implement:** Partner will provide Client with its standard instructions and other materials for Client to perform a basic installation of the Mobile Solution offering and to implement and train themselves thereon – per the established Fulfillment Schedule on the Order Form. This option is designed to be an effective, self-paced, low-cost option and has very limited Partner involvement.
- **Option 2 – Assisted Implementation:** Partner will engage NextGen Healthcare to provide, on a time and material basis, the necessary resources and time to complete Fulfillment per the established Fulfillment Schedule on the Order Form. The implementation would be done in accordance with a mutually agreed to implementation plan, which would be based on a train-the-trainer approach. Client will be required to designate an employee(s) to participate in NextGen Healthcare’s training program and be responsible for providing ongoing training to Client’s Registered End Users, support, and ancillary staff. Ongoing implementation and/or training requiring NextGen Healthcare services beyond thirty (30) days after the Fulfillment Date on the Order Form may result in additional fees being charged. All training will be based on the specific *Mobile Solution* offering as provided by Partner through NextGen Healthcare. Client shall provide NextGen Healthcare timely prior written notice in the event Client intends to make any modifications in workflow, interfaces, or any related software or hardware of Client that could impact any Service(s).

**NextGen<sup>®</sup> Mobile Plus subscription tier.** The following is pertinent only if NextGen<sup>®</sup> Mobile Plus tier is subscribed to in the Order Form: for all End Users subscribing to the NextGen Mobile Solution, the implementation of *NextGen Mobile Transcription* and/or the *Remote Scribe* feature will occur concurrently on or before the Fulfillment Date as defined as a single “Go Live” for NextGen Mobile Solution. This implementation schedule will be used unless a Statement of Work (SOW) is appended to the initial Order Form under which Client is obtaining Mobile Solution, which is such case that SOW will control the terms of the implementation. If the initial Mobile Solution subscription is part of a larger NextGen<sup>®</sup> Enterprise Ambulatory software implementation, the Mobile Solution implementation will be included in the SOW associated with the NextGen<sup>®</sup> Enterprise Ambulatory implementation and override the statement above.

**Approved Mobile Devices; Minimum System Requirements; Client System Changes.** Client understands that there are minimum equipment and operating system requirements, as well as the need to use an approved mobile devices, to access and use Mobile Solution and the App, which are found here: [NextGen Mobile System Requirements](#). Client is solely responsible for satisfying, at its own expense, these minimum hardware and software requirements and obtaining an approved mobile device. Moreover, Client and its Registered End Users are responsible for applying Updates to the App, as communicated by Partner from time to time. Partner, on behalf of Client, shall be responsible for notifying NextGen Healthcare at least sixty (60) days prior to any changes to Client Systems, including non-NextGen Healthcare EHR version upgrades, server upgrades or other migrations, as well as template or document changes, as these activities could impact the performance of Mobile Solution. Changes required to be performed to Client’s System to maintain compatibility may result in Move/Add/Change (“MAC”) fees being charged.

**Compliance by End Users.** Client shall be solely responsible, and hold NextGen Healthcare harmless, for all use of Mobile Solution and the App or any activities that occur under its account, including without limitation all acts and omissions of the End Users and their compliance with the Partner’s Agreement and, where applicable, the EULA. All Registered End Users within the practice will be set up within Mobile Solution as a secured contact for the exchange of secure messages. If a Registered End User desires to send a secure message to a non-registered End User, whether he/she is within or outside of the Client’s practice, the non-registered End User must affirmatively agree to the terms of the EULA before being able to participate in secure message thread. Client shall not make any

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representations, commitments, or warranties with respect to Mobile Solution and the App that are inconsistent with or not set forth in the EULA. Client shall indemnify and hold NextGen Healthcare and Partner harmless from any claims, losses, costs or damages resulting from the acts or omissions of End Users or any breach of the Partner Agreement or EULA caused by End Users.

**Permissions.** Client represents and warrants that Client possesses all necessary rights in and to any Client Data, information, and/or records collected, stored, submitted, accessed, or inputted by Client or a Registered End User through the System or the App (collectively, "Client Data"). Neither Client Data nor Client's use thereof shall (i) be defamatory, harmful to minors, obscene, indecent, pornographic, libelous, threatening, or harassing; or (ii) violate any applicable federal, state or local laws or regulations, including without limitation 42 U.S.C. 1320d et seq. enacted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and the implementing regulations set forth at 45 CFR Parts 160, 162 and 164 ("HIPAA Regulations"). Additionally, Client shall ensure that: (A) Client only transmits health-related information to NextGen Healthcare for which it has all consents and authorizations necessary, if any, to permit such disclosure and to permit NextGen Healthcare to perform the Services; (B) any Client policies or notices of privacy practices do not conflict with or limit the ability of NextGen Healthcare to perform the Services; (C) in the event that Client agrees to provide additional privacy protections to information relating to an individual, Client must notify NextGen Healthcare, in writing, of such limitations on the date such information is transmitted to NextGen Healthcare or the date on which Client makes such an agreement, whichever is earlier; and (D) in the event that an individual revokes an authorization or consent given to Client that pertains to the use or disclosure of information previously transmitted to NextGen Healthcare, Client promptly notifies NextGen Healthcare, in writing, of such revocation. Client acknowledges that Client shall remain responsible for the final content of any documents, images or materials added to its EHR.

**Product Improvement.** NextGen Healthcare may monitor use of the Mobile Solution System and the App and gather general statistical information about use of the System and the App. Such information may be used for internal statistical and marketing reports and product development and improvement, and may be shared by NextGen Healthcare with third parties in aggregate or statistical form only, without disclosure of Client's Confidential Information or any personally identifiable information about Client.

**Definitions.** Capitalized terms shall have the meaning set forth in the Order Form or applicable Schedule, General Terms and Conditions or as defined below.

- **"Fulfillment"** means, for Mobile Solution services, when NextGen Healthcare has confirm to Partner that it has provided the necessary resources to the applicable Client to complete the initial configuration, implementation and activation of the Mobile Solution. Client understands that it will have no access or use of the Mobile Solution until the date of Fulfillment.
- **"Registered End User"** means an End User that completes NextGen Healthcare's account registration process to access and use Mobile Solution and the App.

## EXHIBIT A.1 – Subscription levels

### Subscription Tiers and related capabilities

- **NextGen Mobile Plus**
  - Dictation
  - Clinical Schedule View
  - Patient Clinical Display
  - Mobile Image Capture
  - Secure Messaging w/ Clinical Integration\*
  - Charge Capture w/ Diagnosis Codes\*\*
  - Provider Action Queue (“PAQ”)\*\*
  - Cloud Portal
  - eRx
  
- **NextGen Mobile**
  - Clinical Schedule View
  - Patient Clinical Display
  - Mobile Image Capture
  - Secure Messaging
  - PAQ\*\*\*
  - eRx

\* *Clinical data integration available with select EHR’s.*

\*\* *Requires use of CPT codes. (If Client does not have a current CPT Codes subscription it may be separately purchased from NextGen Healthcare through Partner.)*

\*\*\* *Only available with use of NextGen<sup>®</sup> Enterprise EHR solution.*