



nexthink

PUBLIC

1

Cloud Terms & Conditions

Indirect Customers

CLOUD TERMS & CONDITIONS (INDIRECT CUSTOMERS)

These Cloud Terms and Conditions (Indirect Customers) (the “**Terms and Conditions**”) are accepted by the Customer on the date of grant by Nexthink of access rights to the Subscription Services (the “**Effective Date**”). These Terms and Conditions are effective where the Customer purchases the Services through a Resale Partner.

“**Customer**” and Nexthink Entity (hereinafter “**Nexthink**”) are identified in the Sales Order signed by the Resale Partner. Each of the parties may be referred to herein as a “**Party**” and collectively as the “**Parties**.”

Capitalized terms shall have the meanings set forth in these Terms and Conditions. For the purposes of these Terms and Conditions, reference to the Customer shall include those of its Affiliates authorized to access and use the Services for which Customer shall be directly responsible and the sole obligor.

In consideration of the mutual covenants contained herein and such other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

DEFINITIONS AND INTERPRETATION

DEFINITIONS

“**Access Credentials**” means any user-name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Subscription Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Additional Professional Services Fees**” has the meaning ascribed to it in the Section of the same name below.

“**Affiliate**” means any legal entity that owns, is owned by, or is commonly owned by a Party, whereby “own” means having more than 50% ownership or the right to direct the management of the entity.

“**Applicable Law(s)**” has the meaning ascribed to it in the DPA.

“**Authorized Users**” means Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to these Terms and Conditions; and (ii) for whom access to the Services has been purchased hereunder.

“**Cloud Customer Support Terms**” means the terms of the same name as set out in **EXHIBIT 1**.

“**Customer Data**” means information, data, and other content, in any form or medium, that is (i) collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services and (ii) is specific to such Customer or includes any Personal Data from Customer. For the avoidance of doubt, Customer Data does not include Platform Data.

“**Customer Systems**” means Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“Device” means any Endpoint from which the Nexthink Systems are configured to, directly or indirectly, extract data.

“Endpoint” means any personal computer or computerized system from which the Services are accessed or configured to, directly or indirectly which, for the purpose of this definition, includes (but is not limited to) desktops, laptops or any element of the Customer Systems.

“Documentation” means any manuals, instructions, or other documents or materials that Nexthink provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Nexthink Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“Fees” means the Subscription Services Fees and/or the Professional Services Fees and/or Additional Professional Services Fees along with such other fees, charges and expenses as may be agreed in accordance with these Terms and Conditions.

“Harmful Code” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (i) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (a) computer, software, firmware, hardware, system, or network; or (b) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (ii) prevent Customer or any Authorized User from accessing or using the Services or Nexthink Systems as intended by these Terms and Conditions.

“Intellectual Property Rights” or **“IP”** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Jurisdiction” shall mean, depending on the Nexthink Entity:

- (i) If Nexthink SA, in accordance with the material laws of England and Wales, the venue of the competent courts of England.
- (ii) If Nexthink, Inc., in accordance with the material laws of the Commonwealth of Massachusetts, United States, the venue of the competent courts of the Suffolk County, Massachusetts.
- (iii) If Nexthink France SASU, in accordance with the material laws of France, the venue of the competent courts of Paris.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Losses” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance, except that with respect to infringement claims, Losses shall be limited to damages ordered to be paid in a final court decision based on demonstration of an infringement of a patent or copyright of the country in which the Subscription Services are delivered or any sum paid in accordance with an amicable settlement of the dispute concerned insofar as Nexthink has agreed to such settlement.

“Nexthink Data Sheet” means the literature describing the fixed-price packages of Professional Services provided by Nexthink as found at Nexthink’s website which shall incorporate the terms of this Agreement as if written out therein in full.

“Nexthink Entity” shall mean, in respect of the region in which the Customer is domiciled:

- (i) if Customer is based in any of the following regions - APAC, Central Europe, India, META (Middle East, Turkey or Africa), Northern Europe, Southern Europe other than in France, the relevant Nexthink entity will be **Nexthink SA**, with its principal office at Malley Lumieres Centre, Chemin du Viaduc 1, 1008 Prilly, Switzerland;
- (ii) if Customer is based in North America, the relevant Nexthink entity will be **Nexthink, Inc.**, with its principal office at 294 Washington St., Suite 510, Boston, MA 02108, United States;
- (iii) if Customer is based in France, the relevant Nexthink entity will be **Nexthink France SASU**, with its principal office at 62 rue de Caumartin, 75009 Paris, France.

“Nexthink Materials” means the Subscription Services, Documentation, and Nexthink Systems and any and all other information, data, methods and processes, that are provided or used by Nexthink or any Nexthink Personnel in connection with the Subscription Services or otherwise comprise or relate to the Subscription Services or Nexthink Systems. For the avoidance of doubt, Nexthink Materials include Platform Data, but do not include Customer Data.

“Nexthink Personnel” means all individuals involved in the provision of the Subscription Services as employees, agents, or independent contractors of Nexthink or any subcontractor.

“Nexthink Systems” means the information technology infrastructure used by or on behalf of Nexthink in providing the Subscription Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Nexthink or through the use of third-party services.

“Permitted Use” means any use of the Subscription Services by an Authorized User for the benefit of Customer in the ordinary course of its internal business operations in accordance with the Documentation.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“Personal Data” shall have the meaning ascribed thereto under the GDPR.

“Platform Data” means data and information related to the use of the Subscription Services by the entire client base, or segments thereof, that is used by Nexthink in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services, improve and develop products and services and financial analysis and reporting, among other corporate, development and operational purposes, not limited hereby. For the avoidance of doubt, Platform Data do not include that data which is specifically Customer Data or Personal Data.

“Process” means to take any action or perform any operation or set of operations that the Subscription Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. **“Processing”** and **“Processed”** have correlative meanings.

“Professional Services” means the implementation, consulting, managed and similar services provided by Nexthink as described on a Sales Order and described in the relevant Statement of Work or Nexthink Data Sheet. For the avoidance of doubt, Professional Services do not include Subscription Services and Support Services.

“Professional Services Fees” has the meaning ascribed to it in the *Professional Services* Section.

“Reimbursable Expenses” shall have the meaning ascribed to it in the *Additional Professional Services* Section.

“Representatives” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

“Resale Agreement” means the resale agreement between Nexthink and the Resale Partner enabling the Resale Partner to sell the Services to the Customer.

“Resale Partner” means the resale partner who has entered into the Resale Agreement with Nexthink.

“Sales Order” means a written sales order for Nexthink Services in a form acceptable to Nexthink signed by Nexthink and the Resale Partner referencing this Agreement including, as the case may be, any SOW or Nexthink Data Sheet agreed between the Parties.

“Server Location(s)” shall be those geographic locations selected by Reseller or Customer for its primary and back-up locations, from the options made available by Nexthink, which shall include options located within the European Union, among other locations.

“Services” means the Subscription Services and/or the Professional Services and/or the Additional Professional Services along with any other products and services as identified in a Sales Order or SOW or Nexthink Data Sheet.

“Service Level Agreement” means the agreement of the same name as set out in **EXHIBIT 2**.

“Statement of Work” or **“SOW”** means a statement of work that sets out the terms of any bespoke Professional Services to be delivered which shall incorporate the terms of this Agreement as if written out therein in full.

“Subscription Services” means the subscription services for access to and use of the Subscription Services Platform, Support Services and associated user Documentation and supplemental materials as may be specified on a Sales Order executed by Nexthink and the Resale Partner.

“Subscription Services Fees” means the fees payable to the Resale Partner for the Subscription Services.

“Subscription Services Platform” or **“Platform”** means Nexthink’s datacenter facilities, computer software and associated central software application environment, infrastructure and communication services used by Nexthink to provide the Subscription Services.

“Support Services” means the support as provided in accordance with the Cloud Customer Support Terms.

“Term” has the meaning given to it in the Term and Termination Section below.

“Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Nexthink.

INTERPRETATION

A reference to a “Section”, “Exhibit”, form, “Process” or “Policy” shall be a Section, Exhibit, form, Process or Policy in these Terms and Conditions.

The headings in these Terms and Conditions are for reference only and do not affect the interpretation of these Terms and Conditions.

A reference to a statutory provision is a reference to it as in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

A reference to writing or written includes email.

SUBSCRIPTION SERVICES

Access and Use. Subject to and conditional on Customer’s and its Authorized Users’ compliance with the terms and conditions of these Terms and Conditions, and the Resale Partner’s compliance with the terms and conditions of the Resale Agreement, Nexthink hereby grants Customer in respect of each Authorized User a non-exclusive, non-transferable (except in circumstances where Nexthink has given its consent to assign in accordance with these Terms and Conditions) right to access and use the Subscription Services during the Term, solely in accordance with the terms and conditions herein (each such grant of rights being a “**Subscription Services License**”). Such use is limited to Customer’s internal use. Nexthink shall provide to Customer the Access Credentials as of the Effective Date. The total number of Authorized Users will not exceed the number set forth in the applicable Sales Order, except as expressly agreed to in writing by Nexthink and Resale Partner and subject to any appropriate adjustment of the Fees payable hereunder. Once allocated to a Device, Subscription Service Licenses may not be transferred to another Device, except when the original Device has been decommissioned.

Client Component License. The Subscription Services require a software client component to be installed in Customer’s (desktop or other) environment (also known as the “**Collector**”). Customer is hereby granted a non-exclusive and non-transferable license to use such Collector as far as necessary to use the Subscription Services which will terminate upon the expiration or termination of the Term (a “**Client Component License**”). Customer will not reverse engineer or decompile or assist or otherwise facilitate others to reverse engineer or decompile such Collector. Any portion of the Collector that constitutes third party software, including software provided under a public license, is licensed to Customer subject to the terms and conditions of the software license agreements set forth in the Documentation. The use of such third-party software will be governed exclusively by the terms and conditions of such Documentation. Collectors are licensed under a per Device model and the exercise of the rights granted herein are limited to the quantity of Devices associated to the purchased Client Component Licenses. Once allocated to a Device, Client Component Licenses may not be transferred to another Device, except when the original Device has been decommissioned. Nexthink may grant to Customer limited versions of the Client Component License to (i) allow for the decommissioning of a Device and the setup of a new Device, which shall be limited to one (1) month per new Device (“**Buffer License**”) and (ii) evaluate the Collectors and Subscription Services in a non-production IT environment for quality assurance purposes (“**Test Licenses**”).

Documentation License. Subject to Customer’s compliance with the restrictions on use set out in these terms and Conditions (“**Use Restrictions**”), Nexthink hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in circumstances where Nexthink has given its consent to assign

in accordance with these Terms and Conditions) license to use the Documentation solely for Customer's internal business purposes in connection with its use of the Services.

Service and System Control. Except as otherwise expressly provided in these Terms and Conditions, as between the Parties: (i) Nexthink has and will retain sole control over the operation, provision, maintenance, and management of the Nexthink Materials; and (ii) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Nexthink Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (a) information, instructions, or materials provided by any of them to the Services or Nexthink; (b) results obtained from any use of the Services or Nexthink Materials; and (c) conclusions, decisions, or actions based on such use. Notwithstanding anything to the contrary in these Terms and Conditions, all Services, including all Processing of Customer Data by or on behalf of Nexthink shall be provided solely from within, and on computers, systems, networks, and other infrastructure located in Server Location(s).

Reservation of Rights. Each Party and their respective licensors will retain all of their right, title, and ownership in and to their Intellectual Property Rights and related materials that existed prior to the Effective Date.

Changes. Nexthink reserves the right, in its sole discretion, to make any changes to the Services and Nexthink Materials that it deems necessary or useful to: (i) maintain or enhance: (a) the quality or delivery of Nexthink's Services to its customers; (b) the competitive strength of or market for Nexthink's Services; or (c) the Services' cost efficiency or performance; or (ii) to comply with applicable Law.

Suspension or Termination of Services. Nexthink may, directly or indirectly, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Nexthink Materials, without incurring any resulting obligation or liability, if: (i) Nexthink receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Nexthink to do so; or (ii) Nexthink believes, in its good faith and reasonable discretion, that Customer or any Authorized User has failed to comply with any material term of these Terms and Conditions, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under these Terms and Conditions or in any manner that does not comply with any material instruction or requirement of the specifications; (b) has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (c) behaves in a manner which in the reasonable opinion of Nexthink is likely to bring Nexthink or any Nexthink Affiliate into disrepute or otherwise to compromise or adversely affect the reputation and standing of Nexthink or any Nexthink Affiliate; or (iii) these Terms and Conditions expire or are terminated. Nexthink's right to suspend or terminate the services as set out in this Section does not limit any of Nexthink's other rights or remedies, whether at law, in equity, or under these Terms and Conditions.

USE RESTRICTIONS

Customer shall not and shall not permit any Authorized User or other Person to, access or use the Services or Nexthink Materials except as expressly permitted by these Terms and Conditions. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as these Terms and Conditions expressly permit: (i) copy, modify, or create derivative works or improvements of the Services or Nexthink Materials; (ii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Nexthink Materials, in whole or in part; (iii) bypass or breach any security device or protection used by the Services or Nexthink Materials or access

or use the Services or Nexthink Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (iv) input, upload, transmit, or otherwise provide to or through the Services or Nexthink Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (v) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Nexthink Systems, or Nexthink's provision of services to any third party, in whole or in part; (vi) remove, delete, alter, or obscure any trademarks, specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Nexthink Materials, including any copy thereof; (vii) access or use the Services or Nexthink Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Nexthink customer), or that violates any applicable Law; (viii) access or use the Services or Nexthink Materials for purposes of competitive analysis of the Services or Nexthink Materials, the development, provision, or use of a competing software service or product or any other purpose that is to Nexthink's detriment or commercial disadvantage; or (ix) otherwise access or use the Services or Nexthink Materials beyond the scope of the authorization granted under these Use Restriction Section.

CUSTOMER OBLIGATIONS

Customer Systems and Cooperation. Customer shall at all times during the Term: (i) set up, maintain, and operate in good repair and in accordance with their specifications all Customer Systems on or through which the Services are accessed or used; (ii) provide Nexthink Personnel with such access to Customer's premises and Customer Systems as is reasonably necessary for Nexthink to perform any requested related Services, subject to reasonable access and non-disclosure policies; and (iii) provide all cooperation and assistance as Nexthink may reasonably request to enable Nexthink to exercise its rights and perform its obligations under and in connection with these Terms and Conditions. Customer, at Customer's expense, will provide timely participation of Customer's functional and/or information technology staff as Nexthink reasonably deems necessary for the timely delivery of the Services as contemplated in these Terms and Conditions.

Effect of Customer Failure or Delay. Nexthink is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under these Terms and Conditions.

Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by the Use Restriction Section, Customer shall, and shall cause its Authorized Users and/or Persons expressly permitted to use the Services to, immediately: (i) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Nexthink Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (ii) notify Nexthink of any such actual or threatened activity.

Customer Responsibilities. Customer is responsible for providing all network connections and links between Customer Systems and/or Customer local network(s) and the Subscription Services Platform for the implementation and execution of the Subscription Services as provided in Nexthink's technical specifications provided by Nexthink to Customer. It is the Customer's responsibility to maintain connectivity and public bandwidth of sufficient capacity for the operation of the Subscription Services. Customer has the sole responsibility for installation, testing and operations of facilities,

telecommunications and internet services, equipment and software upon Customer's premises necessary for Customer's use of the Subscription Services (the "Customer Facilities"), and for paying all third-party access fees incurred by Customer to access and use the Subscription Services.

Customer's Data and Information; Data Protection. To the extent that Customer Data comprises Personal Data, such Personal Data will be processed under Nexthink's standard data protection agreement (available on request) or otherwise in accordance with an alternative data protection agreement as agreed between the Parties..

PROFESSIONAL SERVICES

General. Nexthink will provide the Professional Services as described in the Statement of Work or Nexthink Data Sheet. Customer will pay Nexthink the fees for the Professional Services ("**Professional Services Fees**"), together with reasonable travel expenses incurred in connection with Professional Services, as provided in the applicable Sales Order. If Customer fails to timely pay any invoice for Professional Services Fees and/or travel expenses, Nexthink will have the right, in addition to any other remedies it may have under this Agreement or at Law, to suspend its performance of any further Professional Services without any liability to Nexthink for any damages suffered by Customer arising from or related to such suspension of performance.

Change Orders. Any modification to the Professional Services or any other aspect of a Sales Order, including any resultant changes to pricing or project schedules, will be made pursuant to a written change order that is signed by Nexthink and Customer. Each such change order will set forth in reasonable detail the nature of the change to the Professional Services or other aspect being changed, the recommended change in personnel or other deliverables, any change in Professional Services Fees, and any other impact the change order will have on the Sales Order.

Additional Professional Services. Nexthink may provide Customer with additional Professional Services ("**Additional Professional Services**"), as may be agreed to between Nexthink and Customer from time to time in the relevant statement of work. Additional Professional Services will include any services provided by Nexthink for support of the Subscription Services to the extent required to remedy any support or performance issues concerning the Subscription Services caused by or resulting from Customer's failure to comply with Customer's responsibilities or obligations as described in this Agreement, including, without limitation, in the Cloud Customer Support Terms and the Service Level Agreement. In each such event Nexthink will invoice Customer for all Professional Services Fees for such Additional Professional Services ("**Additional Professional Services Fees**") at Nexthink's then-current rates for Professional Services, together with all reimbursable expenses incurred by Nexthink in providing such Additional Professional Services ("**Reimbursable Expenses**"), and Customer will pay the invoiced amount within thirty (30) calendar days following receipt of such invoice.

SERVICE LEVELS

Availability Level Summary. Nexthink will provide the Subscription Services to Customer in accordance with the Service Level Agreement.

Support Services. The Services include Nexthink's standard Support Services as set out in the Cloud Customer Support Terms.

DATA BACKUP

The Nexthink Systems are programmed to perform routine data backups from time to time (the "**Backup Policy**") as set out in Nexthink's Cloud Security Policy, a current copy of which will be provided upon

request. Upon Customer's written request, Nexthink will deliver to Customer its then most current back-ups of Customer Data as and when set forth in the Backup Policy. In the event of any loss, destruction, damage, or corruption of Customer Data caused by the Nexthink Systems or Services, Nexthink will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Nexthink's then most current backup of such Customer Data in accordance with the then current Backup Policy.

SECURITY

Information Security. Nexthink will employ reasonable security measures to protect the integrity of its Nexthink Systems and Customer Data in accordance with the Nexthink Cloud Security Policy, a current copy of which will be provided upon request.

Data Breach Procedures. Nexthink maintains a cyber incident breach response plan in accordance with Nexthink's Information Security Incident Response Plan, a current copy of which will be provided to Customer upon request. Nexthink will implement the procedures required under such plan on the occurrence of a data breach or security incident as set forth therein. In accordance with such plan, Nexthink will notify Customer of a data breach or security incident as soon as reasonably practicable, but no later than seventy-two (72) hours after Nexthink has confirmed such event.

Customer Control and Responsibility. Customer has and will retain sole responsibility for: (i) all Customer Data, including its content and use; (ii) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (iii) Customer Systems; (iv) the security and use of Customer's and its Authorized Users' Access Credentials; and (v) all access to and use of the Services and Nexthink Materials directly or indirectly by or through the Customer Systems or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (i) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (ii) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

FEES AND PAYMENT

Fees and Expenses; Payment Timeframe. Fees for the Subscription Services shall be payable via the Resale Partner to Nexthink as set out in the Sales Order between Nexthink and the Resale Partner. The Professional Services Fees and/ or Additional Professional Services Fees shall be agreed with between Nexthink and the Customer as per any applicable SOW.

CONFIDENTIALITY

Confidential Information. In connection with these Terms and Conditions each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**"). Subject to the exclusions set out below, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential".

Exclusions. Confidential Information does not include information that: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with these Terms and Conditions; (ii) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with these Terms and Conditions; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with these Terms and Conditions; (ii) except as may be permitted by and subject to its compliance with the provisions relating to compelled disclosures set out in the Section below, not disclose or permit access to Confidential Information other than to its Representatives who: (a) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with these Terms and Conditions; (b) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under these Terms and Conditions in relation to Confidential Information; and (c) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in these Terms and Conditions; (iii) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (iv) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, these Terms and Conditions in relation to Confidential Information. The Receiving Party's obligations under these Terms and Conditions with respect to any Confidential Information that constitutes a trade secret under any Applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such Applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by Applicable Law to disclose any Confidential Information then, to the extent permitted by Applicable Law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under these Terms and Conditions in relation to the protection of its Confidential Information and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 0, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

INTELLECTUAL PROPERTY RIGHTS

Nexthink Materials. All right, title, and interest in and to the Nexthink Materials, including all Intellectual Property Rights therein, are and will remain with Nexthink and, with respect to Third-Party Materials, the applicable third-party provider owns all right, title, and interest, including all Intellectual Property Rights,

in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Nexthink Materials except as expressly set forth in the Subscription Services License or the applicable third-party license, in each case subject to the Use Restrictions. All other rights in and to the Nexthink Materials are expressly reserved by Nexthink. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Nexthink an assignment of all right, title, and interest in and to the Platform Data, including all Intellectual Property Rights relating thereto.

Nexthink IP. Nexthink will retain all right (including all Intellectual Property Rights), title to and ownership of all documentation, software, techniques, tools, processes and other deliverables used in and/or developed by Nexthink in the course of performing the Services (collectively, “**Nexthink IP**”). Customer is hereby granted a non-exclusive and non-transferable license to use such Nexthink IP as far as necessary to use the Services which will terminate upon the expiration or earlier termination of these Terms and Conditions.

Customer Data. As between Customer and Nexthink, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the licenses, rights and permissions granted herein in relation to the Nexthink Materials and Nexthink’s use of Customer Data.

Consent to Use Customer Data. Customer hereby irrevocably grants a non-exclusive license to Nexthink to use the Customer Data and the Intellectual Property Rights therein in connection with the provision of the Services along with any and all such rights and permissions in or relating to the Customer Data as are necessary or useful to Nexthink, its subcontractors and the Nexthink Personnel to enforce these Terms and Conditions and exercise Nexthink’s, its subcontractors’, and the Nexthink Personnel’s rights and perform Nexthink’s, its subcontractors’, and the Nexthink Personnel’s obligations hereunder.

REPRESENTATIONS AND WARRANTIES

Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (ii) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under these Terms and Conditions; (iii) the execution of these Terms and Conditions by its representative whose signature is set forth at the end of these Terms and Conditions has been duly authorized by all necessary corporate or organizational action of such Party; and (iv) when executed and delivered by both Parties, these Terms and Conditions will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

Additional Nexthink Representations, Warranties, and Covenants. Nexthink represents, warrants, and covenants to Customer that Nexthink will provide the Subscription Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under these Terms and Conditions.

Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to Nexthink that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Nexthink and Processed in accordance with these Terms and Conditions, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Applicable Law.

DISCLAIMER OF WARRANTIES. EXCEPT FOR NEXTHINK'S EXPRESS MUTUAL WARRANTIES AND THE ADDITIONAL NEXTHINK REPRESENTATIONS, WARRANTIES AND COVENANTS SET OUT ABOVE, ALL SERVICES AND NEXTHINK MATERIALS ARE PROVIDED "AS IS." NEXTHINK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, NEXTHINK MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR NEXTHINK MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

INDEMNIFICATION

Nexthink Indemnification. Nexthink shall indemnify, defend, and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors, and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's or an Authorized User's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement (including the specifications) infringes or misappropriates such third party's Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (i) Third-Party Materials or Customer Data;
- (ii) access to or use of the Nexthink Materials in combination with any hardware, system, software, network, or other materials or service not provided by Nexthink or specified for Customer's use in the Documentation;
- (iii) modification of the Nexthink Materials other than: (a) by or on behalf of Nexthink; or (b) with Nexthink's written approval in accordance with Nexthink's written specification;
- (iv) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Nexthink; or
- (v) any act, omission, or other matter described in the Customer indemnification obligations arising out of sub-sections (i) to (iv) below, whether or not the same results in any Action against or Losses by any Nexthink Indemnitee.

Customer Indemnification. Customer shall indemnify, defend, and hold harmless Nexthink and its subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Nexthink Indemnitee**") from and against any and all Losses incurred by such Nexthink Indemnitee resulting from any Action by a third party (other than an Affiliate of a Nexthink Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

- (i) Customer Data, including any Processing of Customer Data by or on behalf of Nexthink in accordance with these Terms and Conditions;
- (ii) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Nexthink's compliance with any specifications or directions provided by or on behalf of Customer or any

Authorized User to the extent prepared without any contribution by Nexthink;

- (iii) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under these Terms and Conditions; or
- (iv) gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with these Terms and Conditions.

Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to the foregoing Nexthink indemnification obligations or Customer indemnification obligations, as the case may be. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate.

Litigation. If any of the Services or Nexthink Materials or Nexthink IP are, or in Nexthink's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Rights, or if Customer's or any Authorized User's use of the Services or Nexthink Materials or Nexthink IP is enjoined or threatened to be enjoined, Nexthink may, at its option and sole cost and expense: (i) obtain the right for Customer to continue to materially use the Services and Nexthink Materials or Nexthink IP as contemplated by these Terms and Conditions; (ii) modify or replace the Services and Nexthink Materials or Nexthink IP, in whole or in part, to seek to make the Services and Nexthink Materials or Nexthink IP (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute the Services and Nexthink Materials or Nexthink IP, as applicable, under these Terms and Conditions; or (iii) by written notice to Customer, terminate these Terms and Conditions with respect to all or part of the Services and Nexthink Materials or Nexthink IP, and require Customer to immediately cease any use of the Services and Nexthink Materials or any specified part or feature thereof.

Sole Remedy. THE FOREGOING PROVISIONS IN THIS SECTION RELATING TO INDEMNIFICATION SET FORTH CUSTOMER'S SOLE REMEDIES AND NEXTHINK'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND NEXTHINK MATERIALS OR ANY SUBJECT MATTER OF THESE TERMS AND CONDITIONS INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

LIMITATIONS OF LIABILITY

EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN THE INDEMNIFICATION PROCEDURE ABOVE, IN NO EVENT WILL NEXTHINK OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR PROVIDERS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (ii) IMPAIRMENT, INABILITY TO USE OR LOSS,

INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS; (iii) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (iv) COST OF REPLACEMENT GOODS OR SERVICES; (v) LOSS OF GOODWILL OR REPUTATION; OR (vi) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN THE INDEMNIFICATION PROCEDURE ABOVE, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF NEXTHINK AND ITS LICENSORS, SERVICE PROVIDERS, AND PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO NEXTHINK UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Exceptions. The aforesaid exclusions and limitations do not apply to Nexthink's obligations following termination or liability for Nexthink's gross negligence or willful misconduct.

TERM AND TERMINATION

Initial Term. The initial term of these Terms and Conditions will commence as of the Effective Date and, unless terminated earlier pursuant any of the express provisions of these Terms and Conditions, will continue in effect until three (3) years from such date (the "**Initial Term**").

Renewal Term. These Terms and Conditions will automatically renew for additional successive annual terms unless earlier terminated pursuant to the express provisions of these Terms and Conditions or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a, "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**"). Notwithstanding the foregoing, to the extent any Sales Order or SOW is outstanding and effective, the Term of these Terms and Conditions shall be deemed extended until the last date of such effectiveness, unless any such Sales Order or SOW is terminated earlier in accordance with these Terms and Conditions.

Termination. In addition to any other express termination right set forth elsewhere in these Terms and Conditions Nexthink may terminate any Sales Order and these Terms and Conditions: (i) as applicable, effective on written notice to the Resale Partner, if the Resale Partner or Customer (a) fails to pay any amount when due, and such failure continues more than thirty (30) days after Nexthink's delivery of written notice thereof; or (b) breaches any of its material obligations; (ii) if the Customer materially breaches these Terms and Conditions, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured thirty (30) days after Nexthink provides the Customer with written notice of such breach; and (iii) if the Resale Partner : (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (c) makes or seeks to make a general assignment for the benefit of its creditors; or (d) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Effect of Termination or Expiration. Upon any expiration or termination of these Terms and Conditions, except as expressly otherwise provided in these Terms and Conditions:

- (i) all rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate;
- (ii) unless otherwise expressly provided in these Terms and Conditions, Nexthink shall immediately cease all use of any Customer Data or Customer's Confidential Information and (a) return to Customer, or at Customer's written request, destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (b) permanently erase all Customer Data and Customer's Confidential Information from all systems Nexthink directly or indirectly controls in accordance with its data retention policy (approximately 90 days), provided that, for clarity, Nexthink's obligations under this sub-section (c) do not apply to any Platform Data; and
- (iii) Customer shall immediately cease all use of any Subscription Services or Nexthink Materials and (a) return to Nexthink, or at Nexthink's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Nexthink Materials or Nexthink's Confidential Information; and (b) permanently erase all Nexthink Materials and Nexthink's Confidential Information from all systems Customer directly or indirectly controls; and (c) certify to Nexthink in a signed written instrument that it has complied with the requirements of this sub-section (iii).

Notwithstanding anything to the contrary in these Terms and Conditions, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; (ii) Nexthink may retain Customer Data; (iii) Customer may retain Nexthink Materials, in the case of each of subclause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law. Notwithstanding the foregoing, Nexthink may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course. All information and materials described herein will remain subject to all confidentiality, security, and other applicable requirements of these Terms and Conditions. Nexthink may disable all Customer and Authorized User access to the Nexthink Materials.

Fees. Where Nexthink terminates these Terms and Conditions pursuant to these Terms and Conditions, all fees that would have become payable had these Terms and Conditions remained in effect until expiration of the Term will become immediately due and payable by the Resale Partner, and Resale Partner shall pay such fees, together with all previously-accrued but not yet paid fees, on receipt of Nexthink's invoice thereof.

Return of Customer Data. If Customer requests in writing at least thirty (30) days prior to the effective date of expiration or termination, subject to Nexthink's right to retain information as set out above Nexthink shall, within sixty (60) days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Nexthink, provided that Resale Partner has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Nexthink's services in transferring such Customer Data.

Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the Parties in these Terms and Conditions that, by its nature, should survive termination or expiration of these Terms and Conditions, will survive any expiration or termination of these Terms and Conditions including but not limited to Use Restrictions, the obligations relating to Confidential Information, disclaimer of

warranties, each Party's obligations to indemnify the other, the limitations on liability herein, the payment of Fees following termination, these surviving terms and the miscellaneous provisions below.

MISCELLANEOUS

Further Assurances. On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to these Terms and Conditions.

Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in these Terms and Conditions shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

Notices. Notices pursuant to these Terms and Conditions must be in writing and will be deemed effectively delivered to the Party when delivered at the address provided in the Particulars (or such other address as a Party subsequently may provide by notice to the other Party). Notices may be delivered: (i) by email using a method that positively establishes receipt of the email by the recipient; (ii) by personal, same or next day delivery; or (iii) by commercial overnight courier with written verification of delivery. All notices so given will be deemed given upon the earlier of receipt or three (3) days after dispatch. Any notices sent to Customer hereunder also may be sent to the contact information for Resale Partner as provided in a Sales Order

Marketing. Subject to the warranties given in rest of this section, Customer accepts that Nexthink can use the Customer's trading name, brand name or logo strictly for Nexthink's marketing purposes; e.g., customer testimonials, success stories, presentations, or mentions of Customer as user of software. Nexthink warrants that it will not deface, modify or misuse in anyway any brand name or logo of the Customer. Nexthink further warrants that it will only publish any business case, customer study or testimonial or such similar content with prior written approval of the Customer.

Export. The Nexthink Materials provided by Nexthink (collectively, the "**Controlled Items**") may be subject to United States, EU or other export control jurisdiction. The Controlled Items may not be shipped, transferred, re-exported into any country, or used for any purpose prohibited by any applicable international and national legal instruments that apply to the Controlled Items, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments competent to Nexthink or Customer. Customer agrees that it will not export or re-export the Controlled Items without first having obtained applicable government export licenses or permissions.

Public Announcements. Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to these Terms and Conditions or, unless expressly permitted under these Terms and Conditions, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided, however (and notwithstanding the Nexthink's right to use the Customer's trading name, brand name or logo for the purposes set out above), that Nexthink may, without Customer's consent, include Customer's name and other indicia in its lists of Nexthink's current or former customers of Nexthink in promotional and marketing materials.

Audit. During the Term and for a period of one (1) year thereafter Nexthink or a third-party on its behalf may, at its expense, during normal business hours and upon reasonable notice, audit the Customer's compliance with the terms of these Terms and Conditions. If any such audit reveals any non-compliance by the Customer with these terms and conditions then, in addition to Nexthink's right to suspend or terminate these Terms and Conditions or other rights reserved to Nexthink elsewhere in these Terms and Conditions, Customer will reimburse Nexthink for the full cost of the Audit.

Entire Agreement. These Terms and Conditions constitute the entire understanding between Nexthink and Customer with respect to the subject matter hereof and supersedes any prior representations, statements or warranties given by either Party. Terms and conditions presented in any ordering document or purchase order that differ from, conflict with or are not included in these Terms and Conditions, unless signed by a duly authorized representative of Nexthink, shall not become part of these Terms and Conditions.

Assignment. Neither these Terms and Conditions nor any of Customer's rights, licenses or obligations hereunder may be assigned or delegated by Customer to any third party, including without limitation in connection with a merger, acquisition, reorganization, outsourcing, change of control or under any other circumstance without the prior written consent of Nexthink. Any such purported assignment or delegation shall be void and of no effect and shall constitute an incurable breach of these Terms and Conditions resulting in the automatic termination of these Terms and Conditions and all rights and licenses granted to Customer hereunder.

Force Majeure. Nexthink shall not be liable for any breach of these Terms and Conditions due to any circumstances outside Nexthink's reasonable control including, but not limited to, acts of God, fire, acts of Government, war, military operation or riot, accidents, embargo, industrial actions, terrorist threat, hereinafter referred to as "**Force Majeure**". In case of Force Majeure, Nexthink shall notify the Customer in writing providing it with all relevant information thereto.

No Third-Party Beneficiaries. These Terms and Conditions are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

Amendment and Modification. No amendment to or modification of or rescission, termination, or discharge of these Terms and Conditions will be effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of these Terms and Conditions and signed by an authorized representative of each Party.

Waiver and Severability. The waiver by a Party of one breach or default by another Party under these Terms and Conditions will not constitute the waiver of any subsequent breach or default. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party. If any court or competent jurisdiction determines that any provision of these Terms and Conditions are illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

Governing Law; Submission to Jurisdiction. These Terms and Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any dispute or claim relating to non-contractual obligations) will be construed and governed in accordance with the relevant Jurisdiction without regard to any rules of conflicts or choice of law provisions that would require the application of the laws of any other jurisdiction. The Parties hereby submit to the exclusive jurisdiction and venue of the Jurisdiction to settle any dispute or claim arising out of or in connection with these Terms

and Conditions or its subject matter or formation (including any non-contractual disputes or claims) and the Parties hereby waive any objections based on forum non conveniens.

Equitable Relief. Customer acknowledges that Nexthink's rights in and to the Nexthink Materials are unique and that financial remedies will be insufficient to compensate Nexthink for any infringement of such rights. Nexthink shall be entitled to seek injunctive and other equitable relief to protect, maintain, defend, enforce, and preserve such rights, in addition to any other remedy that may be available.

Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

EXHIBIT 1

CLOUD CUSTOMER SUPPORT TERMS

During the term of this Agreement, unless provided herein to the contrary, Nexthink shall provide Customer with these Support Services. Nexthink shall generally support the Nexthink Subscription Services at the agreed levels.

Defined terms have their meaning set out in the Agreement or in the Definitions section below.

Section 1. Support Levels

(A) Error Correction

All Errors should be reported by Customer to Nexthink via the Support Portal or email at support@nexthink.com. Where the Customer cannot report via the Support Portal or email then it may report by telephone. Nexthink will provide Customer with its assigned support contact telephone number.

Nexthink shall acknowledge receipt of such notification by creating a new file in the Nexthink Support Portal in which the following information shall be mentioned: (i) the name of the person to whom the case has been assigned within Nexthink, (ii) the status of the Error, (iii) the Error's priority level, and, as soon as practicable (iv) the proposed next steps towards Error correction with their targeted timeframe.

Reported Errors must be reproduced by Nexthink prior to being assigned a priority level.

Nexthink shall use commercially reasonable efforts either to correct or provide instructions for circumventing any verifiable and reproducible Errors discovered in the Services when properly reported to Nexthink in accordance with Table A below.

Nexthink will endeavor to provide its Support Services 24 hours a day, 365 days a year.

Table A

Priority	Description	Targeted Response time*	Targeted Level of Effort
Priority 1	The entire Subscription Services are "down" and inoperable. Priority 1 incidents shall be reported by telephone only.	Response within one Business Hour	Continuously, 24 x 7
Priority 2	Operation of the Subscription Services is severely degraded, or major components of the Service are not operational. Priority 2 incidents shall be reported by telephone only.	Response within two Business Hours	Continuously, but not necessarily 24 x 7
Priority 3	Certain non-essential features of the Subscription Services are impaired while most major components of the Service remain functional. Errors reported (i) to the Support department at support@nexthink.com or (ii) via the Nexthink Support Portal.	Response within one Business Day	As appropriate during normal Business Hours

* The Response time may increase including in cases where Nexthink needs to reproduce the Error.

(B) Telephone Support – Helpdesk

Nexthink shall provide reasonable telephone technical assistance twenty-four (24) hours per day, three hundred and sixty-five (365) days per year, such assistance being limited to: (i) technical problems that are not Errors; and (ii) questions about the Documentation ("**General Assistance**").

Where Nexthink decides during the telephone call that the Customer is reporting an Error, and not requiring General Assistance, Nexthink shall inform the Customer, and the Customer must report the Error in accordance with Table A above.

Section 2. Exceptions to Support Services

Nexthink shall have no obligation to provide Support Services in relation to queries or Errors arising directly or indirectly due to any Customer Intervention.

Where Nexthink has provided Support Services in relation to queries or Errors arising directly or indirectly due to any Customer Intervention, Nexthink will charge and the Customer will pay Nexthink's standard support services fees which may be amended from time to time by Nexthink in its sole discretion.

Section 3. Customer's Obligations

(A) Customer's Cooperation

Nexthink's obligations under this Agreement are subject to Customer providing Nexthink with full, good faith co-operation and such information as may be required by Nexthink in order to render the Support Services. Nexthink will provide Customer with any relevant documentation to help resolve any issues. Customer shall supplement or modify its operating methods as reasonably required to make effective use of the Support Services. Any delay in responding to information requests or action items submitted by Nexthink or a failure by Customer to cooperate with Nexthink to resolve any open issues, may increase or void the time period for the Response.

(B) Technical Contact

Customer shall designate by written notice to Nexthink a primary and secondary technical contact (including the relevant name, job title, email and telephone number) who shall be the sole interface with Nexthink. Customer may replace the designated individuals by providing written notice to Nexthink. Notice may be provided through the Nexthink Support Portal. Failure to provide such notice may result in Customer's designated individual being denied access to the Support Services.

(C) Access

In order to facilitate problem reproduction and fixing, and as per its duty to collaborate with Nexthink, Customer acknowledges that Nexthink may require access to the Customer's Systems relevant to the Services. Such access will be granted and given by Customer to Nexthink's designated technical staff upon request for problem reproduction, diagnosis, test, follow up or any other measures to help identify or resolve an Error.

Nexthink may only request access where the issue cannot be resolved locally or on Customer's site. Customer may refuse the grant of access, in which case Nexthink shall no longer be bound by its obligations contained in this Cloud Customer Support Terms Exhibit.

DEFINITIONS

"**Business Hours**" means 0900 to 1700 Monday to Friday, excluding bank or public holidays in Spain, Switzerland or the United States, as applicable.

“Customer Intervention” means (i) act or omission by Customer or any Authorized User/access to or use of the Subscription Services by Customer or any Authorized User, or using Customer’s or an Authorized User’s Access Credentials, that does not strictly comply with this Agreement and the Documentation; (ii) interruptions caused by the negligence, error or omission of Customer or other users of the Customer’s Subscription Services, (iii) Customer’s applications, equipment, or facilities, including the Customer Facilities and Customer’s connection to the Internet, (iv) interruptions arising from Customer’s use of the Subscription Services in an unauthorized or unlawful manner or in violation of this Agreement, (v) interruptions arising from a third-party supplier or services provider (hereinafter **“Provider”**) disconnect for non-payment or other breach of the Agreement, (vi) an interruption due to improper or inaccurate network specifications provided by Customer, and/or (vii) Customer fails to meet its express responsibilities (as set out in the Agreement and the Service Level Agreement).

“Error” means a failure in the Subscription Services, such that it does not materially function in accordance with its Documentation.

“Response” means the creation of a file by Nexthink in the Support Portal that includes (i) the name of the person to whom the case has been assigned within Nexthink, (ii) the status of the Error, (iii) the Error’s priority level, and, as soon as practicable (iv) the proposed next steps towards Error correction with a targeted timeframe.

“Support Portal” means the support portal at <https://support.nexthink.com/hc/en-us>

[END OF EXHIBIT 1]

EXHIBIT 2

SERVICE LEVEL AGREEMENT

AVAILABILITY REQUIREMENT

Capitalized terms have their meaning set out in the Agreement or in the Definitions section below.

1. Service Levels. Subject to the terms and conditions of this Agreement, Provider will use commercially reasonable efforts to make the Key Subscription Services Available at least **ninety-nine and one-half percent (99.5%)** of the time as measured over the course of each calendar month during the Term (each such calendar month, a (“**Service Period**”), excluding unavailability as a result of any of the Exceptions described below (the “**Availability Requirement**”).

The Availability measurement shall be carried out by the Provider and is based on the monthly average percentage availability, calculated at the end of each calendar month by Provider as the total actual uptime minutes divided by total possible uptime minutes in the month.

2. Service Level Failures and Remedies. In the event of a Service Level Failure with respect to Customer, Provider shall issue a credit to Customer in the amount of **two percent (2%) of the monthly Fees** for the essential Subscription Services (excluding all supplemental Fees) for the Services due for the Service Period in which the Service Level Failure occurred (each a “**Service Credit**”), subject to the following: (i) Provider has no obligation to issue any Service Credit unless: (a) Customer reports in writing the Service Level Failure to Provider immediately on becoming aware of it; and (b) requests such Service Credit in writing within ten (10) days of the Service Level Failure; and (ii) in no event will a Service Credit for any Service Period exceed two percent (2%) of the total Subscription Services Fees that would be payable for that Service Period if no Service Level Failure had occurred.

Any Service Credit payable to Customer under this Agreement will be issued to Customer and is not transferable or assignable in any way. This Exhibit sets forth Provider’s sole obligation and liability and Customer’s sole remedy for any Service Level Failure.

Service Credits have no cash value outside of the payment terms of this Agreement and may not exceed any payments made or owing by Customer. Unless otherwise agreed in writing by the Parties, Service Credits will only be applied against Customer payment obligations paid or owing at the time the Service Credit is established by Provider or for later periods if Customer has a continuing commitment period under a Sales Order or SOW. There is no right of set off between the Service Credits in this Agreement and any credits or payments in any other agreement.

3. Scheduled Downtime. Provider will use commercially reasonable efforts to: (i) schedule downtime for planned outages for service updates, fixes, improvements, upgrades, backups and maintenance of the Services (together the “**Maintenance Window**”) outside of local business hours (which scheduled Maintenance Window shall occur during the once-monthly period option selected by Customer and not exceed four hours); and (ii) give Customer at least 12 hours prior notice of all newly scheduled outages of the Services, outside of regular maintenance windows (all Company-planned downtime being referred to as “**Scheduled Downtime**”).
4. Customer Support Responsibilities. In addition to the Customer’s responsibilities as set forth in the Agreement between Supplier and Customer for the Subscription Services, the Customer will be solely responsible, at the Customer’s expense, to:
 - (i) Notify Supplier immediately of any support or maintenance issues.
 - (ii) Train users on use of the Subscription Services.

- (iii) Properly use the online support and other resources under the Cloud Customer Support Terms.
- (iv) Designate a key contact for Support Services and maintenance communications.
- (v) Provide Supplier with timely access, remote and/or on site, to Customer's applicable devices or machines within the Customer Systems, with which the Subscription Services interfaces, and/or upon which the Subscription Services relies.
- (vi) Provide Supplier timely return of requested troubleshooting data in order to perform root cause analysis for support issues being experienced with the Subscription Services.
- (vii) Maintain minimally supported client-side software version.
- (viii) Maintain and control the installation, security, connectivity and inter-operability, as prescribed by Provider, of its client-side software and connectivity to Nexthink systems.
- (ix) Provide, support and maintain the Customer-side delivery of user-IDs.

DEFINITIONS

"Available" means the Key Subscription Services are operating without Outage in material accordance with the specifications.

"Availability" means the total number of minutes in a Service Period that the Key Subscription Services were Available.

"Customer Failure" means (i) act or omission by Customer or any Authorized User, access to or use of the Services by Customer or any Authorized User, or using Customer's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement and the Documentation; (ii) interruptions caused by the negligence, error or omission of Customer or other users of the Customer's Subscription Services, (iii) interruptions caused by Customer's applications, equipment, or facilities, including the Customer Facilities and Customer's connection to the Internet, (iv) interruptions arising from Customer's use of the Subscription Services in an unauthorized or unlawful manner or in violation of this Agreement, (v) interruptions arising from a disconnect for non-payment or other breach of the Agreement, (vi) an interruption due to improper or inaccurate network specifications provided by Customer, and/or (vii) Customer fails to meet its express Customer Support Responsibilities set forth below.

"Exceptions" means any: (i) Customer Failure; (ii) Internet and communications systems connectivity, latency and disruption; (iii) Force Majeure Event; (iv) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to this Agreement; (v) Scheduled Downtime; or (vi) disabling, suspension, or termination of the Services under the Agreement.

"Key Subscription Services" means essential server-side data processing and platform access on Nexthink Systems, and expressly excludes all functions and use cases on Customer Systems and other systems outside of Nexthink Systems.

"Outage" means any fifteen (15) consecutive minutes during which the Key Subscription Services are inoperable.

"Provider" shall have the meaning ascribed to it in **EXHIBIT 1**.

"Service Level Failure" means a failure of the Key Subscription Services to meet the Availability Requirement in a Service Period for Customer.

[END OF EXHIBIT 2]