



## **MIRTH® CONNECT BY NEXTGEN HEALTHCARE MAINTENANCE SERVICES & DATA USE POLICY**

(Capitalized terms shall have the meaning set forth in the Order Form, Schedule, Connect Agreement, or as defined below.)

### **I. SOFTWARE MAINTENANCE SERVICES**

**1. Support Issues.** Company offers Software Maintenance Services to help End Users maintain the Connect Offering accessed and used under the Connect Agreement. Client will only receive such services while Client has a valid, current Software Maintenance subscription as outlined below. Company's response times and the actions it takes to resolve Software Maintenance issues are based on an assessment of the impact of the reported technical issue on Client's business. The more serious the business impact, the higher the assigned priority as initially set by Client. Company's support consultant may raise or lower priority in its reasonable discretion based on Client's information and/or subsequent diagnosis or remediation efforts, including the availability of a work-around pending final resolution. A workaround may include requiring Client to operate on the most current version of the applicable Connect Offering (including any Updates thereto) if doing so will resolve the incident. Company's Help Desk will follow the following response timeframe objectives that are based on case priority:

<b>Targeted Response Time *</b>	<b>Technical Support Availability</b>
Priority 1 (Critical): One hour**	24x7 support, 365 days a year
Priority 2 (Urgent): Two <a href="#">Business Hours</a>	8:30am-8:30pm EST (business day)
Priority 3 (Important): One <a href="#">Business Day</a>	8:30am-8:30pm EST (business day)
Priority 4 (Minor): Two <a href="#">Business Days</a>	8:30am-8:30pm EST (business day)

\*Response times commence from the time Client has properly logged a case within Company's on-line support center.

Client can, through accessing Company's on-line support center, track the status of each support case opened by, or on behalf of, Client.

\*\*Priority 1 (Critical) phone support level only applies to Gold and Platinum tiers as set forth below.

**Company's Enterprise, Silver, Gold, and Platinum priority tiers of Software Maintenance Services include the following:**

- **Silver Bundle Support includes:** [Success Community](#) 10 cases only. No phone support. [Business Hours only](#).
- **Enterprise Bundle Support includes:** [Success Community](#) 20 cases only. No phone support. [Business Hours only](#).
- **Gold Bundle Support includes:** [Success Community](#) 40 cases, exclusive phone support, and [Priority 1 support 24/7/365](#)
- **Platinum Bundle Support includes:** [Success Community](#) unlimited cases, exclusive phone support, and [Priority 1 support 24/7/365](#)

**2. Case Priority.** Client is required to provide, through their Certified Professional(s) and prior to contacting the Help Desk Support, End User assistance, which includes, but is not limited to: (A) receiving and logging initial contacts by End Users, (B), reviewing and isolating likely root causes for support cases and ruling out obvious causes such as End User error or failure in items not supplied by Company, and C) using reasonable efforts to resolve problems, including accessing and reviewing web-based support tools and databases such as Company's Q&A Knowledge Exchange.

Company's support consultants will provide technical assistance to Client's Certified Professional(s) to assist in remedying failures of the Connect Offering, which are being used in a production environment, to perform in accordance with their respective User Materials. Client will utilize Company's on-line support center to enter and document all problems, questions, or issues. Each specific and discrete problem, question or issue with the Connect Offering reported by Client's Certified Professional to Company's Help Desk Support shall be issued a case, which will include a record of the support incident, a unique tracking number and the identity of the initial Company personnel assigned to the matter. In addition, each case will be assigned one of following priority levels:

**CRITICAL (Priority 1):** A severe disruption or complete outage of critical production systems or services, impacting the entire business unit, department, location or user community. Tasks that should be executed immediately cannot be executed because of a complete crash of the system or interruptions in core functions of the production system or service. Immediate action is required to address the incident as quickly as possible, restore service, and prevent further damage or financial issues.

**HIGH (Priority 2):** A significant disruption to important production systems or services, impacting a notable number of the user community, though not as severe as a critical incident. Important tasks cannot be performed, but the issue does not impair essential operations. Processing can continue in a restricted manner, and data integrity may be at risk. Prompt action is required to resolve the incident, because the malfunction could cause serious interruptions to critical processes or negatively impact business.

**MEDIUM (Priority 3):** A moderate disruption to production systems or services, impacting a small number of the user community. It may cause impairment in work force ability to perform a key work function however a work around or an alternate process is available. The problem may interrupt normal operations or cause minor degraded performance but does not halt critical operations. The issue is attributed to malfunctioning or incorrect behavior of the Connect Offering. Action should be taken in a timely manner, but it is less urgent compared to high or critical priorities.



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**LOW (Priority 4):** Minimal or no disruption to production systems or services impacting a single user or very small portion of the user community. The issue may cause an inconvenience but there is little to no interruption to normal operations or business impact. The issue consists of "how to" questions, installation requests, configuration inquiries, enhancement requests, documentation questions or service requests. Action can be scheduled as part of routine maintenance or after higher-priority incidents are resolved. The issue is not urgent.

**Incident Priority Matrix**

		Impact			
		Critical Extensive/Widespread (Business Wide / Core Functionality Impact)	High Significant/Large (Large Number of Users / Clients Impacted)	Medium Moderate/Limited (Small Number of Users / Clients Impacted)	Low Minor/Localized (Single User / Client Impacted)
Urgency	Critical (Complete work stoppage for affected users/clients)	P1 - Critical	P1 - Critical	P-2 High	P-2 High
	High (Primary work functions unable to be accomplished by affected users/clients)	P1 - Critical	P-2 High	P-2 High	P-3 Medium
	Medium (Some impairment of work functions for affected users/clients)	P-2 High	P-2 High	P-3 Medium	P-4 Low
	Low (Flexible timing, issue is inconvenient but not causing impairment of work functions for affected users/clients)	P-3 Medium	P-3 Medium	P-4 Low	P-4 Low

If as part of the provision of Maintenance Services Client is required to provide to Company Protected Health Information ("PHI") that is protected under any Laws, the Parties will enter into, and maintain throughout the Service Term, a mutually agreed upon Business Associate Agreement or similar agreement if Client itself is a Business Associate rather than a Covered Entity. Company does not own the PHI provided by Client, and Client will provide Company with, only the minimum PHI required to perform the Services hereunder. The Parties each will comply with their respective obligations set forth in the Business Associate Agreement.

**3. Exclusions.** Software Maintenance Services are only provided on the Connect Offering as initially delivered by Company and only licensed instances of the Connect Offering. Software Maintenance Services do not include support for: (A) issues that cannot be reproduced by Company or for which Client cannot provide sufficient documentation (i.e. screenshots, video, Mirth Connect logs, on-demand reproduction, Message ID, Patient Name, Channel Information, Database logs, Data Source/Destination, etc.), (B) issues caused by a modification of the Connect Offering by any party other than Company, (C) issues that arise because of any cause external to the Connect Offering or how the Connect Offering operates within Client's Connect based solution(s), (D) changes in, or additions to, the Environment, other software, configurations, data, or any other items other than the Connect Offering, (E) any channel customizations made by any Party, (F) any other additional code, configuration or changes made by non-NextGen Healthcare Products or Services, or custom extensions, etc. (G) the *NextGen® Connect Core Extension Bundle* or (H) the *Mirth® Connect for Research License*.

**4. Client Responsibility.** Client will utilize Company's online support center to enter and document all issues. For each case opened, Client is responsible for: (i) collecting error messages, logs and other information required by Company to work a case; (ii) determining procedure, data, and conditions necessary to reproduce a problem; and, (iii) determining if the issue has been documented and fixed in a newer version of the Connect Offering; and, if so, to apply the Update if Client is self-hosted. Unless installation of Updates is specifically included in the Company Services purchased by Client, Client is solely responsible for proper installation of all Updates, including any changes to operating systems, database software and other third-party materials required in connection with the Update. Additionally, before installing any Update in a



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Production environment, Client must test the Update in a non-Production environment and, if self-hosted, perform a backup of Client's Production environment configurations and data before applying any Update.

**5. Version Control Policy.** Company may not make Updates available for all versions of the *Mirth® Connect by NextGen Healthcare* and each Update will function with the most recent, general-released, commercial version of the *Mirth® Connect by NextGen Healthcare*. Through each Company Software's lifecycle, Company may choose to sunset Software product, feature, functionality, or compatibility and cease to provide Updates to that version of *Mirth® Connect by NextGen Healthcare*. Company will only provide Software Maintenance Services on its most current general-released version of the Software and those prior two (2) Minor generally released versions (older versions are not eligible for any form of support). A Minor generally released version shall only have one decimal point (for example purposes only, 4.2 or 4.23). However, Company is under no obligation to provide Updates to such older versions and Client's sole remedy for an issue associated with any version other than the current generally released version may be to upgrade to a newer version of the *Mirth® Connect by NextGen Healthcare*.

### **II. DATA USE POLICY**

**1. Improvements for Client(s).** Company gathers information to enhance the Products and Services we provide to our clients. The type of information Company collects and how it's utilized depend on how a client engages with our Products and Services and manages their privacy settings. Company collects data regarding clients' activities within our Products and Services, which we utilize to suggest improved workflows, features, and functionalities. This information is also instrumental in building, maintaining, and enhancing our services. Additionally, Company may personalize Products or Services for our clients, measure performance, and offer tailored recommendations and content based on the data we collect. Company employs various technologies to process client information, including automated systems that analyze content to deliver customized results, recommendations, and features aligned with how clients use our Products and Services. Furthermore, these systems help us identify and prevent spam and malware. Company also uses algorithms to identify patterns in data. Moreover, the information collected aids us in understanding how our Products and Services are utilized both by individual clients and across our entire client base. It also informs the design and improvement of our security methodologies.

**2. De-Identified Data/Client Data Use.** Company may De-Identify Client Data for any lawful purpose, including incorporation of such data into any Analytics Database. De-Identified Data will not be personally identifiable (as defined in 45 C.F.R. § 165.514) and will be aggregated with de-identified data from enough other clients in a manner reasonably designed to prevent Company or others from using the Analytics Databases to analyze the characteristics of Client's business. Client grants Company a non-exclusive, worldwide, paid-in-full, perpetual and irrevocable right and license to: (A) extract, copy, aggregate, process and create derivative works of Client Data to derive, or add to, Analytics Databases; (B) employ data analytics on the Analytics Databases for purposes of developing Data Analytics solutions; and (C) prepare derivative works of the Analytics Databases, and use, execute, reproduce, display, perform, transfer, distribute, and sublicense the Analytics Databases and such derivative works, (collectively A, B and C shall be referred to as "Use Rights"). Company will not individually identify Client as a source of the De-Identified Data for the Analytics Databases, although Company may disclose that certain of its customers allow the use of Client Data for such purposes.

Notwithstanding anything above to the contrary: (i) Company will neither de-identify Client Data nor engage its Use Rights against Client Data beyond those Services authorized by Client under the Connect Agreement, Business Associate Agreement ("BAA") or herein; and (ii) Client will not authorize Company to perform any Service and/or employ its Use Rights beyond that which Client is permitted to use under HIPAA (45 C.F.R. § 164.502) or as otherwise authorized by the Client's patient(s). Moreover, termination or expiration of a Service, will prospectively halt Company's extraction of Client Data through such Service.

**3. Assistive Technology Integration and Safeguards:** Company may leverage a diverse collection of computer systems and software, collectively referred to as "Assistive Technology." This technology is designed in part to: (i) analyze Client Data and/or Client's workflow and/or interaction with the Products and Services, (ii) identify intricate patterns, (iii) make autonomous decisions, and (iv) adapt the behavior of those Products and Services to enhance functionality based on these patterns over time. This process minimizes the need for direct human intervention, and includes, but is not limited to, machine learning, neural networks, natural language processing, and other innovative methods. Company retains and reserves the right, in its sole discretion, to modify, suspend, or discontinue the integration and/or use of Assistive Technology in or with its Products and Services at any time. Company commits to promptly informing and updating its clients of any material changes that may impact any affected Products and Services. Company acknowledges the dynamic nature of Assistive Technology, which may occasionally result in unforeseen discrepancies or errors. With this in mind, Company is dedicated to upholding elevated standards of quality and reliability to adequately safeguard Client Data and the integrity of those applicable Products and Services. Further, Company strives to implement any Assistive Technology in a manner that is in strict accordance with applicable legal and ethical standards. Client acknowledges that these Assistive Technologies are provided on an "As Is" and "As Available" basis. By engaging with NextGen® Products and Services, Client consents to Assistive Technology integration and the use of Client Data therewith. This includes the concurrent utilization of Client Data to facilitate these advanced functionalities.