

# Terms and Conditions

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2018-2019



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Winner 2013



Winner 2014

# TERMS AND CONDITIONS

Next Telecom Pty Ltd ACN 074 728 724 ('Next Telecom, we or us') will supply You (or Your) with telecommunications and data services ('Services') on the terms and conditions as follows:

These terms and conditions are a Standard Form of Agreement formulated for the purpose of Section 479 of the Telecommunications Act 1997.

## 1.0 Our Agreement with You

- 1.1. As a customer of Next Telecom these terms and conditions form the basis of our agreement.
- 1.2. Our agreement with you also includes any application form which you complete and provide to us. We may accept and rely on a facsimile or scanned email copy of the original application form as if it was an original.
- 1.3. Our agreement with you also includes our currently applicable price list. The price list may change from time to time, but we will notify you of any changes when they happen. Copies of the price lists are available from us on request.
- 1.4. This Agreement will commence on the earlier of:
  - a) the date the Application Form is signed; or
  - b) when you are first connected;  
and ends the earlier of:
  - c) termination by you or us in accordance with this Agreement; or
  - d) the expiry of your Commitment Period (if applicable) and subsequent termination or disconnection by you.
- 1.5. This Agreement will automatically renew for a further consecutive periods of 12 months, unless terminated one month prior to the expiry of any such period, or it is otherwise terminated in accordance with this Agreement.
- 1.6. Upon the request of either party, the parties will meet to discuss the Agreement on a quarterly basis. The Party requesting the meeting must provide four weeks notice and agenda items. This clause does not preclude either Party reporting or escalating performance or obligation issues. Any changes to the Agreement after such meetings, must be in writing and mutually agreed.

## 2.0 Provision of Services

- 2.2. 2.1 We will provide the telecommunications services as indicated in the Application including our online service, Next Telecom (the 'Services') to you in Australia through such Carrier or supplier network or networks as we nominate from time to time directly with the Carrier, supplier, or network operator (the 'Carrier' or 'Supplier'). Where carriage is supplied, the quality of the carriage of the Services will be the same as that of the carrier or supplier. Where we are providing mobile services, we will connect your mobile phone to the network as soon as it is reasonably practicable after our acceptance of the application and its attachments ('Application') and we will use all reasonable efforts to maintain the connection while you comply with this Agreement.
- 2.3. Where we are providing mobile services, we will provide you with a Next Telecom SIM card to use in relation to the Services. Notwithstanding clause 18, the SIM card remains the property of next Telecom.
- 2.4. Where we are transferring mobile services under mobile number portability arrangements,

the SIM card provided in relation to the services will be activated upon your request for activation. If no such activation request is received within 15 business days of dispatch, we will activate the SIM card on your behalf.

- 2.5. Where we are providing data services, the ADSL, NBN, EOC or Fibre access component of the relevant data service and, optionally, a rented CPE router, are supplied to us by a third party(s) as a wholesale supplier.
- 2.6. You must not re supply any of the Services without our expressed agreement in writing.
- 2.7. Where we are providing Next Advantage™ to you, your use of it is governed by both the terms within this Standard Form of Agreement and the Terms and Conditions as laid out in the Application form of Next Advantage™. Where there is any exclusion or inconsistency between the Terms and Conditions of Next Telecom and the Standard Form of Agreement, the latter shall prevail, to the extent of any such exclusion or inconsistency.
- 2.8. You may request that we supply Additional Services.
- 2.9. Any Additional Services requested to be added to your account will be:
  - a) contracted for a 36-month term from the date such Services are activated by our provisioning team, unless agreed otherwise;
  - b) provided on a time and materials basis charged at our Standard Rates; and
  - c) provided in accordance with this Agreement.

### 3.0 Use of Services

- 3.1. You are responsible for the use of the Services at Your premises and from the Service Delivery Point (means the point and/or location at the Customer Premises at which the Equipment and/or the Customer's equipment and/or communications network connects to the Services), even unauthorized use. This means that if someone uses the Services without Your knowledge or consent, you are liable for all costs arising from that use.
- 3.2. You must not use the services and must use your reasonable endeavours to prevent any other person from using the Services:
  - 3.2.1. to break any law or infringe any copyright or any person's rights;
  - 3.2.2. to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - 3.2.3. in any way that damages or interferes with or interrupts the Services of the systems that Next Telecom uses to supply the Services.
  - 3.2.4. You warrant that:
    - (i) no person at the Premises;
    - (ii) requires Priority Assistance;
    - (iii) is a Priority Customer;
    - (iv) is a Provisional Priority Customer; and
    - (v) the Services will not be used to acquire Priority Assistance services.
  - 3.2.5. If you are using Next Telecom Services, you agree to comply with our Acceptable Use Policy and/or Fair Use Policy or the Acceptable Use Policy and/or Fair Use Policy of our nominated Supplier where applicable. Our Policies may be accessed on our website at [www.nexttelecom.com.au/policies](http://www.nexttelecom.com.au/policies) or may be contained in relevant Critical Information Summaries or Service

## 4.0 Your Responsibilities for Next Advantage™ Services

### 4.1. You must:

- 4.1.1. permit Next Telecom employees, agents or contractors to have reasonable access to your Premises to install the Equipment (means any equipment supplied by Next Telecom to You and required for the supply of the Services) and the Network Access line (means the dedicated access line between your Premises and our network supplier or between two or more of your Premises, used in connection with the Services);
- 4.1.2. ensure that Next Telecom has full and unhindered access to the Equipment during normal business hours or at such other times as you and Next Telecom agree;
- 4.1.3. ensure that any equipment used in connection with the Service that is not supplied by Next Telecom has all the necessary approvals, is not prohibited by law or any Regulator and is capable of operating with the Services;
- 4.1.4. not cause or permit any Equipment to be altered, repaired, serviced or moved except by service personnel approved by Next Telecom;
- 4.1.5. ensure, at your own cost, that the Equipment protected from power surges and is located in a suitable physical environment for the operation of the Equipment;
- 4.1.6. ensure at your own cost that you have all the equipment and software necessary (whether by firewall or by any other means) to protect from any external attack the security and integrity of the configuration of the Equipment;
- 4.1.7. use all reasonable endeavours to assist Next Telecom in any investigation by any government body or Regulator in which Next Telecom is involved where your use of the Services is relevant to the investigation regardless of whether or not you are required by law to assist.

### 4.2. If, when Next Telecoms' employees, agents or contractors attend by arrangement at your Premises to:

- 4.2.1. inspect your Premises to establish the method or location of installation of the Equipment or the Network Access Line; or
- 4.2.2. install the Equipment or the Network Access Line, no provision has been made by you for that inspection or installation and that inspection or installation has to be rescheduled, then you shall pay to Next Telecom all costs associated with cancelling, postponing or rescheduling that inspection or installation.

## 5.0 Fault Reporting

- 5.1. You may report a fault with the Services to Next Telecom at any time in accordance with clause 5.
- 5.2. Prior to reporting a fault, you must investigate and ascertain for yourself the cause of the fault and, if required by Next Telecom, provide any further information in relation to the fault, including what you have done to satisfy this clause.
- 5.3. Upon being notified of a fault, Next Telecom will immediately assign a reference number to the fault and will issue that reference number to you. You must use and quote that reference number in relation to any dealings with Next Telecom in respect of that fault.
- 5.4. Next Telecom will use all reasonable endeavours to rectify the fault within the timelines set out in any Service Level Agreement. This includes but is not limited to pro-actively working with third party carriers and suppliers.

- 5.5. When Next Telecom has remedied the fault, it will notify you that the fault ticket is “closed”.
- 5.6. If Next Telecom determines that:
  - 5.6.1. a fault arises out of or in connection with any equipment, facilities, networks or systems of yours; or
  - 5.6.2. there is or was no fault, then Next Telecom may require you to pay Next Telecom reasonable costs and expenses (based on Next Telecom standard rates) in dealing with or resolving a fault, and such cost and expense shall be a debt due and payable by you on demand to Next Telecom.

## 6.0 Software Licence

- 6.1. Next Telecom warrants to you that it owns or has the right to grant sublicences of the software required to support the Services described in a Service Schedule.
- 6.2. Next Telecom grants to you, for use in your own business and on the Equipment, a non-exclusive, personal and non-transferable licence, without right to sub-licence, to use the software required to support the Services described in a Service Schedule.
- 6.3. Subject to this Agreement, the licence to use the software pursuant to clause 6.1 will continue for the Agreement Period.
- 6.4. You must:
  - 6.4.1. treat the software as Confidential Information under clause 39 of this Agreement;
  - 6.4.2. use the software or any portions or aspects thereof (including any methods or concepts utilized therein) solely on the Equipment;
  - 6.4.3. return to Next Telecom all memory media, documentation and/or other material that has been modified, updated or replaced;
  - 6.4.4. not modify, disassemble or decompile the software, or reverse engineer any part of the software or permit others to do so; and
  - 6.4.5. not reproduce or copy the software in whole or in part except for backup and archive purposes.

## 7.0 Charges & Payment

- 7.1. Charges for the services are determined in accordance with the Rate Plan or such other manner specified in the application. We may change the amount of these charges or add new charges from time to time in accordance with clause (13). You will be invoiced for all calls, services, usage or other charges on a monthly basis with 14 days trading terms for payment of accounts thereafter. You must pay all invoiced amounts by the date specified on the relevant invoice. Charges that do not appear on your monthly invoice may appear on future accounts due to processing procedures.
- 7.2. Where we are providing mobile services monthly, you must also pay us:
  - a) Charges for calls you have made to the extent those charges exceed the Minimum Monthly Spend as set out in the Application; and
  - b) Charges for value added services you have used.
- 7.3. Any charges billed to you after the cancellation date from your previous service provider will be due and payable by you to that provider.
- 7.4. Our charges to you may involve fees for connection, initiation or cancellation of any services.
- 7.5. In relation to Mobile Services, you accept that you are responsible for all calls made from your



handset, including any calls made in error. Most mobile phone handsets have a keypad lock function to prevent accidental use. It is your responsibility to take adequate precautions to avoid accidental use.

- 7.6. Accounts overdue may incur interest on the overdue amounts at 3% above the per annum National Australia Bank Overdraft Reference rate applicable at the date of the bill calculated daily. An initial \$15 (ex GST) late payment will be applied to your account.
- 7.7. We may, upon reasonable notice, deactivate or cancel all or part of your service if any amount is not paid by its due date. We reserve the right to restrict any Service at any time if we feel the account has gone over its credit limit or the service appears fraudulent. Discounts may also be revoked during the overdue period. Pricing may revert to the Next Telecom Standard rates. If any amount has not been paid by the due date we reserve the right to deduct any unpaid amount (or part thereof) from your credit card or charge card nominated on the application form. If you have nominated automatic direct debit, your bank account or credit card will be charged 14 days from the invoice date.
- 7.8. Delivery of archived invoices is available upon request in PDF format. Also available on [www.nexttelecom.com.au](http://www.nexttelecom.com.au)
- 7.9. Personal information
  - a) If you default under this agreement, we may use or disclose any personal information collected and recorded in relation to you to assist us in the process of debt recovery.
  - b) Personal information includes personal identifying details such as your name, address, date of birth, employers and driver's license details and status of any of your accounts or related bodies corporate, your credit history, and information about your credit worthiness or capacity.
- 7.10. All payments made using either American Express or Diners Club credit cards will be subject to a 2.75% surcharge.
- 7.11. All payments made using a Visa, MasterCard or Bankcard will be subject to a 1.65% surcharge.
- 7.12. In consideration of us having agreed to supply the services to you, the person signing this agreement on your behalf ("the signatories") hereby jointly and severally guarantee the payment on demand of all monies which are or shall hereafter become due to us by you. This guarantee shall be a continuing guarantee and shall not be affected by us giving time or any other indulgence to you, nor shall any of our rights to sue or report your details to a credit reporting agency be affected.
- 7.13. If you do not pay the account by the due date we reserve the right to place the outstanding amount due in the hands of a Registered Collection Agency for debt recovery. At this time they will assume the responsibility for collection of the outstanding amount and such amount owing will be liable to a 20% surcharge or actual legal costs to cover recovery charges.
- 7.14. For TCP customers: Next Telecom recognises that unforeseen events in your life may affect your ability to pay us for services you have used. Unforeseen events may include sudden illness, loss of employment or any other reasonable cause. If you are a customer covered by the TPC code and unable to pay for Next services you have used call us on 1300 00 6398 and ask for finance to arrange payment options.
- 7.15. We will usually endeavor to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. As per 8.2.2 of ACIF CS42 - Industry Code - Billing, we will not bill Next Telecom Voice or Next Telecom Mobile charges older than 190 days from the date the charge was incurred by you.

## 8.0 GST

- 8.1. Unless expressly stated otherwise, the charges payable for the services under this agreement are exclusive of GST. You must pay to Next Telecom in addition to the charges, for the services, an amount equal to any GST payable on the supply of the services. That additional amount is payable at the same time any part of the charges for the services is payable. Next Telecom will issue a tax invoice to you for the supply of those services at or before that time.

## 9.0 Disputed Amounts

- 9.1. In the event that a bill is disputed by you, the disputed amount will be set aside until an investigation has been completed and all parties are satisfied that all charges are correct. If a charge is found to be incorrect a credit for that charge will be applied to your account. The disputed amount will not be part of the collection process.

## 10.0 Next Telecom's Refund Policy

If a product or service you buy fails to meet a service level agreement you have the right to request a repair, replacement or refund under the Australian Consumer Law.

## 11.0 Transfers to Us

- 11.1. In providing the services, we need to change your arrangements with your current supplier and we will do so in accordance with this clause.
- 11.2. By signing this Agreement or any other Agreement for the provision of telecommunication services by us:
- a) You authorise us to sign on your behalf and in your name, forms of authority to your current supplier of telecommunications services to transfer the services into our name.
  - b) You will on request give written instructions to your current supplier to transfer the services from your name to Next Telecom's.
  - c) You will immediately pay to your current supplier all amounts owing to it for the services being transferred up to the time of transfer to our name.
  - d) If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services under Clause 11.2, we will advise you accordingly, and you must pay your previous Supplier that amount. If you dispute the amount claimed, you must notify us in writing.
  - e) Commencement of Services: The provision of Services commences when your accounts are transferred from another supplier to us or our nominated Supplier, and/or upon completion of installation by us or our nominated Supplier of any necessary Services and/or Supplier Equipment.
  - f) Credits: If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.
  - g) Supplier Indemnity: We will not accept any liability for any amounts owing by you to a Supplier or other person. You indemnify us against any claim made by a Supplier or other person against us in relation to any such amounts.
- 11.3. You agree that for us to provide services to you through our online application at [www.nexttelecom.com.au](http://www.nexttelecom.com.au) you or your nominee will constitute agreement by both You and Your nominee to our terms and conditions. You and your nominee agree to use Next Telecom solely as provided by these terms and conditions. You should ensure that both you and your nominee have read and understood these terms and conditions.

## 12.0 Transfers from Us/Relocation

- 12.1. If in the future you ask us to transfer any of the services to another supplier, then you remain

responsible to us for the amount payable for the services up to the time when we transfer those accounts to another supplier, and you will immediately pay us that amount on receipt of our invoice.

- 12.2. The provision of services ceases when we transfer those accounts to another supplier.
- 12.3. We will bill you for those services within the next normal billing period.
- 12.4. If your services are under Agreement and you relocate your premises your Agreement will recommence for a minimum 24-month period from the date of the relocation being completed.
- 12.5. If after we become aware of any other proper charges (including fees payable to any other supplier) for those services up to the date of transfer, then you will immediately pay us all such amounts on receipt of our invoice.
- 12.6. If Next Telecom has programmed an override code into your phone system or PABX, then calls may continue to be billed by Next Telecom. In this situation you are liable to Next Telecom for all related call costs and it is your sole responsibility to remove or change the override code at your cost to allow calls to go through to your new supplier.

### 13.0 Amendments to the Terms & Conditions

- 13.1. These Terms & Conditions, including charges for services and/or method of calculation may be varied, altered, replaced, or revoked at any time by our giving a minimum of 30 days notice to you by email, mail or as an amendment detailed on the monthly invoice to you.
- 13.2. Without notice, we may at any time change the carrier or supplier, or the carrier's or supplier's products.

### 14.0 Information

- 14.1. You consent to us and our carriers or suppliers exchanging your information and or details and the carrier or suppliers, ourselves and our respective related bodies corporate may all use your details for our own purposes.
- 14.2. You authorise the carrier or suppliers to disclose to us all records, and in particular exchange line details, telephone accounts information, call charge records and call event records.

### 15.0 Credit Check

- 15.1. You will supply without delay all the necessary information to check the worthiness of your credit rating.
- 15.2. If we consider it relevant to assess this application, you agree to us obtaining from a credit-reporting agency a credit report containing personal information about you.
- 15.3. If your organisation is a Trust or member of a Trust you may be required to complete a Trust Compliance Form.
- 15.4. You agree that we may give to any credit provider and/or credit-reporting agency any information contained in the Application. You also agree that we may seek from any credit provider and/or credit-reporting agency any credit report on all parties named in the Application. You acknowledge and understand that such information can include any information regarding your commercial or consumer credit worthiness, credit history or credit capacity that credit providers and/or credit reporting agencies are allowed to give or receive under the Privacy Act.
- 15.5. You authorise and permit us to make independent enquiries of third parties concerning your financial standing and for this purpose, authorise and permit third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought.
- 15.6. If the ownership of your business, our customer, changes involving a change of directors or owners then Next Telecom reserves the right to request a new Application Form is signed and



the new owners be subjected to a credit check. Next Telecom reserves the right to withhold services to the new owner if they fail to meet our credit terms.

- 15.7. Credit Limit: We may from time to time set a credit limit for the provision of a Service to you. You will be notified of this credit limit and any variation thereof.
- 15.8. Security Deposit: We may require you to lodge a security deposit as a condition of us providing a Service to you. You authorise us to deduct from that security deposit any amounts remaining owing to us 30 days after the date of an invoice. The amount of the security deposit will be no greater than the credit limit described in Clause 4.2.
- 15.9. Barring: You acknowledge and agree that we may bar provision of Next Telecom Voice Services, Next Telecom Data Services, Next Telecom Mobile Services or other Services upon reasonable verbal or written notice to you (including transmitting the notice to your email address) where your unbilled calls or usage charges exceed your credit limit with us, or we become aware of unusual calling and/or usage patterns when compared with your previous account activity for that Service, or we have reasonable grounds for believing that you represent a credit risk in relation to the Service.
- 15.10. Equipment Tampering and Service Fraud: We will not be responsible for any equipment tampering or service fraud. Should you have any questions in relation to steps which may be taken to reduce the potential risk of fraud in relation to a Service or Equipment, please contact us and we will endeavour to provide such information or direct you to an appropriate source of information.

## 16.0 Limitation of Liability

- 16.1. Warranties: To the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied by legislation, the common law, equity, trade, custom or usage or otherwise relating to the provision by us of the Services, Software, Maintenance and/or Equipment, or any other equipment or otherwise in connection with this SFOA are expressly excluded
- 16.2. Limitation of Liability: To the maximum extent permitted by law, we will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services, Software, Maintenance and/or Equipment) as a probable result of any act or omission, arising out of or in connection with the supply of any Services, Software, Maintenance and/or Equipment, any and all components of a Service, or any other equipment under this SFOA or otherwise in connection with the relationship established by this SFOA, including any loss or damage caused by our negligence or any fundamental breach of this SFOA. Resupply: Subject to Clause 14.1 our liability for any breach of any term, condition, warranty or under any remedy implied by law which cannot be excluded will be limited at our option to the repair or re-supply of Services, Software, Maintenance and/or Equipment or the payment of the cost of having the Services, Software, Maintenance and/or Equipment re-supplied.
- 16.3. No Liability: To the maximum extent permitted by law our Suppliers have no liability to you in connection with this SFOA and we have no liability to you or to any other person for faults or defects in Services, Software, Maintenance and/or Equipment we supply to you which are caused by or contributed to by your, or a third parties conduct or misuse; or faults or defects that arise in services not provided under this SFOA (even if they are connected, with our consent, to Services which we have arranged under this SFOA) which are due to incompatibility with the Services, Equipment or Software, or any other equipment that we or our Suppliers provide to you.
- 16.4. We accept liability arising from our breach of contract or negligence for any damage to your real or tangible property resulting from the supply of the Services, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it.

16.5. When we are not liable

- 16.5.1. Other than for the liability we accept under clauses 16.1 and 16.2, we exclude all other liability whether to you or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded as it is under this clause 16, our liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods..
- 16.5.2. Notwithstanding anything else in this clause 16, our liability will be reduced to the extent the loss or damage is caused by you, your employees, agents, or contractors.

16.6. In the case of goods:

- 16.6.1. The replacement of goods or the supply of equivalent goods
- 16.6.2. The repair of the goods
- 16.6.3. The payment of the cost of replacing the goods or acquiring equivalent goods.

16.7. Your Liability to us:

You are liable to us for breach of contract or negligence under the principles applied by the courts. However, you are not liable to us for any loss to the extent that it is caused by us (for example, through our negligence or breach of contract).

16.8. Beyond Our Control

We will not be responsible for any loss or damage arising from circumstances outside our reasonable control.

## 17.0 Equipment

- 17.1. Any equipment you use in relation to the services must comply with applicable standards and specifications, including those set by the carrier or supplier.
- 17.2. Risk in any equipment provided to you by us or by the carrier or any third party ('Equipment') passes to you upon delivery.
- 17.3. Title to any equipment does not pass to you until all amounts owing have been paid in full to Us or the carrier under this Agreement and the cost of such equipment will be held by you in a fiduciary capacity as bailee for us.
- 17.4. You irrevocably grant to us, our agents and servants, leave and license without the necessity of giving any notice, to enter at any time on and into premises occupied by you using reasonable force if necessary to inspect, search for and re-take possession of any equipment in respect to which payment is overdue.
- 17.5. On the termination of this Agreement for any reason, you will immediately return all of our equipment.
- 17.6. Where we are providing mobiles services, you must notify us immediately if there is any problem with the service or SIM card or if your mobile phone or SIM card is lost or stolen.

## 18.0 Installation & Programming of Equipment

- 18.1. Where we are providing fixed wire services, you will assist us in ensuring that any equipment necessary for you to receive the services and access our network is installed and programmed so that calls to destinations nominated by us from time to time are, as far as possible, carried by our preferred switched services network.
- 18.2. Where we are providing data services, you will assist us in ensuring that any equipment necessary for you to receive the services and access our network is installed and maintained.

Next Telecom supplies all modems pre-configured to work on the relevant Next Telecom Data service. Any alterations of these settings will leave you liable for charges at \$180 (ex GST) per hour for resetting or reconfiguring of the modem by Next Telecom.

#### 19.0 Customer Premise Equipment,

meaning PABX, Telephone, IP Handsets/Switch/Router or Key System, Software, Block-up converter, and other cable, mountings: CPE

- 19.1. Subject to the payment or contracted monthly service fee for the CPE, we will provide you with CPE as reasonably necessary for installation and which we provide to you to use with the relevant access (using data, PSTN or other telecommunication access medium) service(s), and any associated documentation to your premises specified in the relevant Application or Order Form. We may substitute any component of the CPE or part of any component of the CPE prior to delivery without consultation with you and may in any respect modify the CPE if, in the reasonable opinion of us, the substitution or modification:
- a) Will not adversely affect the performance or capacity of the CPE in any material respect.
  - b) Will not alter the configuration of the CPE in any material respect; and
  - c) Will not otherwise materially affect the obligations of us or prejudice the rights of you under this agreement.

#### 20.0 Delivery

- 20.1. We will use our best endeavors to deliver the CPE to you on the Delivery Date at the site during your normal business hours.
- 20.2. If you wish the CPE to be delivered to a location other than the site, you shall make a request in writing to us not later than 14 days (or such other period as is agreed between us and you) prior to the Delivery Date. We may at our sole discretion determine whether to agree to such a request and what conditions, if any, shall apply in the event of us agreeing to such a request.
- 20.3. If you request delivery of the CPE to be made in advance of the Delivery Date or postponed beyond the Delivery Date, we shall use reasonable endeavors to re-schedule delivery accordingly but shall otherwise be under no obligation to comply with your request.
- 20.4. In the event that we accede to a request made by you pursuant to clauses (b) and (c) of Clause 31.1, we may make such additional charge as we reasonably consider to be appropriate to reflect the direct impact upon our resources in complying with such request.
- 20.5. If we request permission to deliver the CPE prior to the Delivery Date, you shall use your best endeavors to prepare the site and to do all other things necessary to accept early delivery.

#### 21.0 Installation

- 21.1. We or an approved contractor shall install the equipment at the site on the Installation Date. In the absence of agreement to the contrary, the installation shall be affected during our normal business hours.
- 21.2. You shall at your own expense prepare the site, and access to the site, prior to delivery. In doing so, you shall comply with any directions or specifications issued by us.
- 21.3. Without limiting the foregoing, you shall ensure the supply at the site of:-
- a) Adequate electric current for the continuous use of the CPE;
  - b) Adequate electrical and mechanical fittings;
  - c) Appropriate environmental conditions; and
  - d) Provide all relevant facilities for the location of the CPE at your premises;

- e) Provide us with access to all relevant personnel including your technical and other personnel;
  - f) If you do not own the Premises notify the relevant owner and/or lessor and obtain the owner's and/or lessor's permission for us and our representatives and agents to enter the Premises; and install the CPE, including making any minor physical modifications contemplated for the purposes of providing the telecommunication or data service(s). You warrant to us that at the date of installation you will have notified the relevant party and obtained all relevant consents and you indemnify us against any claim made against us, or loss incurred (including legal costs on a full indemnity basis), by another person in connection with such entry and installation.
- 21.4. We shall, upon request from you, supply such information and assistance as we consider reasonable and necessary to enable you to prepare the site.
- 21.5. Notwithstanding the foregoing, we shall, if requested by you and at your expense inspect the site prior to delivery for the purpose of providing an opinion as to whether the site is suitable for delivery and installation of the Equipment.
- 21.6. Where we reasonably determine the requirements for installation exceeds reasonable expectations for any Installation Fee quoted or agreed with you, we will not be bound to provide the installation at the Installation Fee previously quoted or agreed and we agree to discuss and use our respective reasonable endeavors to agree a new Installation Fee; and subject to Our completing the assessment in clause (e) to our satisfaction; You are responsible for all other things not included within the installation.
- 21.7. You agree to obtain and maintain, at your expense, any and all permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the CPE;
- 21.8. In the event that you are relocating your Premises and as a result, your CPE, we may, upon your request, allow you to move the CPE from the Premises to new premises during the Term so that you can continue using the service(s) at the New Premises, subject to:
- a) Our being able to provide the service(s) at the New Premises;
  - b) You agree that these Terms and Conditions apply to the provision of the service(s) at the New Premises; and, (iii) You pay all costs incurred by us as a result of you having the CPE moved.

## 22.0 Exclusions and Maintenance Services

- 22.1. You acknowledge that the CPE does not include the goods and services specified as excluded or not included in the quotation;
- 22.2. You may upon request to us, request that we supply additional services including without limitation, inspection, repairs, adjustment and replacement of unserviceable or defective parts not subject to the limited warranty given in respect of the CPE;
- 22.3. If agreed to by us, additional services will be provided on a time and materials basis charged at our standard rates in effect from time to time and on terms agreed to between us and you; and
- 22.4. Unless agreed in writing, any subsequent agreement to provide additional services between you and us will not modify or vary the Terms and Conditions of this agreement.

## 23.0 Title and Risk

- 23.1. Title in the CPE will not pass to you until all monies owing by you to us have been paid in full.
- 23.2. You shall return the CPE to us on demand at any time prior to payment of the monies owing to us in full and immediately following the making of a demand we shall be entitled to enter your premises for the purpose of retaking the CPE and may resell the equipment to another person.
- 23.3. Notwithstanding Clause 17, risk of loss or damage to the CPE passes to you upon delivery of the CPE to the site.

23.4. Title in all intellectual property rights including without limitation, copyright and trademarks in and to any manuals or user documentation supplied with the CPE shall at all times remain the property of us.

23.5. Insurance

Unless otherwise agreed in writing, you must:

- (a) insure the Comms Group Owned Equipment and keep it insured for its full insurable value under an all risks insurance policy;
- (b) take-out and maintain an adequate level of public risk liability insurance in relation to the Comms Group Owned Equipment and its use;
- (c) take out each insurance policy with a reputable insurer;
- (d) punctually pay all premiums on each insurance policy and not prejudice any policy;
- (e) if we request, provide us with adequate evidence of the insurance policies;
- (f) irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Comms Group Owned Equipment or any injury, death, damage or loss caused by the Comms Group Owned Equipment or its use; and
- (g) appoint us as your attorney to:
  - (i) make, recover and/or compromise in your name any claim under such insurance or against any person; and
  - (ii) appropriate any insurance money or other amount received at our option towards repair or replacement of the Comms Group Owned Equipment or towards any money payable by you to us or to any third party.

24.0 Limited Warranty

24.1. We warrant that the CPE is new.

24.2. We warrant that at the date of this agreement we believe the CPE to be free from defects in materials and workmanship.

24.3. You may during the Warranty Period notify us in writing of any defect or suspected defect in the CPE. We shall, to the extent necessary, inspect, replace or repair the CPE at no additional charge and as soon as practicable after receiving written notice from you.

24.4. We shall not be liable under clause 17 if the defect is the result of:-

- a) Improper use or mismanagement of the CPE by you;
- b) Operation of the CPE other than in accordance with the instructions given by us;
- c) Use of the CPE in a manner not reasonably contemplated by us;
- d) Modification of the CPE not authorised by us;
- e) Use of the CPE in a manner contrary to law;
- f) Subjecting the CPE to unusual or not recommended physical, environmental or electrical stress;
- g) Reinstallation or moving of the CPE by a person other than us;
- h) Use of the CPE by a person other than you;
- i) Your failure to comply with any terms of this agreement; or
- j) Your failure or refusal to install engineering changes or enhancements recommended by us.



- 24.5. If you provide a notice of a defect or suspected defect pursuant to clause 17 and any subsequent inspection of the CPE by us reveals no defect, the direct and indirect costs and expenses associated with such inspection shall be borne by you as an additional charge.
- 24.6. You agree that the warranty in this clause 29.1 may, at our option, be varied or replaced by specific warranty conditions issued in respect of the CPE.

## 25.0 Term of the Agreement,

### Complaint Handling, TCP Code, Suspension, Cancellation, or part Cancellation of a Product, or Termination

- 25.1. In respect of each service set out in the application, this agreement will commence on the date of its signing by you and will continue in relation to that service until:
  - 25.1.1. Expiry of the Agreed Term selected for the service on the application; and
  - 25.1.2. For further consecutive periods of 12 months, unless terminated one month prior to the expiry of any such period, or it is otherwise terminated in accordance with this clause.
  - 25.1.3. Where services are cancelled or moved to another supplier while out of contract 30 days advance notice must be given or the relevant period charges will be invoiced to your account.
- 25.2. The period in which the Agreement is effective in accordance with clause (12) shall be the Agreed Term.
- 25.3. Any new Services requested to be added to your account will be contracted for a 36 month Term from the date such Services are activated by our provisioning team;
- 25.4. We may terminate this Agreement if you breach any term or condition of this Agreement or if a receiver or receiver and manager is appointed over any of your property or assets, or if a liquidator or provisional liquidator is appointed to you or if You enter into any arrangement with your creditors or you assign or otherwise deal with your rights under this agreement without our prior written consent or, in the case of an individual, you die.
- 25.5. We may suspend the services
  - 25.5.1. Following due notice of reason and not less than 5 working days prior to a suspension taking place.
  - 25.5.2. We assess that the you or the account status presents an unacceptably high credit risk to us;
  - 25.5.3. We reasonably suspect fraud or attempted fraud
  - 25.5.4. We are unable, for any reason including the default of a carrier, to provide the whole or part of the service;
  - 25.5.5. You become subject to any form of insolvency administration.
- 25.6. If you request reactivation of services that have been suspended due to lack of payment we reserve the right to request a bond up to \$1,000.00 which is to be applied to the first account issued following reactivation and payable by the due date of that invoice. This will be held until the conclusion of the Agreement period or 12 months, whichever is the greater.
- 25.7. If you churn your services to another carrier all bond monies will be refunded by cheque within 14 days of the account being finalised.
- 25.8. If we suspend the services, you will still remain liable for all monies due to us under the agreement, during the period of such suspension.
- 25.9. If your service has been suspended by us due to non-compliance with the Terms and Conditions

of the Agreement a fee of \$75 (ex GST) is payable to reactivate each service.

25.10. If this agreement is cancelled by you, or terminated by us:

25.10.1. Any right which we have in respect of your obligations under the Agreement that are not fulfilled when the Agreement is ended, will continue to exist;

25.10.2. You must pay us all reasonable costs and expenses incurred by us in relation to the Agreement ending;

25.10.3. Where we are providing mobile services:

- (i) All of your rights to receive the services from us will end and you must return to us the SIM card that we provided to you;
- (ii) You must pay amounts due at the time the agreement ends, including the balance of the Minimum Monthly Spend amounts for all months up to the end of the Agreed Term.
- (iii) If we are supplying a SIM only service and you terminate the service before the agreement ends an early termination fee of \$500.00 per service is payable to us

25.10.4. Where we are providing data access or IP Telephony services, you must pay amounts due at the time the agreement ends, including the balance of the Monthly Service Fees as set out on the application, for all months up to the end of the Agreed Term.

25.10.5. In addition to any liabilities arising under this clause and where we are providing fixed wire services, if you terminate the services before the expiry of the Agreed Term or such lesser time as is agreed in writing by you and us, then you will pay us an early termination fee based on a genuine estimate of the loss (Early Termination Fee) we will incur from the early termination of this agreement. The amount of the Early Termination Fee will be the amount of services and equipment charges billed per month for all the months up to the end of the agreed term.

25.11. Where you have entered into an agreement to purchase 2 or more of the following products from us: Mobile GSM, Fixed Wire (Inbound, Long Distance and Local), Next Advantage™, Video and Voice Conferencing or Data, and during the term of your agreement you cancel the supply of one of the aforementioned products, the pricing of the remaining product(s) or service(s) will revert to the non-bundled (or non-discounted), and thus adjusted rate for the service that we continue to supply to you for the remainder of the agreement.

25.12. Where we are providing Data services, if this agreement is terminated in accordance with this clause, the carrier may arrange for you to be supplied by the carrier with the carrier's services that had been supplied by us, but you acknowledge that the carrier may not be able to make those arrangements immediately and once the carrier makes those arrangements, those services acquired by you will be acquired on the then current carrier's tariff and terms and conditions and the carrier will bill you accordingly.

25.13. Complaint Process. Upon acceptance of a complaint via phone, fax, email or letter we will register the complaint in our CRM. Acknowledgement of the complaint will be advised in writing within two working days. We will endeavor to resolve a complaint on the first contact, in cases where additional information is required from a third party we will notify you should the complaint not be able to be resolved within 15 working days.

25.14. If we are unable to resolve your complaint, you may contact the Telecommunications Industry Ombudsman (TIO).

25.15. Telecommunications Consumer Protections ('TCP') Code  
The "TCP Code applies to consumer customers. A consumer customer is a person who acquires a Consumer Product for the primary purpose of personal or domestic use.

25.16. Variations arising from our Partner agreements.

If a variation results from an amendment to our agreement with a Partner whose service we resell to you:

We shall give you written notice of the variation. We shall give the notice by email or in a bill. We will also offer you the right to terminate your Contract within 42 days of the date of the notice without incurring charges other than: usage or network access charges to the date your Contract would have ended; and outstanding amounts for installation of Equipment; and outstanding amounts for Equipment that is compatible with other supplier's services.

## 26.0 Removable Discount

- 26.1. If we provide a service at a discount on payment over a set term and you cancel the service or terminate the agreement before that term ends, then you will be liable to pay the for service billed at Next Telecoms Standard Rates for the period prior to cancellation and termination. We will bill you for the amount of the discount allowed to you during the elapsed period on your next bill.

## 27.0 Communications & Content

- 27.1. You are responsible for the content of the messages you communicate when using our services as well as the consequences of those messages. You agree that you will not use our services to engage in activities that are illegal, obscene, threatening, defamatory, invade privacy, infringe intellectual property rights, or otherwise injure third parties or are objectionable. You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead others or us as to your identity. We reserve the right to suspend or terminate the service in the event of a breach of this clause and in such cases you will be responsible for any costs associated with suspension or termination of the service.
- 27.2. We believe that any correspondence or emails from Next Telecom or its related parties are a valuable part of our service as they enable you to keep up-to-date with matters regarding Internet security, viruses, useful tools, promotions, sites of interest and other related matters. The correspondence and emails do not constitute Spam as we have a continuing business relationship with you. However, if you do not want to receive such commercial communication from us please contact us to unsubscribe, otherwise we will continue sending you relevant information until you request us to remove your email address (this does not affect other electronic communications specifically regarding the provision of the service of your account).

## 28.0 Use of Mobile Phone Overseas (Roaming)

- 28.1. Where we are providing mobile services, if you use a roaming service overseas in connection with your mobile phone, you agree to pay all call charges in connection with the provision and use of the roaming services, including local taxes and surcharges. We may require you to pay a \$500 security deposit prior to making roaming facilities available.
- 28.2. Where we are providing mobile services, if you fail to comply with the Terms and Conditions outlined herein, Next Telecom may use the security deposit or any part thereof, to meet any costs, loss or liability incurred as a result. Where appropriate, providing you have met the provisions of the Terms and Conditions of this agreement, we will return the outstanding balance of the security deposit, without interest to you.
- 28.3. Where we are providing mobile services, you understand that while roaming an overseas network it may not provide some of the services. There may be limitations to the overseas networks, which may have not been advised to you or us.
- 28.4. Roaming charges are governed by the carrier you use at the time. We advise the Roaming rates will alter without notice and Roaming rates for the country you're going to should be checked on [www.nexttelecom.com.au](http://www.nexttelecom.com.au) prior to your departure.

## 29.0 Conditions of Telstra Wholesale 4G (LTE) & 5G Mobile Service

## 29.1 Rate Plan:

29.1.1 If arrangements between Telcoinabox ("TIAB") (means the wholesaler of Telstra 4G (LTE) & 5G Mobile Services) and Next Telecom are terminated, TIAB may arrange to supply you directly or Next Telecom may choose alternative supplier of Telstra Wholesale mobile services. You acknowledge that the rate plan applicable to the provision of Mobile Service to you may be altered to the nearest applicable Supplier rate plan in the event the rights and obligations of Next Telecom under your Agreement are assigned or novated to TIAB so that TIAB provides the Mobile Services directly to you.

29.1.2 You may not resell or resupply the Mobile Services provided by Next Telecom. This is applicable to both direct customers and channel partners of Next Telecom.

29.1.3 Next Telecom shall have the right to assign or novate all or part of its rights and obligations under your Agreement to Telcoinabox without your consent. You cannot assign or novate all or part of your rights and obligations under your Agreement other than in accordance with this clause 29.

29.1.4 For the purposes of novation, you agree to novate your Agreement to Telcoinabox on receipt of a notice from either Next Telecom or Telcoinabox, such novation to be on terms no less favorable than the terms of the Agreement in existence immediately prior to novation.

29.1.5 You consent to allow Next Telecom to disclose to Telcoinabox or Telstra Wholesale (or its Related Bodies Corporate) your details including information relating to the affairs or personal particulars (including any listed or unlisted telephone number, address or account history) or carriage services supplied to you.

29.1.6 You consent to allow Telcoinabox ("TIAB") or Telstra Wholesale (or its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to you by Next Telecom TIAB or by Telstra Wholesale. Without the express permission of Next Telecom, TIAB or Telstra Wholesale (or its Related Bodies Corporate) may not directly contact you with offers and information via electronic messaging (such as SMS) for marketing purposes.

29.2 Next Telecom, Telcoinabox or Telstra Wholesale will not be liable for any consequential, direct or special loss resulting from the unavailability of any service due to any outage that is beyond its control.

29.3 You agree that you are not a Carrier or Carriage Service provider as defined in the telecommunications ACT of 1997.

29.3.1 Should you become a Carrier of Carriage Service Provider then Next Telecom, Telcoinabox or Telstra Wholesale may cancel your service under notice.

## 29.0 Conditions of Voice & Video Conferencing Service

- 29.1. You are responsible for maintaining the confidentiality of your owner number and any personal identification numbers and passwords ('Account') and for restricting access to your account.
- 29.2. You agree to accept responsibility and liability for all activities that occur under your account whether lawful or unlawful. You are also solely responsible for all uses of your account, whether or not actually or expressly authorised by you.
- 29.3. We do not sell products or services to children. If you are under 18, you may use our services only under the supervision of a parent or guardian.
- 29.4. We reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders at our sole discretion.

## 30.0 Conditions of Data (inc Fibre, NBN, EOC, EFM & DSL) Service

- 30.1. Provision of Next Telecom Data Services: We will provide the Next Telecom Data Services to you, as specified in your Application and where applicable the related Critical Information Summary, when your new Next Telecom Data Services are installed or accounts are transferred from your current Supplier to us or our nominated Supplier and upon successful activation of your Next Telecom Data

Services by us or our nominated Supplier. If you are using Next Telecom Data Services, you agree to comply with our Acceptable Use Policy and/or Fair Use Policy or the Acceptable Use Policy and/or Fair Use Policy of our nominated Supplier where applicable.

- 30.2. Availability of Next Telecom Data Services: We will provide the required Next Telecom Data Services and/or Next Telecom Data Equipment and/or Supplier Equipment subject to availability, geographical and technical capability. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Next Telecom Data Services and/or Next Telecom Data Equipment and/or Supplier Equipment where capacity, geography, technical capability or inadequacy of physical infrastructure at your Site affects the application or installation of the Next Telecom Data Service and/or Next Telecom Data Equipment and/or Supplier Equipment to your Site. You acknowledge that certain Next Telecom Data Services coverage may only be available at selected Sites or in selected metropolitan and/or regional areas and that certain Next Telecom Data Services may not be suitable for and are not supplied for supporting any application that needs continuous fault free services. We do not warrant Next Telecom Data Services and/or Next Telecom Data Equipment and/or Supplier Equipment will be free of interruption, delays, or fault.
- 30.3. Next Telecom Data Services Fees: The charges applicable to the Next Telecom Data Services are specified in the Application and where applicable the related Critical Information Summary. Your usage of Next Telecom Data Services will be calculated based on data uploaded and downloaded, unless your Application or Critical Information Summary states otherwise. We may vary any of the charges applicable to the Next Telecom Data Services.
- 30.4. You acknowledge that you will experience an outage on all existing fixed line voice and fixed line broadband services while the NBN Service is being provisioned, and that you will not be able to receive or make any telephone calls (including to the 000 emergency service) over any fixed line voice services at the premises for the duration of the outage.
- 30.5. You agree to waive your rights and protections afforded by the Customer Service Guarantee for all the existing and proposed fixed line voice services at the premises for the duration of the outage caused by the activation of, or migration to, the NBN Service.

### 31.0 Acceptable use of Internet, Data &/or DSL Service

In addition to the provisions in (27 .0) above, you agree to comply with the acceptable use standards which include but are not limited to the following:

- 31.1. Not to send e-mail that may destroy or damage an e-mail recipient's computer;
- 31.2. Not to knowingly accept email which is unlawful, and violates or infringes upon the rights of any person or corporation;
- 31.3. Not to reveal confidential information about us and or our suppliers which may result in unauthorised usage of the services by a third party;
- 31.4. Not to transmit information which contains viruses or other harmful components;
- 31.5. Not to interfere, damage or destroy computer systems operations of the Services including disobeying any of our requirements, procedures, policies or regulations, other users and or third parties; and
- 31.6. Not to store or transmit any unlawful, threatening, defamatory, offensive or pornographic material that constitutes a criminal or civic offence under State and Commonwealth Laws.

### 32.0 Network Security

- 32.1. You agree to accept responsibility and liability for the security of and or access to your networks and related systems. You will take reasonable and appropriate precautions to prevent any violations of your network and or related systems security.
- 32.2. We do not take responsibility or are liable in any way for any violations of your network and or related systems security, however caused.



- 32.3. While we are responsible for the provision of services, you are responsible for ensuring that adequate security in the form of virus protection or firewalls exist to protect your electronic data or the electronic data of your business against unauthorised or unwarranted intrusion.

### 33.0 Data and Satellite Transmission Requirements

Intentionally left blank.

### 34.0 Inaccessibility due to Interference

You agree that:

- a) Any service levels for the data service(s) do not apply where you are unable to access the data service(s) due to any interference with the CPE that prevents the CPE from:
  - (i) Which are a result of any changes to the surrounding environment subsequent to the installation of the CPE; and
- b) You must either:
  - (i) Take all steps reasonably necessary and within its control to ensure that the interference is removed; or
  - (ii) Where it is not possible to remove the interference, you must engage us to relocate the CPE at your cost.

### 36.0 Mobile Number Porting

Switching ("Porting") your mobile Service Number ("MSN") from your current mobile service provider to ("Next Telecom") is covered by the Australian Communications Industry Forum. Industry Code – Mobile Number Portability ACIF C570 June 2001 ("MNP Code") and bilateral arrangements. Provided that your MSN is capable of being Ported, you may Port your MSN from your current Mobile Service Provider to Next Telecom if that MSN is declared Portable under the ACA Numbering Plan 1997 and no exemption has been granted by the ACA. The terms of the relevant Next Telecom Service Application form (including all associated terms and conditions), as current, and as may be varied from time to time, will apply to your use of the Service.

36.1. You acknowledge and agree with the following:

- a) If your MSN is ported, only your MSN switches to Next Telecom. No existing value added services with your current Mobile Service Provider will be transferred, which may result in the loss of (or the loss of access to) these services from your current Mobile Service Provider, including voice mail, SMS, paging or facsimile services. However, such services may instead be provided by Next Telecom upon application and payment of any relevant fees.
- b) You may have outstanding contractual obligations and costs to your current Mobile Service Provider.
- c) You may have an ongoing contract with your current Mobile Service Provider which requires the payment of cancellation and or termination fees (including and early termination fees) to that mobile Service Provider if you switch to Next Telecom.
- d) Your current Mobile Service Provider may or may not disconnect your existing mobile service and value added services, and Porting your MSN may result in finalisation of your existing account for that service.
- e) If you currently have a prepaid handset, you may need to get any SIM security or network locking removed by your current Mobile Service Provider and or have the handset reprogrammed prior to Porting, or get a new handset.

36.2. You can only withdraw your authority to Port to the Port Cutover Notification being received by

Next Telecom from your current Mobile Service Provider.

- 36.3. Next Telecom does not warrant that it can switch your number from your current Mobile Service Provider. Your current Mobile Service Provider may reject the request to Port, if the information you provide is incorrect or does not match the data held by them. In this case, we reserve the right to correct the information and resubmit the request to switch or dispute the rejection by your current Mobile Service Provider. Additionally, in accordance with the MSN Code, a request to Port may be rejected if:
- a) The request is for a non-Portable MSN, eg. A cancelled MSN.
  - b) The MSN Code requires the request to be rejected; or
  - c) Next Telecom cannot otherwise provide Porting for that MSN in the circumstances.
- 36.4. If your MSN cannot be ported then you may accept a new donor number from Next Telecom on such terms and conditions as imposed by Next Telecom.
- 36.5. Next Telecom does not warrant that your MSN will be switched to Next Telecom within any specified timeframe. The Standard Hours of Operation under the MSN Code are AEST 8am to 8pm Monday to Friday and 10 am to 6pm on Saturday, excluding national public holidays. Next Telecom may be able to provide you with the facility to implement the Porting to your MSN(s) outside the Standard Hours under any Bilateral agreement that may exist from time to time.
- 36.6. Acting in accordance with the MNP Code and any other bilateral arrangements, in the event of a Port to Next Telecom, or Port Withdrawal or Port Reversal to your previous Mobile Service Provider, Next Telecom :
- a) Is not responsible for any period of outage of your Mobile Service and or any related or ancillary services; and
  - b) To the extent that any statutory warranties cannot be lawfully excluded, you agree that Next Telecom's liability to you will be limited in contract, tort or otherwise direct or indirect, for or in relation to the Port, or Port Withdrawal or Port Reversal, including any negligent act or omission by Next Telecom; and
  - c) To the extent that any statutory warranties cannot be lawfully excluded, you agree that Next Telecom's replacement of the goods' supply or equivalent goods; payment of the cost of having the goods repaired; supplying the services again; and the cost of supplying equivalent services.
- 36.7. If you wish to Port your MSN from Next Telecom to another Mobile Service Provider, then you must contact the other provider. If you do so and your agreement has not expired, you will be liable for any termination fees as detailed in clause 25.
- 36.8. Next Telecom reserves the right to charge to Port your MSN to or from Next Telecom.
- 36.9. You expressly authorise Next Telecom to provide information regarding your MSN, Next Telecom and the network type to be disclosed to other telecommunication service providers to enable the transfer of your mobile service from one mobile Service Provider to another, to allow call routing, for customer network fault management, for preventing of fraud, and for routing of SMS messages to your MSN after porting activity. For further information on the Porting process please refer to the MNP CODE.

## 37.0 Next Telecom Direct Services and Local Number Portability

- 37.1. Next Telecom Direct Services (also known as Next Advantage™). Next Telecom Direct Services are internet based VoIP services. Next Telecom Direct Services are marketed by Next Telecom under the brand Next Advantage™. These services are not connected via Telstra's local phone lines. Customers can migrate from Telstra phone lines (or from a Telstra Service Provider) to Next Telecom Direct Services and keep their existing local numbers via Local Number Portability

(Please see section 37.2).

- 37.2. Local Number Portability (LNP) refers to the transfer of a standard telephone service number (for example, a Business Line service or an ISDN 10) between service providers. Local Number Porting includes transfers between Telstra and its service providers and between Telstra and other carriers.
- 37.3. Porting local numbers to, or from, Next Telecom takes between 30 and 120 working days.
- 37.4. Pricing - Customers waiting for their services to port to Next Telecom Direct Network will be charged at Next Telecom's standard rates until the port is completed.
- 37.5. Transferring Numbers from a Next Telecom Direct Service. If the service is still under Agreement with Next Telecom then the customer will be liable to pay an early termination fee, along with all outstanding usages charges. Any costs associated with the move away from Next Telecom to another carrier are the sole responsibility of the customer and may include connection fees charged by the new carrier and PABX programming.

### 38.0 Confidentiality and Intellectual Property

38.1. Intellectual Property: We retain all Intellectual Property Rights in any information relating to a Services including but limited to the design or operation of the Services, Software, Maintenance and/or Equipment, our websites, Client portals, proposals, reports, reporting tools and other technical and commercial information relating to the provision of the services ("Confidential Information").

38.2 Confidential Information: In connection with the Agreement either party may disclose or may have already disclosed, to the receiving party certain of its intellectual property, proprietary or confidential and other information and documents which the disclosing party does not generally make available to the public ("Confidential Information").

38.3 Confidentiality: Each party will keep the Confidential Information confidential and agrees they will not allow any written or electronically recorded material to be copied or reproduced for any purpose other than fulfilling their obligations under the Agreement. Each party agrees not to copy, republish, frame, download, transmit, modify, rent, lease, loan, sell, assign, distribute, license, sublicense, reverse engineer, or create derivative works based on the Confidential Information except as expressly authorised in writing by the other party.

38.4 Return on Termination: On the termination of this Agreement for any reason, the receiving party will upon request return all Confidential Information to the disclosing party. If a party has destroyed all or any of the Confidential Information, then they will give the other party a written declaration accordingly.

38.5 Surviving Obligations: You will keep confidential the way we arrange a Services under this Agreement, including our charges and discounts, and other financial information. You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

38.6 Our Marks: Our trademarks, websites, Client portals, reporting tools, corporate names, trade names, domain names, logos, and service marks are our property. You may not use our marks without our prior written consent.

38.7 You will keep confidential all information supplied by the carrier or us.

### 39.0 Force Majeure

- 39.1. We will not be liable for any delay in the connection of or failure in the operation of services due to any occurrence reasonably beyond our control including failure of any link provided by the carrier.

### 40.0 Entire Agreement

- 40.1. This agreement contains your and our entire understanding to the exclusion of any and all prior or collateral agreement of understanding relating to the services provided whether oral or written. You acknowledge that you have not entered into this agreement in reliance upon any statement made by us, other than as expressly contained in this agreement.
- 40.2. If any part of this agreement is found to be invalid or of no force or effect this agreement shall be construed as though such part had not been inserted and the remainder of the Agreement shall retain its full force and effect.
- 40.3. To the extent that any service specific term or condition conflicts with any other term or condition in this agreement, the term or condition specific to the service will apply.

#### 41.0 Assignment

- 41.1. We may assign the benefit of this Agreement at any time to a person or corporation nominated by us, including a carrier, and, in this event, such assignee or nominated carrier shall deal directly with you for the purposes associated with the provision of Services under this Agreement.

#### 42.0 Next Telecom's Privacy Policy

When you use our website "www.nexttelecom.com.au" ("web site") or if you acquire goods or services from us we are required to follow a specific Privacy Policy that is detailed herein.

You may be providing your personal information to us, through our website, or through our account managers or otherwise. In doing so you agree to the collection, use and disclosure of that information in accordance with this Privacy Policy.

If you do not consent to the use of your personal information for certain reasons, we may not be able to provide you with our services or products.

This policy outlines the measures we have taken to implement the requirements of the Privacy Act 1998 (and the Telecommunications Act 1997 if telecommunications services are provided to you). It is designed to answer any queries you might have about how we collect, use and disclose your personal information. If you have any further queries about Next Telecom's privacy practices, please contact Next Telecom on 1300 00 NEXT (6398). Also, we will provide a copy of this Privacy Policy to you via collection from our reception at Level 1, 69 Christie Street, St Leonard's NSW 2065.

We may hold information that you have provided to us about yourself or your company, and definitely information about your use of our services such as telecommunications services and on-line services. Information that you might provide to us may include information provided in applying for goods or services such as a mobile phone, data or voice services - for example, your contact details, driver's license number, photo identification, general demographic information and financial information. Or information generated by your use of our services - for example, your usage or telecommunications calling patterns and details of any contact you have with Next Telecom such as through our staff or specific account managers. Finally, information provided as part of your use of the Next Telecom web site such as your address, contact numbers or email address/s.

We collect information about you to provide you with a particular product or service/s. We may also use personal information for related purposes such as providing our service or services, approving an application for Next Telecom services, internal accounting and administration, including sharing information with our related bodies corporate or credit agencies for reporting purposes, providing your contact details to recommended suppliers (after your written consent to do so) and for other approved purposes, attempting to protect you and Next Telecom from fraud, preventing credit infringement or developing a better understanding of your needs.

All telecommunications providers now have an obligation to retain certain network data and customer information (called 'metadata') for a period of at least two years Please consult <https://www.ag.gov.au/> data retention for more information on what we are required to retain and why.

If you do not provide us with your personal information, we cannot provide you with these services.

Other than disclosure to service providers (explained below) or as required by law (for example, disclosure to various Government departments or to courts), our policy is that we do not generally give your personal information to other organisations unless you have given us your consent to do so.

We may share your personal information with service providers and other third parties to help us run aspects of our business efficiently. Occasionally Next Telecom might also use your personal information for other purposes or share your information with another organisation because:

- we believe it is necessary to provide you with a service that you have requested;
- we believe it necessary to implement our terms of service;
- we believe it is necessary to protect the rights, property or personal safety of another Next Telecom customer, any member of the public or Next Telecom.
- we believe it is necessary to do so to prevent or help detect fraud or serious credit infringements - for example, we may share information with other utility companies, credit reporting agencies, law enforcement agencies and fraud prevention units;
- we believe it is necessary to protect the interests of Next Telecom for example, disclosure to a court in the event of legal action to which Next Telecom is a party; or
- the assets and operations of the business are being transferred to another party as a going concern.

When we share information with other organisations and service providers as set out above, we do so in accordance with this Privacy Policy. To the extent that these organisations and service providers gain access to your personal information, they are covered by strict privacy rules that prevent them from keeping this information or using this information for any other purpose.

Next Telecom likes to keep you up to date with our special offers and new services, unless you've specifically asked us not to. Please note that once you've signed up to a Next Telecom service, you can choose not to receive marketing information from us by calling our customer care team on 1300 00 NEXT (6398).

If at any time you want to know what personal information we hold about you, you are welcome to request a copy of your customer record by calling the Next Telecom customer care team on 1300 00 NEXT (6398).

If at any time you wish to change personal information that is inaccurate or out of date, please contact us and we will take reasonable steps to amend our records.

Next Telecom endeavours to take all reasonable steps to keep your personal information secure. Only authorised users can access your personal information, and access is only for approved purposes. We train our staff and require our data operators to respect the privacy and confidentiality of your information.

Unfortunately, we can't give you an absolute guarantee that your information is always secure. For example, no data sent over the internet is 100% secure. While we do our best, we can't be held responsible for events arising from unauthorised access to your personal information.

Next Telecom will notify you within 24 hours of becoming aware of:

- any information security incident or business continuity event that may materially affect the data held by the Next Telecom in respect of what information we hold of you; or
- any material information security control or business continuity weakness that Next Telecom expects may not be remediated in a timely manner;

If you have any further queries relating to our Privacy Policy, or you have a problem, please call Next



Telecom customer care on 1300 00 NEXT (6398).

#### 43.0 YOUR OBLIGATIONS

- 43.1 Compliance: You will ensure that you comply at all times with all laws and obligations, including license conditions, applicable to the Services, Equipment, Software and/or Maintenance Services, and their use.
- 43.2 Prohibited Network Connections: You must use reasonable endeavours to ensure that you do not establish, maintain or permit a connection to another person's network, equipment or cabling that is prohibited by or does not meet the requirements of any technical or interconnection standards made by the ACMA under the Act unless such connection is made in accordance with a connection permit issued under the Act or connection rules made under the Act where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.
- 43.3 No Resupply: You must not resupply the Services, Equipment, Software, and/or Maintenance to anyone else without our prior written consent, which we may withhold in our absolute discretion.
- 43.4 Liability for Use: You are liable to us for all charges in relation to the a Service including but not limited to Services, Equipment, Software, and/or Maintenance Services whether or not you authorised the use of that Service or any and all components of a Service by you, another person or organisation.
- 43.5 Billing Contact Details: If you change your billing address, phone number email or other billing contact details, you must notify us before the end of your billing period. Please contact our customer care team if you do not know when the end of you billing period is.
- 43.6 Illegal Use: You must not use the Services, Equipment, Software, and/or Maintenance Services or any and all components of a Service in such a manner that may:
- a. menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person;
  - b. expose us or you to the risk of any legal or administrative action including prosecution under any law or which would bring either of us into disrepute;
  - c. involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts;
  - d. damage our, or our Supplier's network or systems or cause the quality of the Services to be impaired;
  - e. infringe any person's intellectual property, personal (as set out in Privacy Act), or other rights; or
  - f. be unlawful.
- 43.7 Acceptable Use and Fair Use: You agree to comply with the Acceptable Use Policies and/or Fair Use Policies of us and our Suppliers as set out on our website or our Suppliers website or otherwise advised to you from time to time.
- 43.8 Agency Supplier SFOA: Where applicable you agree to comply with the Standard Form of Agreement or any other or any other equivalent agreement of our nominated Agency Supplier notified to you from time to time in relation to Services, Software, Maintenance and/or Equipment for which you have provided us an Agency Supplier Client Authorisation.
- 43.9 Spam: You must not use the Services, Equipment or Software to send unsolicited information to third parties in contravention of the Spam Act.
- 43.10 Qualified Personnel: You will use suitably experienced and authorised personnel in performing your obligations under this Agreement.

#### 44.0 SERVICE NUMBERS, CLI & IPND

- 44.1 Service Numbers: You acknowledge that the Government owns Service Numbers such as telephone numbers and mobile numbers and that:
- the Numbering Plan sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Numbering Plan. Information about your rights of use of your Service Numbers may be obtained by calling us;
  - you do not own or have any legal interest or goodwill in any Service Number or PIN issued to you;
  - you are entitled to continue to use any Service Number we or our Supplier issues to you except in circumstances where the Number Plan allows us to recover the Service Number from you; and
  - you can transfer a Service Number or PIN to another person if you get our consent first.
- 44.2 Caller Line Identification (CLI): If you do not bar CLI in respect of calls made from your equipment then you agree that when a call is made or any text message sent from your equipment your Service Number may be sent automatically to the equipment of the called party. You agree that if a party calling your equipment has not barred CLI in respect of a call made from their equipment then the Service Number of the calling party may be displayed on the screen of your equipment at the time the call is made.
- 44.3 Integrated Public Number Database (IPND): We, like other Suppliers, are required by law to provide your name, address, Service Number and other public number customer details to a database known as the IPND. This applies to all clients, including unlisted clients. However, unlisted service information is marked and controlled in the IPND so that it is only provided for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if you wish to have your IPND data altered in any way.

#### 45.0 MODERN SLAVERY:

Each party must:

- not commit, authorise or permit any action that would be in violation of any anti-modern slavery laws or regulations of a relevant jurisdiction.
- promptly notify each other party, on becoming aware of, or having specific suspicion of, any modern slavery in respect of the negotiation, conclusion or the performance of this Agreement.
- commit to ensuring that the working conditions of their employees will remain in compliance with all applicable legal requirements.



1300 00 NEXT (6398)

[nexttelecom.com.au](http://nexttelecom.com.au)

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