nexthink

MASTER SERVICES AGREEMENT

Nexthink France SASU, located at 62 rue de Caumartin, 75009 Paris, France ("**Nexthink**") and customer ("**Customer**") enter into this Cloud Master Services Agreement (this "**Agreement**") as of the date of grant by Nexthink of access rights to the Subscription Services ("**Effective Date**"). Nexthink and Customer are referred to herein collectively as the "**Parties**" and each individually as a "**Party**" to this Agreement. Capitalized terms shall have the meanings set forth in this Agreement.

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:

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

   a. <u>Scope of Agreement</u>. The terms and conditions set forth in this Agreement shall apply to the Parties with respect to certain software programs and related products and services delivered by Nexthink (such software programs, products and services, collectively, the "**Services**") via a software-as-a-service methodology ("**Cloud Services**") and/or an on-premise deployment. Any new releases, corrections, updates and/or other software provided to Customer by Nexthink shall be deemed Services under this Agreement. For purposes of this Agreement, Services shall exclude any "**Third-Party Application**" which shall mean a web-based, offline, mobile, or other software application functionality that is provided by Customer or a third party and interoperates with a Service. Use of the Services includes use of Nexthink's then-current user guides and other end user documentation for the Services (the "**Documentation**") that are publicly available at www.nexthink.com (or successor URL) (the "**Nexthink Site**"). Use of and access to the Services is provided solely pursuant to this Agreement, and the specific Services are set forth in order forms entered into from time to time by the Parties (each, an "**Order**"). The Parties may enter into individual statements of work (each, an "**SOW**") to cover Nexthink's provision of certain implementation, training or other services (the "**Professional Services**"), included within the term Services (unless otherwise expressly excluded), subject to the terms of this Agreement.

   b. <u>Use and Access Rights</u>. Subject to the terms and conditions of this Agreement and the applicable Order, Nexthink hereby grants to Customer a limited, non-exclusive and non-transferable right during the applicable Order Term (as defined below) to use and access the Services referenced in such Order, solely for its internal business purposes as set forth in this Agreement. The Services and Documentation are licensed, not sold.

   c. <u>Collector</u>. The Services include and require a software client component to be installed in Customer'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 Order Term for such Devices under an Order, Nexthink hereby grants to Customer a limited non-exclusive and non-transferable license to use such Collector as far as necessary to use 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. Nexthink may grant to Customer limited versions of the Collector, at no additional charge, to 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.

   d. <u>Documentation</u>. Customer shall be entitled to (i) use the Documentation internally solely to support its authorized use of the Services and (ii) make that number of copies of the Documentation as are reasonably required for it to exercise its rights under clause (i). Any such copies shall include all trademarks or other proprietary legends where and as set forth in the original.

   e. <u>Restrictions</u>. Customer 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 Services in whole or in part; (ii) modify, adapt, create derivative works based upon, or translate the Services; (iii) assign, transfer, re-license, sublicense, lease, loan, resell, distribute or otherwise grant any rights in the Services in any form to any other party (other than Authorized Users); (iv) input, upload, transmit, or otherwise provide to or through the 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 Services in any manner; or (vi) use the Services or the Documentation on behalf of any third party or for any purpose other than monitoring, collecting, analyzing and using Customer Data (as defined below) for Customer's internal business purposes.

   f. <u>Authorized Users</u>. The Services shall be used solely by employees and contractors of Customer or its Affiliates (as defined below) authorized by Customer to use the Services under the rights granted pursuant to this Agreement ("**Authorized Users**"). Customer shall cause all Authorized Users to comply with Customer's obligations under this Agreement and shall be responsible for their use of the Services hereunder. For the purposes of this Agreement, an "**Affiliate**" means any

entity that directly or indirectly controls, is controlled by, or is under common control with the Customer entity signing this Agreement. "**Control**," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

g. Customer Responsibilities. Customer is responsible for all activities conducted under its and its Authorized Users' logins to the Service. Customer shall use the Services in compliance with this Agreement, the applicable Order Forms, Documentation, and applicable regulation and law.

h. Customer Affiliates. Customer Affiliates may purchase and use the Service subject to the terms of this Agreement by executing Orders or Statements of Work hereunder that incorporate by reference the terms of this Agreement, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order(s) or Statement(s) of Work. All Services provided to Customer Affiliate shall be subject to the terms of this Agreement.

i. Suspension. Without limiting the rights and remedies of Nexthink, any use of the Service in breach of this Agreement, Documentation, Orders or SOW by Customer or Authorized Users that in Nexthink's judgment threatens the security, integrity or availability of the Service may result in Nexthink's immediate suspension of Customer's access to the Service; provided, however, that Nexthink will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

j. Partner Orders. Pursuant to a separate agreement between Customer and an authorized Nexthink commercial reseller or distribution partner ("**Nexthink Partner**") (including the applicable ordering document between Customer and such Nexthink Partner, the "**Partner Agreement**"), Customer may procure from such Nexthink Partner certain products or services to be delivered by Nexthink. In such event, this Agreement specifies the terms and conditions under which such products or services will be provided by Nexthink, apart from price, payment and other terms specified in such separate Partner Agreement. Notwithstanding anything to the contrary in this Agreement, if Customer acquires a subscription to the Service or obtains any Professional Services through a Nexthink Partner, then: (a) Customer shall pay the Nexthink Partner all applicable fees in accordance with the Partner Agreement; (b) the Partner Agreement is between Customer and the Nexthink Partner and is not binding on Nexthink, and any disputes related to the Partner Agreement shall be handled directly between Customer and the Nexthink Partner; and (c) any claims for refunds, credits or other monetary claims hereunder, shall be submitted by Customer to the Nexthink Partner. In the event of any conflict between this Agreement and a Partner Agreement, this Agreement shall govern as between Nexthink and Customer. For the avoidance of doubt, reference to amounts or fees paid by Customer or on behalf of Customer shall be those amounts actually paid by Nexthink Partner on behalf of Customer to Nexthink. Nexthink is not party to the pricing and payment provisions between Nexthink Partner and Customer.

2. **TERM OF AGREEMENT, ORDER TERM AND TERMINATION.**

a. Term of Agreement. The term of this Agreement shall commence upon the Effective Date and continue until expiration or termination of the last Order or SOW; and notwithstanding such period, the terms of this Agreement shall be effective for any Order or SOW in effect between the Parties that makes reference to this Agreement or otherwise does not have any stated terms or agreement covering the subject matter herein.

b. Order Term. The initial subscription term of the Services shall be as specified in the applicable Order or SOW (the "**Initial Order Term**"). Unless otherwise mutually agreed by the Parties, following the Initial Order Term, the Order shall automatically renew for successive twelve (12) month periods (each, a "**Renewal Order Term**" and together with the Initial Order Term, the "**Order Term**"), unless either Party gives the other Party written notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term. Unless otherwise agreed by the Parties for an effective Renewal Order Term, Nexthink reserves the right to charge then-applicable subscription fees for each Renewal Order Term, provided notice of any such increase is provided to Customer no later than sixty (60) days prior to the expiration of the then-current Order Term.

c. Termination. Either Party may, at its option and without further notice, immediately terminate this Agreement in its entirety (including all effective Orders and SOWs) and the rights granted hereunder (a "**Termination Right**") if the other Party: (i) breaches any material obligation under this Agreement and such breach is either (a) not curable or (b) not cured within thirty (30) days after the receipt of written notice of the alleged breach; (ii) admits in writing its inability to pay its debts generally as they become due; (iii) makes a general assignment for the benefit of creditors; (iv) institutes proceedings to be adjudicated a voluntary bankrupt, or consents to the filing of a petition of bankruptcy against it; (v) is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (vi) seeks reorganization under any

bankruptcy act or consents to the filing of a petition seeking such reorganization; or (vii) ceases to do business as itself or through a successor. Without limiting any other rights or remedies, Nexthink shall have a separate Termination Right in the event that Customer has failed to pay timely; provided that Nexthink has provided notice of the payment obligation through an invoice or other means, and with respect to the first payment failure only, has provided Customer with a cure period of thirty (30) days.

d. <u>Effect of Termination</u>. Upon the effective date of termination of this Agreement, all rights granted hereunder shall terminate, and Customer shall immediately cease any and all use of the Services and Documentation, return to Nexthink 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 Nexthink's request, Customer shall provide Nexthink with a statement signed by Customer confirming that Customer has no copies of Documentation or any Nexthink software in Customer's possession or control and has ceased all use of the Services and Documentation. The terms of Sections 1(e) (Restrictions), 2(d) (Effect of Termination), 3 (Services Fees and Payment Terms), 5 (Intellectual Property Rights), 9 (Representations, Warranties and Disclaimers), 10 (Limitation of Liability), 11 (Indemnification), and 12 (General) shall survive termination or expiration of this Agreement in accordance with the provisions of this Agreement.

3. SERVICES FEES AND PAYMENT TERMS.

a. Services fees shall set forth in the Order and/or the SOW. Unless otherwise stated in the Order or SOW, fees shall be due and payable annually in advance, net thirty (30) days after Customer's receipt of the applicable Nexthink invoice. Nexthink will invoice Customer upon commencement of the Order Term or the effective date for any individual Service under an Order or SOW, as applicable. All fees and charges hereunder are exclusive of, and it is Customer's responsibility to pay, all federal, state, municipal, and other governmental excise, sales, use, customs, value-added, and other taxes or duties now in force or enacted in the future, but excluding taxes based on Nexthink's net income. In the event Customer purchases the Services from a Nexthink Partner, then pricing, payment and related terms will be agreed between Customer and the Nexthink Partner.

b. In the event of any overdue payments, Nexthink reserves the right to charge interest from the due date at the lesser of the rate of four percent (4%) per annum (or the maximum rate permitted by law) and/or to suspend Customer's access to the Services until such payment is made. All costs of collection, including reasonable attorneys' fees, shall be paid by Customer. Unless otherwise specifically provided in this Agreement, all Services fees are non-refundable.

4. PERSONAL DATA; CUSTOMER DATA; PLATFORM DATA.

a. <u>Personal Data</u>. The Parties agree that the then-current Data Processing Addendum available at the Nexthink Site (the "**DPA**") shall apply to the extent that Nexthink processes Personal Data (as defined in the DPA) on behalf of Customer in the course of providing the Cloud Services hereunder.

b. <u>Customer Data</u>. For purposes of this Agreement, "**Customer Data**" means any data and information specific to Customer or its use of the Cloud Services, and which is (i) provided, submitted and/or otherwise inputted by Authorized Users into the Cloud Services in the course of utilizing the Cloud Services, or (ii) generated by Customer or any Authorized User in the course of utilizing the Cloud Services (subject to Nexthink's intellectual property rights in the Services). As between Nexthink and Customer, Customer owns its Customer Data. Customer grants to Nexthink, its Affiliates and applicable contractors a worldwide, limited-term license to host, process, copy, transmit and display Customer Data, as reasonably necessary for Nexthink to: (A) provide the Cloud Services under this Agreement; (B) log Customer's use of the Cloud Services for security and other internal business purposes; and/or (C) enforce the terms of this Agreement. Subject to the limited licenses granted herein, Nexthink acquires no right, title or interest in any Customer Data. Customer shall be responsible for (w) the legality of Customer Data and the legal means by which Customer acquired and transferred to Nexthink any Customer Data, as applicable, (x) the accuracy and quality of Customer Data, (y) any required notices, consents, and/or authorizations related to Customer's provision of, and Nexthink's processing of, Customer Data, and (z) using commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notifying Nexthink promptly of any such unauthorized access or use.

c. <u>Platform Data</u>. Nexthink owns the Platform Data (as defined herein). Subject to the limited licenses granted herein, Customer acquires no right, title or interest in any Platform Data. Nexthink shall be responsible for the legal means by which Nexthink acquires Platform Data. "**Platform Data**" means the aggregated or anonymized statistical usage, analytics, benchmarking, performance, qualitative and other data derived from the operation of the Service across the Nexthink platform, transaction and user base, or segments thereof. Platform Data is not Customer Data or Personal Data.

To the extent that data is reasonably identifiable to a Customer or individual user, then it is by definition not Platform Data, but rather Customer Data or Personal Data, as the case may be.

5. **INTELLECTUAL PROPERTY RIGHTS.** Nexthink and its licensors are the sole owners of the Services, Collector, Documentation, Platform Data, and any of its Confidential Information not referenced here (including any modifications or improvements made thereto) (collectively, the "**Nexthink 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 this Agreement nor any Order or SOW provide to Customer or an Authorized User any title to or ownership of the Nexthink Materials, or to any IP Rights related thereto, but only the limited rights expressly granted under the terms and conditions of this Agreement.

6. **SUPPORT SERVICES AND SERVICE LEVELS.** Nexthink shall provide support for the Services in accordance with its then current Support Services Addendum and shall provide the Cloud Services in accordance with its then current Service Level Addendum. The Support Services Addendum and the Service Level Addendum form part of the Services Addendum published on the Nexthink Site. Customer shall benefit from the latest available version of this Services Addendum, but only to the extent such newer version has any stronger commitments from Nexthink towards Customer.

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

8. **CONFIDENTIAL INFORMATION.** During the course of this Agreement, each Party (the "**Disclosing Party**") may disclose to the other Party (the "**Receiving Party**") certain confidential and/or proprietary information of the Disclosing Party ("**Confidential Information**"). 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) disclose or use any Confidential Information for any purpose outside the scope of this Agreement; 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. Confidential Information shall not include any information that (i) is or becomes generally known to the public, other than as a result of an act or omission of the Receiving Party; (ii) was rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was lawfully received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of or reliance on Confidential Information. 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. **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS.**

   a. <u>Representations and Warranties for Services (excluding Professional Services)</u>. Nexthink warrants that, during the Order Term, the Services will substantially conform to the specifications contained in the Documentation. Nexthink's sole responsibility under this limited warranty shall be to use commercially reasonable efforts to correct or replace the portion of the Services which fail to conform to such limited warranty, provided, however, that Customer has reported in writing to Nexthink 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) Customer, an Authorized User or any third party acting on Customer's behalf modifies or misuses the Services; (ii) Customer fails to give Nexthink 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 Nexthink, or by products, equipment, software, services or operating environments not furnished by Nexthink; or (iv) Customer fails to implement any correction, update, enhancement, improvement, expansion or revision thereto which Nexthink has provided to

Customer. Customer shall be exclusively responsible for the supervision, management and control of Customer's and each Authorized User's use of the Services and for the application of the Services to Customer's business.

b. <u>Representations and Warranties for Professional Services</u>**.** Nexthink warrants that the Professional Services will be performed in a professional and workmanlike manner consistent with applicable industry standards. As Customer's sole remedy and Nexthink's sole liability for any breach of the foregoing warranty set forth in this Section, Nexthink will, at its sole option and expense, promptly re-perform the non-conforming Professional Services or refund to Customer the fees paid for the non-conforming Professional Services; provided, however, that Customer notifies Nexthink no later than thirty (30) days after delivery of such Professional Services.

c. <u>Disclaimer</u>. THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES GIVEN BY NEXTHINK WITH RESPECT TO THE NEXTHINK MATERIALS, WHICH ARE OTHERWISE PROVIDED ON AN AS-IS, AS-AVAILABLE BASIS. NEXTHINK 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. NEXTHINK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. NEXTHINK MAKES NO WARRANTY REGARDING ANY THIRD-PARTY APPLICATION WITH WHICH THE SERVICES MAY INTEROPERATE.

10. **LIMITATION OF LIABILITY.**

a. IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR (I) ANY LOST PROFITS OR REVENUES OR (II) ANY INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION), MATERIAL BREACH OF SECTION 1(E) (RESTRICTIONS), MATERIAL BREACH OF SECTION 8 (CONFIDENTIAL INFORMATION) OR INFRINGEMENT OF THE OTHER PARTY'S IP RIGHTS, IN NO EVENT SHALL EITHER PARTY'S LIABILITY IN THE AGGREGATE UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID TO NEXTHINK BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S, AFFILIATES' AND NEXTHINK PARTNERS' PAYMENT OBLIGATIONS.

11. **INDEMNIFICATION.**

a. Nexthink shall defend Customer against any third party claim or action brought against Customer, and will indemnify and hold harmless Customer from and against any damages, liabilities, costs or expenses (including reasonable attorneys' fees) awarded to a third party by a court or included as part of a final settlement (provided it has been agreed by Nexthink), to the extent based upon an allegation that the Services, when used in accordance with this Agreement, infringe any United States or European Union patent, trademark or copyright of a third party ("**Claims**"), provided that (i) Nexthink is promptly notified in writing of any Claim, (ii) Nexthink has sole control over the defense and/or settlement of the Claim, and (iii) Customer gives Nexthink all available information and assistance (at Nexthink's expense) to enable Nexthink to do so.

b. In addition, if, as the result of any Claim, Customer is enjoined from using the Services, Nexthink, at its sole option and expense, may: (i) procure the right for Customer to continue to use the Services; (ii) replace or modify the Services so as to make them non-infringing (without materially impacting functionality or performance); or (iii) if Nexthink is not able to accomplish either of the foregoing alternatives on commercially reasonable terms, terminate Customer's right to use the Services and refund to Customer that portion of the fee prepaid for the then-current Order Term which reflects the unused portion of such Order Term.

c. The foregoing indemnity shall not apply if the Claim results from: (i) Services that have been modified by anyone other than Nexthink or its subcontractors; (ii) Customer's use of the Services with software, hardware or services not provided by Nexthink; (iii) misuse of the Services or other breach of this Agreement; (iv) use of other than the most current, unaltered corrections and updates to the Services which have been provided to Customer at no additional charge; or (v) compliance by Nexthink with designs, plans or specifications furnished by or on Customer's behalf; or (vi) or any other

non-compliance by Customer of the restrictions in Section 1(e) (Restrictions). Nexthink shall not be liable hereunder for any settlement made by Customer without Nexthink's advance written approval.

d. THE FOREGOING STATES THE ENTIRE LIABILITY OF THE PARTIES WITH RESPECT TO ANY THIRD-PARTY INFRINGEMENT CLAIMS.

e. Customer Indemnification Obligation. Customer will defend Nexthink from any and all claims brought against Nexthink by a third party alleging a violation of a third party's rights arising from Customer's provision or use of the Customer Data ("**Customer Data Claims**"). Customer will indemnify Nexthink for all damages, costs, reasonable attorneys' fees finally awarded by a court of law jurisdiction or paid to a third party in accordance with a settlement agreement signed by Customer, in connection with such Customer Data Claims, provided that (i) Customer is promptly notified in writing of any Customer Data Claim, (ii) Customer has sole control over the defense and/or settlement of the Customer Data Claim, and (iii) Nexthink gives Customer all available information and assistance (at Customer's expense) to enable Customer to do so.

12. <u>GENERAL</u>.

a. <u>Marketing Usage</u>. 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 Nexthink may, without Customer's consent, use Customer's name and/or logo for the limited purpose of identifying Customer as a customer of the Services.

b. <u>Audit</u>. 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 this Agreement (an "**Audit**"). If any such audit reveals any non-compliance by the Customer with these terms and conditions then, in addition to any remedies otherwise available to Nexthink, Customer will reimburse Nexthink for the full cost of the Audit.

c. <u>Stipulations relating to illegal employment</u>. The Parties agree that the documents prescribed by article D8222-5 of the French Labour Code shall be made available to the Client by Nexthink exclusively via the following platforms: Provigis®, Once For All® or e-Attestations®. If the Customer opts for the Once For All® platform, he/she shall inform Nexthink of this choice in view of its registration.

d. <u>Force Majeure</u>. If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a party including but not limited to failures of the internet or any public telecommunications network, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars (a "**Force Majeure Event**"), the party so affected shall be excused from such performance and liability to the extent of such prevention or restriction.

e. <u>Choice of Law; Venue</u>. This Agreement and all claims related to it shall be construed and governed in all respects according to the laws of France, without regard to any conflict of law provisions. With respect to all disputes arising out of or related to this Agreement, the Parties consent to exclusive jurisdiction and venue in the courts of Paris, France. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

f. <u>Export Laws</u>. 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.

g. <u>Anti-Corruption</u>. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Nexthink's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Nexthink.

h. <u>Waiver</u>. No waiver or failure to exercise any option, right or privilege under the terms of this Agreement by either of the Parties hereto on any occasion or occasions shall be construed to be a waiver of the same on any other occasion or of any other option, right or privilege.

i. <u>Assignment</u>. Neither Party may assign this Agreement without the other Party's prior written consent, except (i) to an affiliate, (ii) in the event of a sale of all or substantially all of such Party's assets or stock, or (iii) in the case of an assignment by Nexthink of monies due or becoming due. In any such event, any assignee shall comply with all of the terms and conditions of this Agreement.

j. <u>Independent Contractors</u>. The Parties are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties.

k. <u>Entire Agreement</u>. This Agreement, together with any Order or SOW, constitute the entire understanding and agreement between Customer and Nexthink and supersedes all prior agreements or understandings, oral or written, relating to the subject matter hereof. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. The Parties agree that any preprinted or standard terms or conditions in any invoice or purchase order shall be of no effect. In the event of any conflict or inconsistency between this Agreement and either an Order or SOW, unless the Order or SOW expressly states otherwise in a clause that references this specific sentence (i) the Order or SOW shall control for matters related to payment terms and term length of the Order or SOW; and (ii) this Agreement shall control with respect to all other matters.

l. <u>Future Commitments</u>. Nexthink has made no commitments or promises orally or in writing 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, either prior to or following the date herein, are for informational purposes only, and Nexthink has no obligation to provide any future releases or upgrades or any features, enhancements, or functions, unless delivered under a support program or specifically agreed to in writing by both Parties. Customer acknowledges that no purchasing decisions are based upon any future software features or functions.