

General Terms of Use

Article 1: General overview

These General Terms of Use (hereinafter the "Terms") apply to any use of the Service accessible by the User from the URL <https://pro.nextmotion.net> or through the mobile application NEXTMOTION.

The Service is offered by NEXTMOTION (hereinafter the "Company"), a "société par action simplifiée" organized under French law with a capital share of 5 540 euros, registered with the Créteil Trade and Companies Register Office under the number RCS 817 441 132, and whose head office is located at 56, Avenue Sainte-Marie - 94160 Saint-Mandé, France - contact@nextmotion.net, SIRET 817 441 132 00013, VAT number FR60817441132

The purpose of these Terms is to define the conditions under which the User may benefit from the Service provided by the Company.

Article 2: Definitions

As used herein, the following terms used in the singular or plural have the following meaning:

- **Application:** the term "Application" means the NEXTMOTION mobile application published and operated by the Company and providing access to the Services;
- **Personal Space:** the term "Personal Space" means a part of the Website to which access is conditioned on the use of Identifiers placed under the exclusive control of a User. Each User has his/her own Personal Space.
- **Identifiers:** the term "Identifiers" means the elements placed under the exclusive control of the User allowing him/her to use the Service (for example his/her login and password), and to access his Personal Space;
- **Party:** the term "Party" means in the singular indistinctly the Company or the User, and in the plural the Company and the User together;
- **Patients:** the term "Patients" means any natural person taken care by a Practitioner using the Service, to whom access to the Service has been made available;
- **Practitioners:** the term "Practitioners" means doctors or health professionals who, personally or through a company they manage or control, have acquired a NEXTMOTION machine from a Company distributor and then took out a subscription to NEXTMOTION Connect service giving them access to the Service. In the event of an acquisition of the NEXTMOTION device by a health facility, the Practitioner is the designated person by the health facility for the purpose of using the Service;
- **Service:** the term "Service" means all SaaS (Software as a Service) services offered by the Company *via* the Website accessible from the URL www.nextmotion.net and by means of the NEXTMOTION Application;

- **Website or Site:** the term "Website" or "Site" means the website accessible from the URL <https://pro.nextmotion.net> edited and operated by the Company and giving access to the Services;
- **Users:** the term "Users" refers to both Practitioners and Patients.

Article 3: Acceptance of Terms

The use of the Service is subject to the acceptance of these Terms by the User who undertakes to:

- have the full legal capacity to enter into this contract;
- have obtained all necessary information regarding the use of the Service, and know all characteristics, whether quantitative or qualitative, of the offered features;
- have read these Terms;
- have all necessary skills to access and use the Service in accordance with these Terms.

By accessing the Website or the Application, and benefiting from the Service, the User acknowledges that he/she has read and understood all of these Terms and accepts them. The User who does not accept these Terms must not use the Service by any means whatsoever.

The Terms are permanently accessible on the Site or in the Application *via* the "*General Terms of Use*" section. The User may also at any time receive the version (or successive versions) of the Terms that he/she has accepted in electronic format or hard-copy version if he/she makes such a request to the Company by e-mail or by mail to the contact details specified in the Article 1 of these Terms.

The User may save and print these Terms by using the standard features of his/her browser or computer.

Article 4: Modifications and updates

The Company reserves the right to modify and update these Terms at any time; it shall inform the User either at his/her e-mail address communicated during the registration, or when he/she accesses his/her Personal Space. The User who does not wish to accept the new conditions must no longer use the Service and must request the closure of his/her Personal Area.

The new version of the Terms will be applicable one month after this information.

Any use of the Service, by any means, after changes to the Terms implies acceptance by the User of the new Terms.

Article 5: Service description

5.1. Users of the Service

Any User may benefit from the Service, the features of which may differ depending on the User being a Practitioner or a Patient.

· **Practitioner User**

The Service is offered to the User Practitioner under the conditions defined in the General terms and conditions for sale.

· **Patient User**

The Service is offered to any Patient of a Practitioner using the Service.

For the Patient User, the Service is offered without financial compensation, subject to access costs (whether material costs, software or Internet access) that remain to the sole responsibility of the User.

5.2. Object of the Service

The Service allows the User Practitioner to have a Personal Space on which he/she can:

- store, consult and manage all of the Patients' files (identity and contact details, history of the relationship with the Patient, medical history, health data, treatments and treatment plan, videos and photographs taken before and after cosmetic or medical procedures, consents received from Patients, etc.);
- monitor and manage his/her activity (appointment booking, activity monitoring, etc.) and stocks;
- exchange messages / chats / videochat with his/her Patients.

The Service allows the Patient User to have a Personal Space in which he/she can:

- access the elements of his/her file shared by the Practitioner;
- exchange messages / chats with the Practitioner.

5.3. System requirements

The Service may be accessed from a terminal (computer, smartphone, tablet) connected to the Internet and on which a web browser must be installed. Only Users with such equipment will be able to access the Website and thus benefit from the Service.

The Service may also be accessed from the NEXTMOTION Mobile App: this Application may be downloaded by the User, after creating his/her Personal Space on the website, from the Apple Store (or Google Play, available later in 2020) download platform of his/her Smartphone.

The User is solely responsible for the proper functioning of his/her computer and/or mobile equipment as well as for his/her access to the Internet.

Article 6: Use of the Personal Space

6.1. Creation of the Personal Space

To be able to access the Service, and in order to ensure its proper functioning, the User must create a Personal Space.

The Practitioner User can create his/her Personal Space by connecting to the Service through the hypertext link communicated to him/her by the Company.

He/she will be invited to create a Personal Space. In order to do so, he/she will have to enter the serial number of the NEXTMOTION machine that he/she has acquired (this serial number is accessible on the left-hand side of the machine), to indicate his/her email address, to choose a password, and to fill in the necessary information for the creation of his/her Personal Space.

The Patient User will receive, at the time of his/her first appointment with his/her Practitioner, an email inviting him/her to join the Service by clicking on a link provided for this purpose where he/she will be offered to create his/her Personal Space.

In order to do so, he/she will have to enter his/her email address and choose a password. Then he/she will be asked to complete a questionnaire about his/her medical history, the reasons for his/her visit, or any other useful information for his/her file.

During the creation of his/her account on the Personal Space, the User is invited to complete all the compulsory information required; this information must be accurate and up-to-date to allow secure access.

All the answers and information completed by the Patient will be instantly recorded in his/her Personal Space and displayed in his/her file to which the Practitioner will have access to through his/her Personal Space as well.

6.2. Access to the Personal Space

The Identifiers are strictly personal. More particularly, as far as the password is concerned:

- it must obey the instructions given when creating his/her Personal Space;
- it must under no circumstances be communicated to anyone by the User.

It is specified that the Company will never ask the User, for any reason whatsoever, to communicate his/her password outside the login form, and that any request to this effect must be considered as a fraudulent one to which the User undertakes not to reply.

The Company reserves the right to modify the technical conditions related to the identification of the User and to substitute the password mean by any other technology that it deems necessary.

The Company also reserves the right to set:

- a delay after which filling in Identifiers is requested again from the User;
- within the Personal Space, in order to access certain pages or sections, a reiteration of the User's identification.

The User may change his/her password at any time through the Website.

The User is entirely liable for the retention and the use of his/her Identifiers. He/she must take all necessary measures to prevent unauthorized or fraudulent use of his/her Personal Space.

Any use of the User's password is presumed to be made on behalf of the User. The User is solely responsible for the use that will be made under his/her password until he/she has changed this password under the conditions set out herein.

The User agrees to:

- change his/her password regularly, and in any situation without delay in case of voluntary or involuntary disclosure to third parties;
- not use a password already used for a service other than access to the Personal Space.

The User must disconnect from his/her session and close his/her browser window after browsing his/her Personal Area to prevent others from accessing it.

The User is required to immediately alert the Company by email to the address referred to in Article 1 in case of:

- finding or suspicion of unauthorized or fraudulent use of his/her Identifiers or any security breach of his/her Personal Space. In the event that the User is unable to follow the procedure for modifying his/her Identifiers, and in any case for security reasons, the Company may decide to close the User's Personal Space;
- modification of his/her email address. In this hypothesis, depending on the technical possibilities available to the Company, it may (i) either modify the Personal Space to take this change into account, (ii) or close the User's Personal Space, dependent on him/her to create another one in the above-mentioned conditions.

The consequences of the closure of the Personal Space are specified below.

6.3. Use of the Personal space

The Personal Space is strictly personal. It is created, used and remains under the sole responsibility of the User in the name of whom it has been created and who has accepted these Terms.

The User undertakes to use the Personal Space and the information to which it would give him/her access only under the conditions of use defined by the Company.

The User agrees to use the features of the Personal Space and all the information to which he/she may have access to only for purposes consistent with public policy, morality and rights of third parties.

6.4. Security of the Personal Space

The Company makes its best efforts, according to the “state of the art” rules and to particularities of the health data hosting, to secure the Personal Space with regard to the risk incurred.

As a consequence, the User agrees to take appropriate measures to ensure the security of his/her own data and/or software from contamination by potential viruses on the Internet.

The User agrees not to commit any act that could compromise the computer security of the Personal Space or computer system of other Users.

The User agrees to not use devices or software of any kind, or to perform any operations that would have the effect of disrupting, hindering, interfering, distorting or interrupting the normal operation of his/her Personal Space or that of other Users, or impose a disproportionate burden on the associated infrastructure.

He/she also makes sure not to introduce into the Personal Space any viruses, malicious code or any other technology harmful to the Personal Space or the Service or to the features which are offered there.

The User accepts the characteristics and limits of the Internet. He/she is aware that data circulating on the Internet are not necessarily protected, especially against any misappropriations.

The Personal Space is an automated data processing system. Any access to and/or fraudulent maintenance in the system is prohibited and sanctioned by criminal law.

The User must inform the Company of any failure or dysfunction of the Personal Space. If a security breach is detected, the Company will inform the User in accordance with the legal provisions that apply to it. It may tell the User what measures he/she should take, the execution of which is the responsibility of the User. Nevertheless, the Company may take all necessary emergency measures for the security of the Personal Space.

6.5. Closure of the Personal Space

The User may close his/her Personal Space at any time without prior notice and free of charge by sending his/her request to the Company by mail or email to the contact details referred to in Article 1.

The Company may also close the Personal Space of a User under the conditions provided herein.

In case of breach of the present obligations by the User, the Company reserves the right, without any compensation or refund, to prohibit the access by the User to the Personal Space and to close this Space, if eight (8) days after sending an email to the User asking him/her to comply with the contractual obligations concerned he/she did not act accordingly. In such case, the reactivation or reopening of such Personal Space will be subject to the express and prior agreement of the Company and at its convenience.

The Company also reserves the right to close the User's Personal Space:

- for a Patient User, when the Patient has not logged in or has not used his/her Personal Space for a period of three (3) years;
- for a Practitioner User, when the Service is terminated according to the terms of the General terms and conditions of sale.

The closure of the User's Personal Space, for any reason whatsoever, implies the definitive impossibility for the User to access his/her Personal Space and data, information and documents contained therein, as well as the deletion of these elements, subject to compliance by the Company with its legal obligations.

Therefore, the User must take appropriate measures to ensure the storage and retention of elements, information and documents contained in or exchanged through the Personal Space by his/her own means, in order to avoid the loss of elements in case of closure of his/her Personal Space.

Article 7: Personal data protection

All information relating to the protection of personal data (collected data, purposes, recipients, retention period, high level of security, rights of data subjects, etc.) are described in the Privacy Policy which is attached to these Terms. We invite you to read it carefully.

Article 8: Limitation of liability

8.1. Accessibility and availability of the Service

The Company makes its best efforts according to the "state of the art" rules to make the Service available 24 hours a day, 7 days a week. However, considering the nature, complexity and specificities of the Internet, and in particular, its technical performance and response times needed to consult, query or transfer the information, the Company does not guarantee the continuity of the Service, being bound in this respect only by due care.

Moreover, the Company reserves the right, without prior notice or compensation, to make temporarily unavailable all or part of the Service, including temporarily closing or making inaccessible all or part of the Personal Space, especially to perform updates, maintenance operations, modifications or technical or functional changes, this list not being exhaustive.

In no case shall the Company be held liable because of a temporary impossibility of access all or part of the Service, a difficulty related to the response time, or, in general, a defect of any performance. Similarly, the Company cannot be held responsible for discontinuities or disruptions in the use of all or part of the Service, whether voluntary or not.

The User acknowledges that he/she has necessary skills and means to access and use the Service through his/her Personal Space and acknowledges that he/she has checked that the computer and/or telephone configuration that he/she uses for this purpose perfectly works and complies with these Terms. The Company's liability cannot in any case be sought due to the impossibility for a User to access the Service that would be due to a defective configuration of the User's computer and/or mobile equipment, or not in accordance with the present Terms,.

8.2. Modification of the Service

The Company reserves the right to modify or supplement, at any time and without prior notice, temporarily or permanently, all or part of the Service, including the possibility of making any technical or functional changes to the Site, Application or Personal Space, after prior notice to Users.

The User must take care of the possibilities of evolution of the computer and transmission means at his/her disposal so that these means are adapted to the modifications.

The Company cannot be held liable for the consequences of any kind that may result from changes or technical or functional changes to the Service, the Site, the Application or the Personal Space.

8.3. Information provided by the Service

The User agrees to provide, when requested, personal data that is complete, accurate and updated.

The Company may thus under no circumstances be held liable for any damages of any kind related to the communication by the User to the Company of inaccurate, incomplete or obsolete information.

8.4. Use and content of the Service

The User is solely liable for his/her use of the Website, the Application, his/her Personal Space and the Service.

In particular, the User is solely liable for the content (information, data, files, elements, documents, texts, images, videos, photographs, etc.) published or communicated by him/her within the scope of the Service, and especially for their accuracy, opportunity, relevance, topicality, comprehensiveness or lawfulness.

The User further undertakes to publish and/or communicate only content that may not constitute an infringement of the rights of a third party or applicable legal and regulatory provisions, and for which he/she has obtained the necessary authorizations to their dissemination and reproduction.

In particular, the Practitioner User undertakes, prior to the provision of information concerning a Patient User through the Service, to obtain the consent of this Patient User for this purpose.

Furthermore:

- contents accessible through the Service must not be considered as authoritative nor substitute to the User's personal judgment, and may not be the sole basis for any decision taken by the User;
- in particular, the contents do not constitute advice or support, of any kind and in particular medical, that would be online for the attention of Users, whether they are Practitioners or Patients;
- in any case, only a personalized analysis of the situation and the needs of the Patient User within the situation of a dedicated consultation with a Practitioner User will allow him/her to have information adapted to the context, the situation and his/her own needs in order to offer appropriate support and specific advices.

In any case, the Company cannot guarantee the accuracy, opportunity, relevance, topicality, comprehensiveness or even the lawfulness of these contents published and/or communicated under the sole liability of Users.

Likewise, the Company cannot be held liable for any decision made by the User based solely on contents published within the context of the Service.

Lastly, the Company cannot be held liable for the violation, by a User, in the context of the use of the Service, of the Website, the Application or his/her Personal Space, these Terms or legal or regulatory obligations and any consequences or damages of any kind that may result to anyone, including third parties or any other User.

The User acknowledges and agrees in this respect that he/she will be personally responsible of any claim or proceeding brought against the Company, due to his/her improper use of the Service, the Site, the Application or his/her Personal space.

8.5 Internet specificities

In particular because of the characteristics and limits of the Internet, the Company cannot be held liable for any damage, of any kind, that may result from mistakes, omissions or delays in the transmission of data, documents, information or any other element through the Service, or the alteration, loss or deletion of such data, documents, information or elements contained therein.

The Company cannot be held liable for the diversion of information circulating *via* the Internet or appearing in the Personal Space, the presence of viruses, malicious codes or any other harmful technologies or other logical infections on the Personal Space or any resulting damage.

The Company cannot be held liable in case of fraudulent or abusive use or due to a voluntary or involuntary disclosure to anyone of User Identifiers.

8.6. Relationships between Users

The User accepts and expressly acknowledges that:

- the Company is not a health professional; it does not practice any medical or paramedical profession, is not a member of the care team of which the Practitioner is a member, and does not offer any advice or any recommendation in this field, whether in the context of the provision Service or other;
- the Service is not intended to allow Practitioners or any other health professionals or members of the care team of which the Practitioner is a part to practice "remotely" their profession, to provide medical or paramedical advice or recommendations, to carry out diagnoses, to propose treatments, etc.: such services can be provided only in the framework of a visit or a consultation in presence of a Practitioner by a Patient, which is moreover a prerequisite prior to the provision of the Service to the Patient User.

Also, it is recalled, what the User accepts, that the Company:

- only makes available to Users a Service, through a software tool offered in SaaS mode, allowing, for information purposes only, Practitioner Users to have dematerialized Patient files, and Patient Users to have access to these files. Thus, the Company does not intervene in the relationship and exchanges between the Users (documents, files or elements exchanged, information provided, medical advice provided, etc.), and cannot guarantee the quality of the content of these exchanges or be held liable for a lack thereof;
- cannot guarantee or be liable for the poor performance or non-performance of obligations that would be contracted directly between two or more Users, or that would result from a factual situation;
- can in no way be held liable, in any way whatsoever, in case of dispute between two or more Users.

8.7. Links to third party websites

The Website or the Application may contain hypertext links to third parties' websites, including the websites of Practitioners using the NEXTMOTION device and the Service.

Users are formally informed that websites to which they can access to through these links do not belong to the Company, which also reserves the right to delete these links suggested from the Website or the Application to a third-party site if, in particular, it becomes in contradiction with the legal or regulatory provisions in force or with its own values.

The Company cannot be held liable for the access to other websites by the Users *via* the links set up from the Website or the Application to other resources on the Internet, nor the content of the information provided on these sites under the activation of said links.

8.8. Force majeure

The Company cannot be held liable if the execution of one of its obligations is prevented or delayed because of a case of *force majeure* as defined by article 1218 of the French Civil Code and by the jurisprudence of the French courts, including natural disasters, fires, malfunctioning or interruption of the telecommunications network or the electricity network.

8.9 Insurance

The Company certifies that it has taken out an insurance policy with a recognized solvent insurance company established in France for all the pecuniary consequences of its professional, tort and/or contractual civil liability for corporal, material and immaterial damages, caused to the User and any third party within the scope of the execution of these Terms. This insurance policy was taken with [...]. The geographical coverage is: [...].

Article 9: Intellectual property

The Service, including the Website, the Application and Personal Spaces, as a whole, as well as all of the elements constituting them taken separately, in particular but not limited to computer programs and specific codes, their structure, and contents such as data, texts, drawings, photos, trademarks, animations, sound, graphics, files, are and shall remain the property of the Company or the property of third parties that granted a license to the Company.

Any total or partial representation of the Service, of the Website, of the Application or of the Personal Space without the explicit and written authorization of the Company is forbidden and would be a counterfeiting act punished as such by the French Intellectual property Code.

Databases existing under the Service, the Website, the Application and the Personal Space are protected by the French Intellectual property Code; any extraction or reuse of a qualitatively or quantitatively substantial part of the database is punishable.

Trademarks and logos under the Service, the Website, the Application and the Personal Space are registered trademarks by the Company or by third parties. Any reproduction, imitation or use, total or partial, of these trademarks and logos, without the explicit and written authorization of the Company and violating rules set by the French Intellectual property Code is forbidden and renders the perpetrator liable.

Other distinctive signs, in particular trade names, commercial signs, sign posts, domain names, used under the Service, the Website, the Application and the Personal Space, are owned by the Company or by third parties and any reproduction without an explicit authorization may render the perpetrator liable.

Users may not create links towards the Website, the Application or the Personal Space without the prior and explicit authorization of the Company. This authorization may in no case be qualified as an implicit affiliation convention.

In all cases:

- the Company may in no case be liable for actual or potential contents of the websites on which links towards the Website, the Application or the Personal Space may have been integrated;
- links towards the Website, the Application or the Personal Space must be withdrawn as soon as the Company makes such a request.

Article 10: Proof

The records kept in the Company's computer systems will be stored in reasonable safety conditions and shall be considered as evidence of communications that occurred between the Parties. They are considered to be authentic until proven otherwise.

The Company also keeps the history of connections and actions performed on the Personal Space, as well as traffic and navigation data of the User. This traceability may be opposed to the User.

Contractual documents are archived on a reliable and durable support that may be produced as evidence in justice.

Article 11: Use of e-mail

In accordance with the provisions of the French Civil Code, Users hereby agree that the Company can send him/her by e-mail any information necessary to subscribe to or to provide the Service as well as, more generally, any information sent in relation to the performance of the Terms. For that purpose, the Company will use the e-mail address that Users have provided when creating his/her Personal Space.

Article 12: Contractual framework

The contractual framework applicable to the relationship of the Company and the Users consists of the following contractual documents, listed in descending order of priority:

- as the case may be, the General terms and conditions of sale;
- the General Terms of Use;
- the Privacy Policy.

Article 13: General provisions

The Parties agree to perform their obligations with good faith and in a fair manner;

The Parties declare these commitments sincere. As such, they declare that no information, to their knowledge, would have changed the consent of the other Party if communicated.

These Conditions contain all obligations of the Parties in respect of the use of the Service: no general or specific conditions of a Party may, unless otherwise specified in these Terms, be integrated in said Terms.

In case interpretation is made difficult because of a contradiction between any of the titles appearing at the head of the articles and any of the articles, the titles will be declared non-existent.

If one or more provisions of these Terms are held to be invalid or declared as such under any law, regulation or following a *res judicata* decision judged by a competent jurisdiction, the remaining provisions will remain fully valid.

The Parties mutually agree that the fact that one of the Parties tolerates a situation does not have the effect of granting the other Party acquired rights. Moreover, such a tolerance cannot be interpreted as a waiver of the rights in question.

The User authorizes the Company to involve any subcontractor of its choice in the execution of these Terms. In this case, the User agrees that the Company discloses to its subcontractors the information necessary for the execution of these Terms.

Article 14: Jurisdiction and applicable law

These Terms, as well as the relationship between the Company and the User, are governed by French law. This is the case both for the form and substance of the rules, notwithstanding the places where the substantive or ancillary obligations may be performed. The Company cannot be held liable in case of non-compliance with the legislation of the country of connection.

THE PARTIES AGREE THAT ONLY THE FRENCH JURISDICTIONS ARE COMPETENT, EXCEPT SPECIFIC JURISDICTION ATTRIBUTED BY LAW, TO JUDGE ANY DISPUTES ARISING FROM THE APPLICATION OF THESE TERMS OR RESULTING DIRECTLY OR INDIRECTLY FROM THE USE OF THE SERVICE, NOTWITHSTANDING THE PLURALITY OF DEFENDERS OR CALL IN WARRANTY, EVEN FOR EMERGENCY PROCEDURES

OR FOR CONSERVATORY PROCEDURES, OR BY USING “INTERIM PROCEEDINGS (RÉFÉRÉ)” OR “PETITION (REQUÊTE)” PROCEDURES.

This article is applicable subject to the mandatory provisions that would apply to the User as a consumer or non-professional if applicable.