

Nextcloud Enterprise

Terms and Conditions

Recitals

- a) Nextcloud GmbH (“NEXTCLOUD”) is a specialist company providing Nextcloud software (“SOFTWARE”), an on-premise enterprise file sync & share, groupware, communication and collaboration software.
- b) These Terms and Conditions for Nextcloud Enterprise set out the provisions for Nextcloud support to be performed by Nextcloud GmbH, 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, and contacts NEXTCLOUD Support for third level support issues only, as defined in Exhibit A.
- 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. See Exhibit D for a limited list of such Third-Party Software. 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”).

See Exhibit D (“Partner products”) for conditions with regards to partner products.

2. Ownership and rights

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.

CUSTOMER grants NEXTCLOUD the right to list CUSTOMER as a reference and to use CUSTOMER's name and logo for this purpose.

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. Data protection

NEXTCLOUD does not require any personal data of CUSTOMER for the provision of the support services defined in this agreement. It is the responsibility of the CUSTOMER to protect its data and to ensure that data is not transmitted to NEXTCLOUD.

To the extent that NEXTCLOUD obtains access to personal data of the CUSTOMER in the course of providing support services, in particular to such data of employees or third parties, NEXTCLOUD undertakes to collect, process and use such data only in compliance with the provisions of data protection law and in accordance with the following regulations.

To the extent that NEXTCLOUD processes CUSTOMER data on its behalf within the meaning of Art. 4 No. 2 GDPR, the parties shall conclude an agreement on commissioned data processing which meets the requirements of Art. 28 GDPR. The CUSTOMER remains "master of the data" in the sense of data protection law. NEXTCLOUD shall be responsible for the lawfulness of the collection, processing, transfer and use of the CUSTOMER data in accordance with the order.

The CUSTOMER undertakes to perform regular data backups. In case of data loss, NEXTCLOUD's liability shall be limited to the extent necessary to restore the data from the data backup. Disregard of the obligation to perform data backups shall not result in any further liability of NEXTCLOUD.

In all other respects, the Limitations of Liability pursuant to § 3 of the Terms and Conditions shall apply.

5. 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"). Confidential information is for example, but not limited to, Nextcloud documentation and security information.

Neither party shall disclose, provide or otherwise make available to any third party (including a prospect-

ive 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.

6. Non-disclosure of agreement

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

7. Compliance

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

- a) allow NEXTCLOUD to keep records of the number of users on the instance to certify its compliance with this agreement; and
- b) keep records sufficient to certify its compliance with this Agreement, and 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; If an audit reveals that CUSTOMER has or at any time has had under-subscribed use of the Software, CUSTOMER will, within 30 days, purchase sufficient subscriptions to cover any shortfall and subject to fees reflecting the duration of the shortfall.

8. Non-solicitation

During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, both CUSTOMER and NEXTCLOUD shall not, without the prior written consent of the other, solicit, offer employment to, or otherwise use, employ or engage the services of

- a) an employee of NEXTCLOUD's senior management; or
- b) any other employee with whom contact has been made or who has become known (or whose services have become known) in connection with the services provided under this Agreement;

provided, however, that the foregoing provision will not prevent either party from hiring any such a person

- a) who contacts one of the companies in response to a bona fide public advertisement for employment which has been placed and which is not specifically directed at the employees of the other company; or

who has not been employed by one of the parties in the twelve months preceding such action.

9. 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.

10. 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.

11. Payment

Payment terms: If not stated otherwise, 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 (€).

12. 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. 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

1st level support

1st level support is provided by CUSTOMER and 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.

2nd level support

2nd level support is provided by CUSTOMER and 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 1st 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. 2nd level support will often pay a visit to the end user if required.

2nd 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 3rd level support. A detailed list can be found in our issue template: https://github.com/nextcloud/server/blob/master/.github/ISSUE_TEMPLATE/Bug_report.md

3rd level support

3rd level support is provided by NEXTCLOUD.

3rd level support includes issues regarding the following components that are released as part of the Nextcloud Enterprise subscription:

- the Nextcloud server/apps/clients code
- the offered APIs
- the shipped connectors with their offered configuration capabilities
- support covers only unmodified Nextcloud Enterprise software

Everything else is out of the scope of our service, for example, but not limited to:

- Issues in the underlying infrastructure and the configuration or upgrading the infrastructure (for example, but not limited to, operating system, database, firewall, identity and access management, LDAP, web servers, caches, proxies, any kind of networking)

- issues in third party software and the connections to or from this software that is not part of the Nextcloud Enterprise subscription
- NEXTCLOUD does not operate the system
- NEXTCLOUD does not perform upgrades. For customers with a premium subscription NEXTCLOUD can be on stand-by and offer advice in case something goes wrong. For stand-by support, the date of the upgrade has to be discussed with NEXTCLOUD at least two weeks in advance.
- NEXTCLOUD support does not develop new features, improvements on existing features, or compatibility with third party software and document formats, upon request

The performance and functionality of the software may vary if another infrastructure or configuration is used that is not documented as a recommended infrastructure by Nextcloud.

Long term support

The type of issues resolved through maintenance varies depending on the age of the Nextcloud Major release version and the subscription level of CUSTOMER, hereby after named long term support. Long term support is the maintenance that NEXTCLOUD provides after the initial release date of the major release. NEXTCLOUD will provide maintenance for up to 5 years depending on the Nextcloud Enterprise subscription level. Maintenance is delivered in the form of minor releases through 3 cohorts:

Year	Maintenance	Subscription level
1	All fixes and regressions across major versions released in the last 12 months.	Basic, Géant, Standard & Premium
2	Medium, high and critical security issues, data loss fixes, regressions within version	Premium
3 – 5	High and critical security issues, data loss fixes, regressions within version	Premium

Relevant definitions:

- A **critical** security issue is when the attacker is able to gain remote code execution on the server as a non-admin user.
- A **high** security issue is when the attacker is able to gain access to complete user data or any other user.

- A **medium** security issue is when the attacker is able to gain access to limited disclosure of user data, or when the attacker is able to gain access to a single users' user session, or when the attacker gains access to remote code execution on the server as a non-admin user.
- A **regression** within version is when functionality that was functional with the initial major release broke in minor or patch releases within the same major version.

Maintenance covers the server software and all supported apps (see the "Supported Apps" section in the Nextcloud Files product overview).

Nextcloud ensures availability of its official client applications during the maintenance period of each release. Official Nextcloud clients include the Desktop, Android and iOS clients for Nextcloud Files and the Android and iOS clients for Nextcloud Talk. Availability of the clients is defined as having a version of the app available for current operating systems (Android, iOS, Windows, Mac and Linux, as supported by their respective vendors) that is compatible with the server version still maintained.

Incident levels

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

Severity	Description
1	The issue is causing a total disruption of work, the product is inoperable and the issue is on a production environment.
2	The issue means that important features are inoperable on a production environment.
3	The product does not work as designed.
4	There is no loss of service. This may be a request for documentation or general information etc.

Nextcloud will then use reasonable efforts to respond to the issue within the time frames defined in Exhibit B for each subscription level.

Exhibit B

Response procedures

Support hours

Business hours are defined as:

Monday to Friday from 9AM to 6PM Central European Time (CET) and exclude public national holidays in Germany

Extended business hours are defined as:

Monday to Friday from 8AM to 8PM Central European Time (CET) and exclude public national holidays in Germany

Depending on the agreed Nextcloud Subscription level, issues will have to be reported either through NEXTCLOUD's customer portal, via email to the address 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(s) which failed
- The exact version of the component(s) 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 and a system report, and relevant screenshots

Failure to meet any of the above requirements will delay the processing of the request and will reset the clock for that 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.

Exhibit C

Response time

“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 resolution” means the time between the initial notification of the issue by the CUSTOMER, or the discovery of the defect by NEXTCLOUD, and the closing of the issue.

The guaranteed response times can only be delivered if CUSTOMER replies to questions in a timely manner.

The possible conditions of closing depend on the severity level of the issue and are listed in the table below:

Severity	Possible resolutions
1	<ul style="list-style-type: none"> When the production system of the customer is workable again
2	<ul style="list-style-type: none"> When the production system of the customer is workable again
3	<ul style="list-style-type: none"> If we can notify the customer in which release a fix will be available If the issue is solved in a future release If the issue can be solved with infrastructure adjustments If we can suggest a workaround If the issue cannot be reproduced locally If the business impact or the end-user impact is low Solutions for reported bugs will be available in new releases.
4	<ul style="list-style-type: none"> If the request is answered

Nextcloud Enterprise Basic

Severity	Time to response	Time to resolution
1	3 working days	5 working days
2	3 working days	5 working days
3	3 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

Nextcloud Enterprise Standard

Severity	Time to response	Time to resolution
1	2 working days	4 working days
2	2 working days	5 working days
3	2 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

Nextcloud Enterprise Premium

Severity	Time to response	Time to resolution
1	1 working day	2 working days
2	1 working day	5 working days
3	1 working day	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

For **Nextcloud Enterprise Premium**, up to 24/7 email and phone support are optionally available.

Nextcloud Enterprise Géant

Severity	Time to response	Time to resolution
1	3 working days	5 working days
2	3 working days	5 working days
3	3 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

Exhibit D

Partner products

The following partner products, when purchased through Nextcloud GmbH, are covered under the exact same terms and conditions as described in this contract, including all exhibits.

- Collabora Online™, a product from Collabora Ltd
- ONLYOFFICE, a product from Ascensio System SIA
- Hancm Office, a product from Hancm Inc.
- Nextcloud Outlook Secure Sharing Add-in, a product from Sendent
- Talk High Performance Back-end from Struktur AG

A copy of the software license(s) of each of these products is included with the product and available upon request.