

# Nextcloud Support Programme

## Terms and Conditions

### Recitals

- A) NEXTCLOUD is a specialist company providing Nextcloud software (the "Software") a next generation Private Cloud Enterprise File Sync & Share software.
- B) This Nextcloud Support Program Terms and Conditions ("NSPTC") for the Software sets out the provisions for support services to be performed by Nextcloud GmbH (NEXTCLOUD), located at Hauptmannsreute 44A, 70192 Stuttgart, Germany, in response to support requests issued by the persons of contact of the customer (CUSTOMER).
- C) The offering, described in the specs sheets covering each product and which are delivered with each proposal, is typically self-serviced, not personalised or dedicated to a unique organisation.
- D) CUSTOMER must provide a dedicated technical point-of-contact and contact details.
- E) CUSTOMER manages the first and second level of user support, as defined in Exhibit A, and contacts NEXTCLOUD Support for third level support issues only.
- F) CUSTOMER will follow the Response Procedures described in Exhibit B.

### 1. Third-Party Software

NEXTCLOUD may furnish CUSTOMER software and related materials that are licensed by third parties ("Third-Party Software"). Such Third-Party Software is licensed under the terms and conditions of this Agreement. CUSTOMER may use the Third-Party Software only in conjunction with the Software. NEXTCLOUD warrants to CUSTOMER that it has obtained the Third Party Software from suppliers purporting to have enough rights to grant such third party licenses to permit the CUSTOMER to use the Third Party Software in accordance with this Agreement and agrees to pass through and assign to CUSTOMER any third party warranties NEXTCLOUD receives in connection with the Third Party Software ("Third Party Software Warranty").

### 2. Ownership

No title to or ownership of the Software is transferred to CUSTOMER. NEXTCLOUD and/or its third party licensors retain all right, title in and to all Intellectual Property Rights in the Software. Title and ownership rights in and to the content accessed through the Software are the property of the applicable content owner.

### 3. Limitation of Liability

In no event will either party be liable, whether in contract or in tort or under any other legal theory

(including strict liability and negligence) for lost profits or revenues, loss or interruption of use, lost or damaged data, reports, documentation or security, or similar economic loss, or for any indirect, exemplary, special, incidental, consequential or similar damages arising from or related to this agreement, even if the party has been advised of the possibility of such damages.

Except for:

- a) claims by third parties relating to violation of intellectual property rights;
- b) cases of gross negligence or willful misconduct;
- c) breach of confidentiality undertakings; and/or
- d) death or personal injury,

in no event will either party's total aggregate liability arising from or related to this agreement, whether in contract or in tort or under any other legal theory (including strict liability and negligence) exceed the aggregate total amount of the Software described in this Agreement.

## 4. Confidential information

Each party acknowledges that, during the Term of this Agreement, it will receive information from the other party that the other party regards as confidential and proprietary ("Confidential Information").

Neither party shall disclose, provide or otherwise make available to any third party (including a prospective customer) any Confidential Information of the other party and shall utilise such Confidential Information only on any internal organization need-to-know basis and only to the extent necessary to effect the provisions of this Agreement as contemplated herein.

## 5. Non-disclosure of Agreement

CUSTOMER shall not disclose the terms or conditions of this Agreement without the prior written approval of NEXTCLOUD.

## 6. Compliance

NEXTCLOUD has the right to verify CUSTOMER's compliance with this Agreement. CUSTOMER agrees to:

- a) keep records sufficient to certify its compliance with this Agreement, and, upon request of NEXTCLOUD, for no more than once a year, provide and certify metrics and/or reports based upon such records and account for the numbers of users as they may reasonably relate to CUSTOMER's Subscription Package; and
- b) allow a NEXTCLOUD representative or an independent auditor ("Auditor"), upon ten (10) days written notice to CUSTOMER, to inspect and audit CUSTOMER (including any subsidiaries or affiliates or contractors with access) computers and records, during CUSTOMER's normal business hours, for compliance with the licensing terms for NEXTCLOUD's Subscription. Upon NEXTCLOUD's and Auditor's presentation of their signed written confidentiality statement form to safeguard CUSTOMER's confidential information, CUSTOMER shall fully cooperate with such audit and provide any necessary assistance and access to records and computers. If an audit reveals that CUSTOMER has or at any time has had unlicensed use of, or access to the

Subscription, CUSTOMER will, within 30 days, purchase sufficient Subscriptions to cover any shortfall without benefit of any otherwise applicable discount and subject to fees reflecting the duration of the shortfall. If a shortfall of 5% or more is found, CUSTOMER must reimburse NEXTCLOUD for the costs incurred in the audit.

## 7. Non-Solicitation

During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, CUSTOMER, without NEXTCLOUD prior written consent, shall neither solicit, discuss employment with, offer employment to, nor otherwise use, hire, or utilize the services of

- a) any management-level employee of NEXTCLOUD or
- b) any other employee of NEXTCLOUD with whom CUSTOMER have had contact or who (or whose performance) became known to CUSTOMER in connection with services delivered in relation to this Agreement;

provided, however, that the foregoing provision will not prevent CUSTOMER from hiring any such person

- a) who contacts CUSTOMER in response to a bona fide public advertisement for employment placed by CUSTOMER and not specifically targeted at NEXTCLOUD's employees or
- b) who has not been employed by NEXTCLOUD during the twelve months preceding any such action by CUSTOMER

## 8. Term and termination

This Agreement shall become into effect when both parties have affixed their signature to a commercial proposal subject to this Agreement ("Effective Date").

Unless sooner termination as provided herein, this Agreement shall be valid and enforced for period of minimum one (1) year, commencing on the Effective Date.

After the initial period, the Agreement shall be automatically renewed for additional one (1) year period unless terminated by one party with sixty (60) days written notice prior to the expiration of the initial term or – thereafter – to the end of the respective renewal period.

After the initial period, either party may terminate this Agreement by written notice to the other party, if:

- a) the other party materially defaults in the performance of its obligations contained in this Agreement which defaults continues for a period of thirty (30) days after written notice is given by the non-defaulting party to the other party; or
- b) the other party shall file a voluntary petition in bankruptcy or other insolvency proceedings, or shall file any petition or answer seeking reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statute, law or regulation of Germany or any state, or shall seek or consent to or acquiesce in the appointment of any trustee, or shall admit in writing its inability to pay its debts generally as they become due; or
- c) a petition is filed against the other party seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation of Germany or any state, and the same remains undismissed or unstayed for an aggregate of sixty (60) days

(whether or not consecutive), or if any trustee, receiver or liquidator of either party is appointed, which appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive).

- d) the other party becomes subject to a change in its ownership that is not reasonably acceptable to the other party.

## 9. Governing Law; Place of Jurisdiction

All matters arising out of or relating to this Agreement will be governed by the substantive laws of Germany without regard to its choice of law provisions. Any suit, action or proceeding arising out of or relating to this Agreement may only be brought (1) before a federal or state court of appropriate jurisdiction in Stuttgart, Germany; and (2) where the laws of such country of CUSTOMER principal place of business are required to be applied to any such action of law the laws of that country shall apply. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to recover reasonable attorneys' fees. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

## 10. Payment

Payment terms: Payments are due and payable in full within thirty (30) days after the date of the invoice. Subscription fees will be invoiced annually in advance.

Payment net of taxes: The fees do not include any taxes, import or export fees, duties, or similar charges, all of which are CUSTOMER's responsibility.

Fees are net of VAT and Sales Tax and will be clearly itemized in the invoices provided by NEXTCLOUD.

Taxes: If any taxes are required by law to be withheld on payments made by CUSTOMER or its Affiliates to NEXTCLOUD, CUSTOMER or its Affiliates, as applicable, may deduct such taxes from payments. CUSTOMER or its Affiliates, as applicable, must comply with the relevant law and pay the taxes directly to the appropriate taxing authority. CUSTOMER shall promptly secure and deliver to NEXTCLOUD an official receipt for the withheld taxes and any other documents needed by NEXTCLOUD to claim a foreign tax credit. The Parties shall take reasonable steps to ensure that taxes withheld are minimized to the extent possible under applicable law. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate, CUSTOMER shall only withhold and pay the reduced tax on behalf of and for the account of NEXTCLOUD if the appropriate exemption certificate is issued by the competent tax authority and is in the possession of CUSTOMER at the time of payment.

Currency: Unless otherwise agreed all amounts and due payments are in Euro (€).

## 11. We are here to help

Should you have any further questions, please do not hesitate to contact us at any time. You can reach us via e-mail at [sales@nextcloud.com](mailto:sales@nextcloud.com). We appreciate your feedback and are happy to help you with any queries you may have.

## Exhibit A

# Nextcloud Support and Incident Levels

## Support levels

### 1<sup>st</sup> level support

1<sup>st</sup> level support is the initial support level responsible to handle basic customer issues and covers entry level technical support functions. Typically this support level is provided by the CUSTOMER's IT help desk or a commissioned call centre. Training for first level support agents is to be provided by CUSTOMER.

### 2<sup>nd</sup> level support

2<sup>nd</sup> level support manages more complex incidents, provides diagnosis and resolution to users of the CUSTOMER. Therefore the support agents need to be more experienced and knowledgeable to be capable of advanced technical troubleshooting and analysis methods. They are responsible for assisting 1<sup>st</sup> level support personnel in solving basic technical problems and for investigating escalated issues by confirming the validity of the problem and seeking known solutions related to these more complex issues. 2<sup>nd</sup> level support will often pay a visit to the end user if required.

2<sup>nd</sup> level support is required to collect information such as environment details, database information, log file and general architectural information which can later be used by 3<sup>rd</sup> level support. A detailed list can be found in our issue template:

[https://github.com/nextcloud/server/blob/master/issue\\_template.md](https://github.com/nextcloud/server/blob/master/issue_template.md)

### 3<sup>rd</sup> level support

3<sup>rd</sup> level support is provided by NEXTCLOUD. NEXTCLOUD employs the engineers who deliver over 80% of the code behind the product, which makes them the most skilled experts when it comes to understanding and fixing the software. They are responsible to research issues and develop the best solutions according to the agreed SLA.

They will:

- review the work order and assess the time already spent with the customer so that the work is prioritised in order to meet the SLA
- analyse the code and data collected by 1<sup>st</sup> and 2<sup>nd</sup> level support
- develop fixes and patches to solve the problems reported by CUSTOMER

## Classification of incidents

*"Incident"* means an issue, defect or problem with the Software involving a regression in the security, operability or availability of a deployment of the Software as determined solely by NEXTCLOUD. It expressly excludes new features, compatibility with third party software and document formats and improvement to existing functionality. It also excludes any third-party or community apps that are

installed additionally to the Software provided by NEXTCLOUD.

When the CUSTOMER reports an Incident, NEXTCLOUD will first classify the Incident according to its severity and nature. The following classification scheme will be used to categorize Incidents:

| Severity level | Description   |
|----------------|---|
| 1              | The operation is in production and is mission critical to the business.<br>The product is inoperable and the situation is resulting in a total disruption of work.<br>There is no workaround available. |
| 2              | Operations are severely restricted.<br>Important features are unavailable, although work can continue in a limited fashion.<br>A workaround is available.   |
| 3              | The product does not work as designed resulting in a minor loss of usage.<br>A workaround is available.   |
| 4              | There is no loss of service.<br>This may be a request for documentation or general information etc.   |

## Exhibit B

# Response Procedures

## Support Hours

**Business hours** are defined as:

|  |
|--|
| Monday to Friday from 9AM to 6PM Central European Time (CET) |
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**Extended business hours** are defined as:

|  |
|--|
| Monday to Friday from 8AM to 8PM Central European Time (CET) |
|--|

Depending on the agreed Nextcloud Subscription level, Incidents will have to be reported either through NEXTCLOUD's customer portal, via email to the address [support@nextcloud.com](mailto:support@nextcloud.com) or via telephone at the number sent to the CUSTOMER at registration time.

## Reporting an Incident

When a potentially new Incident is identified, the first step is for the CUSTOMER to build a concise and complete statement of the Incident in English. The required information includes:

- The name of the Software component which failed
- The exact version of the component in question
- A complete description of how the problem can be reproduced, along with steps to follow to reproduce the problem
- Expected and actual results
- Relevant browser, server, networking and Nextcloud logs

If the Incident is only reproducible in conjunction with modifications developed by the CUSTOMER, such modifications and the associated documentation necessary to reproduce the problem must be provided before the Incident can be triaged. If the Incident is only reproducible on hardware not available to NEXTCLOUD, the relevant hardware and all supporting infrastructure must be made remotely available to NEXTCLOUD in order to triage and classify the Incident.

Any documentation and installation data provided by the CUSTOMER will be treated as Confidential.

In order to provide the CUSTOMER with the best support possible, NEXTCLOUD requests that the CUSTOMER identifies a dedicated point of contact for the Incident who will be available until the Incident is resolved.

Upon receipt from the CUSTOMER of an Incident report, NEXTCLOUD shall take prompt corrective action to remedy the reported Incident and shall work continuously using commercially reasonable efforts to provide at least a temporary workaround or fix (i.e., a patch, temporary release, or update release, which allows end-users to continue to use all functionality of the Software in all material respects) within the time frames defined in Exhibit C for each subscription level.

For all Incident severity levels, except level 4, NEXTCLOUD shall then use commercially reasonable efforts to provide an official fix or workaround within the time frames defined in Exhibit C for each subscription level.



## Exhibit C

# Response Time

### 1. Nextcloud Files Basic subscription

| Severity level | Time to response | Time to temporary solution  | Time to resolution |
|----------------|------------------|---|--------------------|
| 1              | 3 working days   | 5 working days  | 5 working days     |
| 2              | 3 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 5 working days  | 5 working days     |
| 3              | 3 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 22 working days   | 22 working days    |
| 4              | 5 working days   | NEXTCLOUD may, at its discretion, provide a temporary workaround or fix, and/or provide a permanent update in a future release of the Software or reasonably deny the request |                    |

## 2. Nextcloud Files Standard subscription

| Severity level | Time to response | Time to temporary solution  | Time to resolution |
|----------------|------------------|---|--------------------|
| 1              | 2 working days   | 4 working days  | 5 working days     |
| 2              | 2 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 5 working days  | 5 working days     |
| 3              | 2 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 22 working days   | 22 working days    |
| 4              | 5 working days   | NEXTCLOUD may, at its discretion, provide a temporary workaround or fix, and/or provide a permanent update in a future release of the Software or reasonably deny the request |                    |

## 3. Nextcloud Files Premium subscription

| Severity level | Time to response | Time to temporary solution  | Time to resolution |
|----------------|------------------|---|--------------------|
| 1              | 1 working days   | 2 working days  | 5 working days     |
| 2              | 1 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 5 working days  | 5 working days     |
| 3              | 1 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 22 working days   | 22 working days    |
| 4              | 5 working days   | NEXTCLOUD may, at its discretion, provide a temporary workaround or fix, and/or provide a permanent update in a future release of the Software or reasonably deny the request |                    |

## 4. Nextcloud Files Géant subscription

| Severity level | Time to response | Time to temporary solution  | Time to resolution |
|----------------|------------------|---|--------------------|
| 1              | 3 working days   | 5 working days  | 5 working days     |
| 2              | 3 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 5 working days  | 5 working days     |
| 3              | 3 working days   | Within a time period to be mutually agreed on by the parties, but in no event longer than 22 working days   | 22 working days    |
| 4              | 5 working days   | NEXTCLOUD may, at its discretion, provide a temporary workaround or fix, and/or provide a permanent update in a future release of the Software or reasonably deny the request |                    |

In case of a **Premium Subscription**, up to 24/7 email and phone support is available.

*"Time to response"* means the time between the initial notification of the issue by the CUSTOMER and the acknowledgement by NEXTCLOUD of the existence of an issue.

*"Time to temporary solution"* means the time between the initial notification of the issue by the CUSTOMER, or the discovery of the defect by NEXTCLOUD, and the delivery of a temporary solution.

*"Time to resolution"* means the time between the delivery of a temporary solution and the delivery of a permanent solution.

With respect to the foregoing, and subject to CUSTOMER's existing limitation of liability agreed elsewhere, NEXTCLOUD shall work diligently during the support hours to provide the service levels set forth above. The parties understand and agree that a temporary work around or fix shall not constitute the resolution of any such defect.