

G-Cloud Vendor Terms

1. SCOPE OF VENDOR SERVICES AND GRANT OF LIMITED LICENSE.

- a. Scope of the Vendor Terms. These G-Cloud Vendor Terms shall apply to the Parties with respect to the Services delivered by Vendor to the Buyer under a Call-Off Contract. Any new Vendor releases, corrections, updates and/or other software provided to Buyer by Vendor shall be deemed Services under the relevant Call-Off Contract. For purposes of the Call-Off Contract, Services shall exclude any “**Third-Party Application**,” which shall mean a web-based, offline, mobile, or other software application functionality that is provided by Buyer or a third party and interoperates with a Service. Use of the Vendor Services includes use of Vendor’s then-current user guides and other end user documentation for the Vendor Services (the “**Documentation**”) that are publicly available at www.nexthink.com (or successor URL) (the “**Vendor Site**”). Use of and access to the Vendor Services by the Buyer is provided solely pursuant to the Call-Off Contract, and the specific Services provided by the Vendor are set forth in the service list in Appendix 1 (the “**Service List**”) (the “**Vendor Services**”).
- b. Use and Access Rights. Vendor hereby grants to Buyer a limited, non-exclusive and non-transferable right during the applicable Call-Off Contract Period to use and access the Vendor Services referenced in the Service List, solely for its internal business purposes as set forth in the Call-Off Contract. The Vendor Services and Documentation are not sold, and are subject to license or subscription rights, as the case may be, for the duration of the Subscription Term (as defined below).
- c. Collector. The Vendor Services include and require a software client component to be installed in Buyer’s (desktop or other) environment (also known as the “**Collector**”) on individual endpoints or devices (the “**Device(s)**”) as set forth in the Documentation. During the Call-Off Contract Period for such Devices under an Order Form, Vendor hereby grants to Buyer a limited non-exclusive and non-transferable license to use such Collector as far as necessary to use Vendor Services on the permitted Devices. Once allocated to a Device, the Collector may not be transferred to another Device, except when the original Device has been decommissioned.
- d. Documentation. Buyer shall be entitled to: (i) use the Documentation internally solely to support its authorized use of the Vendor Services and (ii) make that number of copies of the Documentation as are reasonably required for it to exercise its rights under clause 1.d.(i). Any such copies shall include all trademarks or other proprietary legends where and as set forth in the original.
- e. Restrictions. Buyer shall not, and shall not attempt to (and shall not authorize or allow Authorized Users or any third party to attempt to): (i) disassemble, reverse-engineer, decompile, or otherwise attempt to derive source code from the Vendor Services in whole or in part; (ii) modify, adapt, create derivative works based upon, or translate the Vendor Services; (iii) assign, transfer, re-license, sublicense, lease, loan, resell, distribute or otherwise grant any rights in the Vendor Services in any form to any other party (other than Authorized Users); (iv) input, upload, transmit, or otherwise provide to or through the Vendor Services, 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 the Vendor Services in any manner; or (vi) use the Vendor Services or the Documentation on behalf of any third party or for any purpose other than monitoring, collecting, analyzing and using Buyer Data (as defined below) for Buyer’s internal purposes.
- f. Authorized Users. The Vendor Services shall be used solely by employees and contractors of Buyer authorized by Buyer to use the Vendor Services under the rights granted pursuant to these G-Cloud Vendor Terms (“**Authorized Users**”). Buyer shall cause all Authorized Users to comply with Buyer’s obligations under Call-Off Contract and shall be responsible for their use of the Vendor Services hereunder.
- g. Buyer Responsibilities. Buyer is responsible for all activities conducted under its and its Authorized Users’ logins to the Vendor Service. Buyer shall use the Services in compliance with the Call-Off Contract (including these G-Cloud Vendor Terms), the applicable Order Form, Documentation, and applicable regulation and law. The Buyer acknowledges that the relevant section of the Order Form shall reflect the responsibilities set out in this Section.
- h. Suspension. Without limiting the rights and remedies of Vendor (including its rights to payment of the Charges, including during any period of suspension), any use of the Vendor Service in breach of the Call-Off Contract (including these Vendor Terms), Documentation, or the Order Form by Buyer or Authorized Users that in Vendor’s judgment (acting reasonably) threatens the security, integrity or availability of the Vendor Service may result in Vendor’s immediate suspension of Buyer’s access to the Vendor Service; provided, however, that Vendor will use commercially reasonable efforts under the

circumstances to provide Buyer with notice and an opportunity to remedy such violation or threat prior to such suspension. The Supplier and Buyer acknowledge that suspension is a necessary and proportionate right for the Vendor in order to protect the security, integrity or availability of the Vendor Service for Buyer and Vendor's other customers. As a result, the Supplier and Buyer agree to: (i) incorporate this term; and (ii) disapply any restrictions on suspending the Vendor Services.

- i. **VDI Session.** For the purposes of this Agreement, a “**VDI Session**” is defined as a single instance of access by an Authorized User to a specific virtualized environment hosted on the Customer’s internal or external infrastructure. Vendor hereby grants to Buyer a right to use the Services for a maximum number of VDI Sessions, as specified in the Call Off. The maximum number of authorized VDI Sessions is calculated by adding the maximum number of simultaneous sessions used by each virtual Device or group of virtual Devices (desktop pool) over a 24-hour period (UTC).

2. **TERMINATION.**

- a. **Effect of Termination.** Upon the effective date of termination of the Call-Off Contract, all rights granted hereunder these Vendor Terms shall terminate, and Buyer shall immediately cease any and all use of the Vendor Services and Documentation, return to Vendor all copies of the Documentation and any software, and permanently and securely delete the Documentation and any software from any electronic media containing them. Upon Vendor’s request, Buyer shall provide the Vendor with a statement signed by Buyer confirming that Buyer has no copies of Documentation or any Vendor software in Buyer’s possession or control and has ceased all use of Vendor Services and Documentation. The terms of Sections 1(e) (Restrictions), 2(a) (Effect of Termination), 3 (Services Fees and Payment Terms), 5 (Intellectual Property Rights), 9 (Representations, Warranties and Disclaimers), 10 (Limitation of Liability), and 12 (General) shall survive termination or expiration of the Call-Off Contract (including these G-Cloud Vendor Terms) in accordance with the provisions of the Call-Off Contract.

3. **SERVICES FEES AND PAYMENT TERMS.**

- a. The Charges payable by the Buyer shall be as set out in the Call-Off Contract and Order Form.
- b. Buyer may increase the quantity of Collectors licensed under a Call-Off Contract (an “**Additional Use**”). In the event of an Additional Use, Vendor shall notify Buyer (“**Initial Notification**”) in order to (i) increase the permitted quantity as required by Buyer by issuing a new Order with the associated fees or (ii) provide Buyer with the opportunity to correct any unwanted Additional Use. The Parties agree that notwithstanding the foregoing, if no action is taken by Buyer to adjust or correct the Additional Use within one (1) month of the Initial Notification, Supplier shall charge Buyer for any Additional Use made from the initial Additional Use date at a rate that includes a 20% premium on the negotiated fee, in accordance with the terms of this Agreement. Buyer understands and agrees that the provision of this Section 3(b) is designed to address isolated instances of Additional Use, rather than allowing for a gradual increase in Collector usage over time.

4. **PERSONAL DATA; BUYER DATA; TELEMETRY DATA.**

- a. **Personal Data.** The Parties agree that the Data Processing Addendum (the “**DPA**”) at the Vendor Site shall supplement and be read in conjunction with Clause 17 and Joint Schedule 10 (Processing Data) of the Call-Off Contract and shall apply to the extent that Vendor processes Personal Data on behalf of Buyer in the course of providing the Vendor Services hereunder.
- b. **Buyer Data.** For purposes of these Vendor Terms, “**Buyer Data**” means any data and information specific to Buyer or its use of the Vendor Services, and which is provided, submitted and/or otherwise inputted by Authorized Users into the Vendor Services in the course of utilizing the Vendor Services (subject to Vendor’s intellectual property rights in the Vendor Services). As between Vendor and Buyer, Buyer owns its Buyer Data. The license granted by the Buyer to the Vendor under paragraph 7 of IPR Option B4 of Call-Off Schedule 1 (Intellectual Property Rights) of the Call-Off Contract or, if another IPR Option is set out in the Order Form, the provision granting the Vendor a license to the Buyer’s IPR, shall include the rights to host, process, copy, transmit and display Buyer Data, as reasonably necessary for Vendor to: (A) provide the Vendor Services under the Call-Off Contract; (B) log Buyer’s use of the Vendor Services for security and other internal business purposes; and/or (C) enforce the terms of Call-Off Contract. Subject to the limited licenses granted under the G-Cloud Vendor Terms, Vendor acquires no right, title or interest in any Buyer Data. Buyer shall be responsible for (w) the legality of Buyer Data and the legal means by which Buyer acquired and transferred to Vendor any Buyer Data, as applicable, (x) the accuracy and quality of Buyer Data, (y) any required notices, consents, and/or authorizations related

to Buyer's provision of, and Vendor's processing of, Buyer Data, and (z) using commercially reasonable efforts to prevent unauthorized access to or use of the Vendor Services, and notifying Vendor promptly of any such unauthorized access or use.

- c. **Telemetry Data.** Vendor owns the Telemetry Data (as defined herein). Subject to the limited licenses granted herein, Buyer acquires no right, title or interest in any Telemetry Data. Vendor shall be responsible for the legal means by which Vendor acquires Telemetry Data. "**Telemetry Data**" means the aggregated or anonymized statistical usage, analytics, benchmarking, performance, qualitative and other data derived from the operation of the Vendor Service across the Vendor Telemetry, transaction and user base, or segments thereof. Telemetry Data is not Buyer Data or Personal Data. To the extent that data is reasonably identifiable to a Buyer or individual user, then it is by definition not Telemetry Data, but rather Buyer Data or Personal Data, as the case may be.

- 5. **INTELLECTUAL PROPERTY RIGHTS.** Vendor and its licensors are the sole owners of the Vendor Services, Collector, Documentation, Telemetry Data, and any of its Confidential Information not referenced here (including any modifications or improvements made thereto before or during the term of the Agreement and regardless of which Party made them) (collectively, the "**Vendor Materials**") and of all copyright, trade secret, patent, trademark and other intellectual property rights therein and thereto throughout the world (collectively, the "**IP Rights**"). Neither these G-Cloud Vendor Terms nor any other part of the Call-Off Contract provide to Buyer or an Authorized User any title to or ownership of the Vendor Materials, or to any IP Rights related thereto. , but only the limited rights expressly granted under these G-Cloud Vendor Terms.

- 6. **SUPPORT SERVICES AND SERVICE LEVELS.** Vendor shall provide support for the Vendor Services in accordance with the Support Services Addendum and the Service Level Addendum available. The Support Services Addendum and the Service Level Addendum form part of the Services Addendum published on the Vendor Site. Buyer shall benefit from the latest available version of this Services Addendum, but only to the extent such newer version has any stronger commitments from the Vendor towards Buyer. The Parties acknowledge that the Vendor's ability to offer the Vendor Services (including the Price List) is based on the Service Level Standards set out in the Services Addendum and not any performance indicators requested by the Buyer. Any request for performance indicators will be subject to the agreement of the Vendor and, if such agreement is reached, may result in additional charges.

- 7. **INFORMATION SECURITY.** Vendor shall maintain its standard information security measures as set forth in its then current Information Security Addendum on the Vendor Site. Buyer shall benefit from the latest available version of this Information Security Addendum published on Vendor's Site, but only to the extent such newer version has any stronger commitments from Vendor towards Buyer.

- 8. **CONFIDENTIAL INFORMATION.** The provisions of this Section 8 shall supplement Clause 18 of the Call-Off Contract. During the course of the Call-Off Contract, each Party (the "**Disclosing Party**") may disclose to the other Party (the "**Receiving Party**") certain Confidential Information of the Disclosing Party. The Receiving Party agrees to protect the Confidential Information in the same manner that it protects the confidentiality of its own confidential and/or proprietary information of like kind, but in no event using less than a reasonable standard of care. Except with the Disclosing Party's prior written consent, the Receiving Party shall not (a) use any Confidential Information for any purpose outside the scope of the Call-Off Contract; or (b) disclose or make the Confidential Information available to any party, except on a "need to know" basis to the Receiving Party's employees, contractors, and agents that have signed an agreement containing non-disclosure and non-use provisions substantially similar to those set forth herein. If the Receiving Party is required by applicable law or regulation to disclose or otherwise report Confidential Information, it shall provide prompt notice of such required disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Due to the unique nature of the Confidential Information, the Parties agree that there can be no adequate remedy at law for the Receiving Party's breach of its obligations under this Section, and any such breach may result in irreparable harm to the Disclosing Party. Therefore, upon any such breach or threat thereof, the Disclosing Party shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it. Upon written request from the Disclosing Party, the Receiving Party shall return to the Disclosing Party all Confidential Information in the Receiving Party's possession or control, and all copies thereof, or, at the Disclosing Party's option, certify its permanent, secure destruction in writing.

9. **WARRANTIES AND DISCLAIMERS.**

- a. **Warranties for Vendor Services (excluding Professional Services).** Vendor warrants that, during the Call-Off Contract Period, the Vendor Services will substantially conform to the specifications contained in the Documentation. Vendor's sole responsibility under this limited warranty shall be to use commercially reasonable efforts to correct or replace the

portion of the Vendor Services which fail to conform to such limited warranty, provided, however, that Buyer has reported in writing to Vendor any defect or error claimed to be a breach of such warranty. The foregoing limited warranties shall not be effective in any of the following cases: (i) Buyer, an Authorized User or any third party acting on Buyer's behalf modifies or misuses the Vendor Services; (ii) Buyer fails to give Vendor written notice of the claimed breach of warranty in a timely manner; (iii) the failure to conform is caused in whole or part by persons other than Vendor, or by products, equipment, software, services or operating environments not furnished by Vendor; or (iv) Buyer fails to implement any correction, update, enhancement, improvement, expansion or revision thereto which Vendor has provided to Buyer. Buyer shall be exclusively responsible for the supervision, management and control of Buyer's and each Authorized User's use of the Vendor Services and for the application of the Vendor Services to Buyer's business.

- b. **Representations and Warranties for Professional Services.** "**Professional Services**" means certain implementation, training or other services described as such in Appendix 5. Buyer acknowledges that before Buyer exercises any right to End the Call-Off Contract for Material Default that is direct attributable to the Vendor Services, it will grant the Vendor the reasonable opportunity to, at Vendor's sole option and expense, promptly re-perform the non-conforming Professional Services or refund to Buyer the fees paid for the non-conforming Professional Services; provided, however, that Buyer notifies Vendor no later than thirty (30) days after delivery of such Professional Services.
- c. **Disclaimer.** THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 9 ARE THE ONLY WARRANTIES GIVEN BY VENDOR WITH RESPECT TO THE VENDOR MATERIALS, WHICH ARE OTHERWISE PROVIDED ON AN AS-IS, AS-AVAILABLE BASIS. VENDOR AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, IRRESPECTIVE OF ANY PREVIOUS COURSE OF DEALING BETWEEN THE PARTIES OR CUSTOM OR USAGE OF TRADE. VENDOR DOES NOT WARRANT THAT THE VENDOR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. VENDOR MAKES NO WARRANTY REGARDING ANY THIRD-PARTY APPLICATION WITH WHICH THE VENDOR SERVICES MAY INTEROPERATE.

10. **LIMITATION OF LIABILITY.**

- a. For the avoidance of doubt, as the Vendor is not a party to the Call-Off Contract, the Vendor shall not be subject to any liability (save those liabilities that cannot be legally limited or excluded) under the terms of the Call-Off Contract.

11. **GENERAL.**

- a. **Vendor Compliance Assessment.** During the Call-Off Contract Term and for a period of one (1) year thereafter Vendor or a third-party on its behalf may, at its expense, during normal business hours and upon reasonable notice, audit Buyer's compliance with restrictions in this Agreement (a "Vendor Compliance Assessment"). If any Vendor Compliance Assessment reveals any non-compliance then, in addition to any remedies otherwise available to Vendor, Buyer will reimburse Vendor for the full cost of the Supplier Compliance Assessment.
- b. **Marketing Usage.** Neither Party shall refer to the identity of the other Party in any marketing materials, publications or press releases, or on its website, unless the prior written consent of the other Party has been obtained; provided, however, that Vendor may, without Buyer's consent, use Buyer's name and/or logo for the limited purpose of identifying Buyer as a buyer of the Vendor Services.
- c. **Export Laws.** Neither Party shall commit any act or request the other Party to commit any act which would violate the export control laws, rules or regulations of the United States or any other country. Further, each Party represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities.
- d. **Anti-Corruption.** Buyer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Vendor's employees or agents in connection with the Call-Off Contract or these G-Cloud Vendor Terms. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Buyer learns of any violation of the above restriction, Buyer will use reasonable efforts to promptly notify Vendor.
- e. **Independent Contractors.** The Parties are independent contractors, and the G-Cloud Vendor Terms and the Call-Off Contract will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties.

- f. Future Commitments. As a matter of policy, Vendor makes no commitments or promises with respect to delivery of any future software features or functions. In relation to any future software features or functions, all presentations, RFP responses and/or product roadmap documents, information, or discussions, are for informational purposes only, and Vendor has no obligation to provide any future releases or upgrades or any features, enhancements, or functions. Buyer acknowledges that no purchasing decisions are based upon the availability of any future software features or functions.
- g. Employee Vetting. Vendor carries out employee vetting at the point of hire but does not carry out additional vetting for individual Buyers. Buyer acknowledges that any request to complete additional vetting may result in additional Charges in accordance with the rate card included in Vendor's Price List.
- h. Business Continuity and Disaster Recovery. Vendor shall ensure it has and maintains its own business continuity and disaster recovery plan in respect of the Vendor Services. Buyer acknowledges that any request to prepare a bespoke business continuity and disaster recovery plan may result in additional Charges in accordance with the rate card included in Vendor's Price List.
- i. Corporate social responsibility. Supplier acknowledges that Vendor's ability to offer the Vendor Services on the terms of these Vendor Terms and the Call-Off Contract (including the Price List) is based on Vendor complying with its own corporate social responsibility commitments and any additional requirements of the Supplier and/or Buyer may result in additional Charges in accordance with the rate card included in Vendor's Price List.
- j. Malicious Software. Buyer acknowledges that it shall be liable to pay additional Charges in accordance with the rate card included in Vendor's Price List in relation to any remedial action required by Vendor as a result of Malicious Software introduced into the Buyer Content as a result of the acts or omissions of the Buyer.

