

# Telecommunications Service Book

## Manual of Services

**Tastel Community Telco**

Customer

# Telecommunications Service Book

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**This Telecommunications Service Book forms part of the Standard Form of Agreement of Tastel Community Telco (the *Supplier*).**

# Telecommunications Service Book

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## Telecommunications Service Book

### Section A – General Terms

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#### 1. Scope and Structure

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- 1.1** This Telecommunications Service Book sets out the additional terms which apply to each Service in this book that you (the **Customer**) acquire from the Supplier.
- 1.2** This Service Book is structured as follows:
- (i) general terms as set out in Section A;
  - (ii) additional terms for customers who obtain telecommunications services supplied on a resale basis by Telstra Corporation Limited in Section B;
  - (iii) additional terms for customers who obtain telecommunications services supplied on a resale basis by AAPT Limited in Section C;
  - (iv) additional terms for customers who obtain telecommunications services supplied on a resale basis by Optus Networks Pty Limited in Section D;
  - (v) additional terms for customers who obtain telecommunications services supplied on a resale basis by PowerTel Limited in Section E;
  - (vi) additional terms for customers who obtain telecommunications services supplied on a resale basis by M2 Wholesale Pty Ltd in Section F;
  - (vii) additional terms for customers who obtain telecommunications services supplied on a resale basis by NEC Australia Pty Ltd trading as Nextep Broadband in Section G;
  - (viii) additional terms for customers who obtain telecommunications services supplied on a resale basis by InterCall Australia Pty Ltd in Section H;
  - (ix) additional terms for customers who obtain telecommunications services supplied on a resale basis by IBM Australia Limited in Section I;
  - (x) additional terms for customers who obtain services supplied on a resale basis by Conetix Pty Ltd in Section J; and
  - (xi) additional terms for customers who obtain telecommunications services supplied on a resale basis by Bendigo Community Telco in Section K
  - (xii) definitions as set out in Section L.
- 1.3** Service terms that are unrelated to the telecommunications services supplied to the Customer have no application to that Customer (for example, Customers solely on plans supplied by Telstra do not need to read Sections C through to J).

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**1.4** The general terms set out in Section A and the definitions set out in Section L have a general application to all Customers.

**1.5** The following is a guide to which services relate to each wholesale supplier:

Service Type	Applicable Sections											
	A	B	C	D	E	F	G	H	I	J	K	L
GSM Mobile	X	X		X		X					X	
Standard Fixed Line Services	X	X	X								X	
Direct Access Line	X		X								X	
Internet (standard ADSL and dial-up)	X		X	X	X	X	X				X	X
Wireless Data Services	X	X		X		X					X	
Business Grade Data Services	X		X		X		X		X		X	
Conferencing	X							X			X	
Web Solutions	X		X							X	X	X
VPN	X	X	X			X						X

**1.6** Structure of the Customer's Agreement with the Supplier

The Customer's Agreement with the Supplier comprises:

- (i) any terms stated in the Application Form (including, for example, compliance with the Acceptable Use Policy);
- (ii) the Standard Form of Agreement;
- (iii) the Rate Card or proposal insert (whichever is applicable);
- (iv) the Schedule of Charges; and
- (v) this Telecommunications Services Book.

**1.7** Order of precedence of Agreement

Unless expressly stated otherwise, the order of precedence between the various parts of the Agreement will be resolved in favour of the document appearing earlier in the list stated in clause 1.6 above.

**1.8** Order of precedence of this Telecommunications Services Book

Unless expressly stated otherwise, the order of precedence between the Sections comprising this Telecommunications Services Book is as follows:

- (i) Sections B to J; and then
- (ii) Sections A and K.

**1.9** Customer assistance

If the Customer requires any assistance or further information, please contact our Customer Assistance line on 1300 550 580. Alternatively, contact the National Relay

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Service on 133 677 from anywhere in Australia. For language assistance, contact the Translating & Interpreting Service on 131 450 from anywhere in Australia.

## **2. Billing and Payment**

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- 2.1** The Customer must pay the Supplier the Fees for each Service:
- (i) by the Due Date for the Fees; and
  - (ii) without set-off, counterclaim or deduction.
- 2.2** The parties will bill and pay for Services in accordance with billing and payment arrangements notified by the Supplier from time to time.

## **3. Intellectual Property**

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- 3.1** Any Intellectual Property in the documents (present and future) comprising this Telecommunications Service Book is owned by the Supplier or its suppliers.
- 3.2** Unless otherwise agreed in writing, a party has no rights in respect of any Intellectual Property of the other party.

## **4. Confidential Information**

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- 4.1** The Customer shall:
- (i) keep confidential the Confidential Information of the Supplier Group and any Upstream Supplier;
  - (ii) not use or reproduce the Confidential Information of the Supplier Group or any Upstream Supplier for any purpose other than the purposes of this Agreement or to the extent necessary to obtain professional advice in relation to matters arising under this Agreement;
  - (iii) not disclose, publish or make available in any way the Confidential Information of the Supplier Group or any Upstream Supplier to any person other than the personnel or contractors of the Customer on a 'need to know' basis or as required by law; and
  - (iv) not directly or indirectly take advantage of, or use or exploit in any way any Confidential Information other than in accordance with this Agreement.
  - (v) For the avoidance of doubt, these provisions are in addition to any other provisions in this Agreement which relate to the Supplier or another supplier's Confidential Information.

## **5. Compliance**

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- 5.1** The Customer shall comply with all relevant local, State and Federal laws and regulations.

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- 5.2** The Customer must provide assistance the Supplier Group reasonably requires to comply with applicable legislation, statutory instruments and registered industry based codes of practice, including but not limited to assistance required in relation to the obligations relating to or arising under:
- (i) directory assistance services;
  - (ii) operator services;
  - (iii) the integrated public number database;
  - (iv) emergency call services; and
  - (v) obligations arising under the *Telecommunications Act 1997*.

## **6. Use of Services**

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- 6.1** The Customer agrees that it will not use any Service in such a manner that may:
- (i) menace or harass any person or intentionally cause damage or injury to, any person or property or incite hatred against any person;
  - (ii) expose either party or an Upstream Supplier to the risk of any legal or administrative action including prosecution under any law, or which would bring that party into disrepute;
  - (iii) involve the publication of material that is illegal, or defamatory, or which may promote others to engage in such acts;
  - (iv) infringe any person's Intellectual Property or other rights; or
  - (v) be unlawful.
- 6.2** The Customer agrees that it will not use any Service to send excessive unsolicited data to third parties.
- 6.3** The Customer agrees that it will indemnify the Supplier against any claim it suffers as a result of the Customer's use of the Service in breach of this clause.

## **7. Variation to Services**

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- 7.1** Subject to any specific terms in this Service Book and the Standard Form of Agreement, the Supplier may, without reference to the Customer, upon 30 days' written notice to the Customer vary the Services (provided such variation has no effect to the extent to which it: (i) purports to decrease the functionality or performance of any Service, or (ii) has a material adverse impact upon the Customer).
- 7.2** If the Supplier wishes to vary the Services otherwise than in accordance with clause 7.1, it may do so at any time by giving 30 days' written notice to the Customer (the **Amendment Notice Period**).

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- 7.3** Subject to clause 2.7 of the Standard Form of Agreement, the Customer may terminate the relevant Service by giving written notice to the Supplier during the Amendment Notice Period. Any such termination will take effect within 10 Business Days of the Amendment Notice Period.
- 7.4** If at the end of the Amendment Notice Period the Customer has not elected to terminate the relevant Service, the Customer will be deemed to have accepted the Supplier's amendment and will lose its right to terminate under clause 7.3.

## **8. Supplier Equipment**

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- 8.1** The Customer:
- (i) acknowledges that Supplier Equipment is and will remain the property of the Supplier or its Upstream Supplier;
  - (ii) must use Supplier Equipment in accordance with agreed procedures and any reasonable directions of the Supplier notified to the Customer from time to time; and
  - (iii) must notify the Supplier promptly on becoming aware of any damage to or malfunction of the Supplier Equipment or that any Supplier Equipment requires maintenance of any kind.
- 8.2** The Customer must:
- (i) at the Supplier's expense comply with all reasonable instructions the Supplier gives the Customer to protect the Supplier's (or its Upstream Supplier's) ownership of the Supplier Equipment;
  - (ii) not do anything or authorise anything to be done which might affect the Supplier's (or its Upstream Supplier's) ownership of the Supplier Equipment; and
  - (iii) ensure that the Supplier Equipment is not damaged and remains in good condition.
- 8.3** If any charge is payable for the purchase or use of the Supplier Equipment, the Customer will promptly pay that charge in accordance with this Agreement, subject to agreement as to the charge.
- 8.4** The Customer is liable to pay the Supplier on demand any cost or expense incurred in repairing or replacing equipment or other property owned by the Supplier or its Upstream Supplier, or for which the Supplier is liable, which is damaged or destroyed as a result of any act or omission by the Customer or its officers, employees, agents or contractors.
- 8.5** The Supplier will use reasonable endeavours to ensure that any Supplier Equipment that is supplied by the Supplier (or any agent or contractor) to the Customer will comply with all applicable industry standards.
- 8.6** For the avoidance of doubt, these provisions are in addition to any other provisions in this Agreement which relate to the Supplier or another supplier's equipment.

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## **9. The Customer's obligations**

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**9.1** The Customer will during the term of this Agreement:

- (i) not do any act which damages the reputation of the Supplier or any Upstream Supplier; and
- (ii) provide the Supplier and its Upstream Suppliers with all assistance and co-operation reasonably requested by the Supplier and its Upstream Suppliers in order to enable the Supplier and its Upstream Suppliers and their related bodies corporate to meet their obligations to any supplier of the Supplier and its Upstream Suppliers and/or their related bodies corporate or any other third party in relation to the Services, including without limitation, all assistance or co-operation required in relation to the resolution of any dispute between the Supplier and its Upstream Suppliers or any of their related bodies corporate or any other third party in relation to the Services. The Customer will not be obliged to pay the Supplier money or otherwise incur any out-of-pocket expenses to comply with its obligations under this clause, unless the Supplier is willing to reimburse the Customer for those costs or expenses or, in the case of a dispute, where that dispute has arisen in connection with any act or omission of the Customer .

## **10. Termination**

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**10.1** Either party may terminate all or any of the Services if a force majeure event (within the meaning of clause 13.1) continues for a period of more than 40 Business Days.

**10.2** The waiver by either party of any breach or default under this Agreement will not constitute a waiver of any other or subsequent breach or default, and the provisions of this clause 10.2 will be without prejudice to and will not limit the rights and remedies of the non-defaulting party under this Agreement, or any other or alternative rights and remedies which the non-defaulting party might have.

## **11. Effect of Termination**

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**11.1** On termination of this Agreement, all unpaid sums owing by the Customer will immediately become due and payable to the Supplier, and the Customer will be liable to reimburse the Supplier for all reasonable legal costs and disbursements incurred by the Supplier in the recovery of such sums.

**11.2** On termination of this Agreement the Customer must immediately discontinue any use of the Supplier's Confidential Information, and must not disclose, reveal or publish all or any portion of the Supplier's Confidential Information nor hold itself out or permit or suffer itself to be held out as having any continuing relationship with the Supplier.

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**11.3** Any provisions of this Agreement which in order to give effect to their meaning or to protect the legitimate interests of either party need to survive its termination will survive termination of this Agreement.

## **12. Liability and indemnity**

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**12.1** To the fullest extent permitted by law, the Customer indemnifies the Supplier and its Upstream Supplier and will keep the Supplier and its Upstream Supplier fully indemnified from and against any costs, damages, losses, expenses and liabilities, including reasonable legal costs and disbursements, which the Supplier or Upstream Supplier may suffer or incur, arising out of or in connection with any action or claim (whether based in contract, tort (including negligence), statute or otherwise) by any person against the Supplier, an Upstream Supplier or the Supplier Group where such action or claim arises out of:

- (i) the negligent or wilful act or omission of the Customer or any of its People in relation to this Agreement;
- (ii) any fraud by the Customer or any of its People who use or purport to use the Service;
- (iii) the use of the Service by the Customer or its People; or
- (iv) the Customer's breach of this Agreement.

**12.2** As the performance of some Services may be affected by the Customer's levels of use, the levels of use of other users and of facilities related to providing the Service, the Supplier does not warrant the Service will be free of blockages, delays, faults or errors. Neither the Supplier or its Upstream Supplier will be responsible for any loss or damage to the Customer or its business which may result from such blockages, delays, faults or errors.

**12.3** Unless expressly stated in this Service Book, all implied terms, conditions, warranties, undertakings, inducements and representations, statutory or otherwise, relating to the provision by the Supplier or Upstream Supplier of the Services are excluded to the fullest extent permitted by law.

**12.4** The Supplier's liability for any breach of any term, condition or warranty or under any remedy implied by law (which cannot be excluded) will be limited (if permitted by law) at the Supplier's option to the repair or re-supply of equipment or Services or the payment of the cost of having the equipment or Services re-supplied.

**12.5** The maximum aggregate liability of the Supplier for damages arising out of or in connection with the Agreement is the amount of Fees incurred by the Customer in the 12 months prior to the event giving rise to such liability.

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- 12.6** The limitation in clause 12.5 does not apply to damage to tangible property and death or personal injury.
- 12.7** The Supplier's liability under this Agreement (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that the liability is caused or contributed to by the Customer's equipment or a breach of any terms of the Agreement, or any negligence or unlawful act or omission by the Customer or any of its People.
- 12.8** Neither the Supplier or Upstream Supplier have any liability to the Customer for any loss of profits, loss of revenue, loss of or corruption of data or loss of savings or for any indirect or consequential loss or damage arising out of or in connection with this Agreement (including for negligence).

## **13. Force Majeure**

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- 13.1** The Supplier will not be liable for any default or delay in the performance of its obligations under this Agreement to the extent that such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts, or any other cause beyond the Supplier's reasonable control (individually each being a "force majeure" event), provided such default or delay could not have been prevented by reasonable precautions.
- 13.2** In such event, the Supplier will be excused from any further performance or observance of the obligations so affected for as long as such circumstances prevail. The Supplier will immediately notify the Customer by telephone or email, to be confirmed in writing within five calendar days from the inception of such delay, and describe at a reasonable level of detail the circumstances causing such delay. The Supplier will inform the other party as soon as reasonably practicable following the cessation of such delay.
- 13.3** To avoid any doubt, the Customer shall not be obliged to pay for any Service which is not supplied due to a force majeure event.
- 13.4** Subject to clause 10 (termination), the Supplier must resume supplying the Services as soon as possible after the force majeure event has ceased to exist or prevail.

## **14. Upstream Suppliers**

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- 14.1** The Customer acknowledges and agrees that:
- (i) the Supplier is not obliged to supply any goods or services on any terms more favourable to the Customer than the terms on which such goods or services are supplied to the Supplier;
  - (ii) the Supplier may at any time impose on the Customer any term, condition, warranty, limitation or exclusion which an Upstream Supplier imposes on the Supplier;

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- (iii) if an Upstream Supplier increases the price at which it supplies any necessary or relevant goods or services to the Supplier, the Supplier may immediately alter any applicable charges to reflect such increase; and
- (iv) the Supplier may immediately suspend or terminate this Agreement without any liability to the Customer if for any reason the Supplier no longer acquires any necessary or relevant goods or services from an Upstream Supplier (including without limitation if an Upstream Supplier suspends or terminates its arrangements with the Supplier, even if it is due to the Supplier's breach or default). For the avoidance of doubt, this will be considered a cancellation event for the purposes of clause 11.3 of the Standard Form of Agreement, and will not be considered a material breach of the Agreement.

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## **Section B – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from Telstra Corporation Limited (Telstra) to the Supplier**

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Further details of the plans to which this Section B applies are set out in clause 1.5 of Section A.

### **1. Equipment (Standard Terms)**

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- 1.1** The Supplier and Telstra have absolute discretion to determine how to provide the functionality of any Service and to use, modify or substitute such of their equipment as the Supplier or Telstra believes is reasonably required to provide a Service, unless expressly provided otherwise in this Agreement.
- 1.2** The Customer must not establish, maintain or permit a connection to Telstra's Network, equipment or cabling that is prohibited by or does not meet the requirements of any technical or interconnection standards made by the ACA under the Telecommunications Act 1997 (Cth) unless such connection is made in accordance with:
- (a) a connection permit issued under the Telecommunications Act; or
  - (b) connection rules made under the Telecommunications Act where the Supplier establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.

### **2. Use of Services (Standard Terms)**

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- 2.1** The Customer agrees that it will not use any 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 either party to the risk of any legal or administrative action including prosecution under any law, or which would bring that party into disrepute;
  - (c) involve the publication of material that is illegal, or defamatory, or which may promote others to engage in such acts;
  - (d) infringe any person's Intellectual Property or other rights; or
  - (e) be unlawful.

### **3. Termination and Withdrawal of Services by 6 Months' Notice (Standard Terms)**

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- 3.1** The Supplier may terminate this Agreement and/or any of the Services in whole or in part by giving the Customer not less than 6 months written notice. If the Supplier cancels or suspends the Service for this reason, the Customer will not be charged any disconnection

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or reconnection fee. If the Customer's account is terminated for this reason, the Customer will be entitled to a refund of the unexpired portion of any amounts paid in advance.

## **4. Allocation of Risk (Standard Terms)**

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- 4.1** Each party indemnifies the other party against all awards, judgements, costs, charges and expenses directly and reasonably incurred by the other party as a result of a claim against it arising out of a death of or personal injury to the people of the innocent party, to the extent that such damage or loss is caused by a negligent act or omission or an act or omission intended to cause death or personal injury, by the indemnifying party or any of the indemnifying party's people.
- 4.2** Each party indemnifies the other party against all loss (including consequential and indirect loss and damage) arising from or relating to any damage to or loss of any equipment, network or other tangible property of the innocent party or any third party to the extent that such loss is caused by a negligent act or omission or an act or omission intended to cause loss by the indemnifying party or any of its people.
- 4.3** Each party indemnifies the other party against all costs, charges and expenses directly and reasonably incurred in relation to making good any damage to or loss of equipment, facilities, network or other tangible property of the innocent party to the extent that such damage or loss is caused by any act or omission of the indemnifying party or any of its people.
- 4.4** The Customer indemnifies the Supplier and Telstra against all loss arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by the Customer using a Service.
- 4.5** The Customer indemnifies the Supplier and Telstra against all loss arising out of any breach of a person's rights or defamation of a person (or allegation of such a breach or defamation) involving use of a Service.

## **5. Service not continuous or fault free (Standard Terms)**

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- 5.1** The Customer acknowledges and agrees that:
- (a) the Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
  - (b) the Customer is responsible for making their own assessment of whether they need continuous and fault free telecommunication services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.

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## **6. Faults (Telstra Operations & Maintenance Annex)**

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- 6.1** Telstra will not accept calls directly from any Customer in relation to Faults or suspected Faults.
- 6.2** The Supplier will maintain, and advise its Customers of, a service number for a Fault reporting helpdesk service which allows its Customers to report Faults or suspected Faults to the Supplier. The Supplier is responsible for providing progress reports to its Customers about the rectification of Faults and the restoration of Services.

## **7. Access to Premises (Telstra Operations & Maintenance Annex)**

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- 7.1** To enable Telstra to provide the Services in accordance with Telstra's obligations under this Agreement, the Supplier must provide, and must use reasonable endeavours to ensure that each Customer provides, safe, sufficient and timely access for Telstra to the Customer Premises and Telstra Equipment at no cost to Telstra:
- (i) to inspect, test, or modify a Service, facility or any Telstra Equipment which may be causing interference or danger; and
  - (ii) as required by Telstra in connection with the installation, provision, maintenance and repair of the Service, any facility, utility (such as electricity or air conditioning) or Telstra Equipment.
- 7.2** The Customer must not:
- (i) interfere with the normal operation of or make unsafe the Service or any facility; or
  - (ii) have unauthorised access to, or interfere with, any Telstra Equipment.

## **8. Non-approved Handsets and Wireless Devices (CRA Annexure A and CRA 85 - Telstra GSM Post-Paid Resale Service)**

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- 8.1** Customers are prohibited from using handsets or Wireless Devices which are not on the Supplier's list of approved handsets and Wireless Devices, available on request by the Customer.
- 8.2** Where the Customer uses non-approved handsets or Wireless Devices, Telstra does not guarantee the performance of such handsets on its GSM Network.
- 8.3** Telstra may implement a black list so that any Customer attempting to access the Telstra GSM Network with a non-approved handset or Wireless Device will be denied access (with the exception of emergency calls) where the handset or Wireless Device is found to have a detrimental effect on the Telstra GSM Network or Telstra Customers.

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## **9. Resale and Resupply (CRA 86A - Telstra Domestic Wireless Packet Data Service)**

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- 9.1** The Supplier is authorised to resupply the Service to Customers. However, to the extent permitted by applicable law, the Customer acknowledges that the Service is supplied on terms that prohibit resupply by the Customer.

## **10. Customer Limitations (CRA 86A - Telstra Domestic Wireless Packet Data Service)**

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- 10.1** Telstra does not guarantee that Wireless Packet Data will be delivered to the Supplier or any Customer.
- 10.2** The Customer acknowledges that the ability of Customers to access, view or otherwise receive Wireless Packet Data is dependent upon external factors outside the control of Telstra including:
- (i) the media contained in MMS Messages;
  - (ii) WAP Data and Packet Data media limitations; and
  - (iii) Wireless Device type, software version and capabilities.

- 10.3** The Customer acknowledges that international roaming is not available with the Service.

## **11. Content, Protection of Networks and Acceptable Use Policy (CRA 86A - Telstra Domestic Wireless Packet Data Service)**

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- 11.1** The Customer must use reasonable endeavours to ensure that Wireless Packet Data:
- (i) does not cause harm to the Telstra network, any Telstra equipment or software, or Wireless Device (eg viruses); and
  - (ii) complies with the Acceptable Usage Policy.
- 11.2** The Customer must:
- (i) comply with Telstra's reasonable directions in relation to the Customer's use of the Service; and
  - (ii) not use the Service for any purpose that may result in a "virus", "worm", "Trojan" or similar program being sent through the Service.
- 11.3** The Customer is solely responsible for:
- (i) the results and consequences of its use of the Service; and
  - (ii) the content of any data or information which the Customer sends or receives using the Service.

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- 11.4** The Customer must ensure that it has all measures in place necessary to protect against:
- (i) data loss and corruption;
  - (ii) interception of data; and
  - (iii) use of the Service in a manner that is unlawful or which may cause loss, liability or expense to Telstra, the Supplier or any other person.

## **12. Misuse of the Service and Suspension (CRA 86A - Telstra Domestic Wireless Packet Data Service)**

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- 12.1** In addition to any other rights of Telstra under this Agreement, Telstra may immediately suspend the supply of the Service (in whole or in part) without notice to the Customer or the Supplier if:
- (i) the Customer breaches any of the paragraphs in clause 11; or
  - (ii) misuse of the Service by the Customer causes a fault or adversely affects Telstra's supply of the Service.

Any such suspension may be subject to such terms and conditions as Telstra considers appropriate.

## **13. Access to LOLM (CRA 86A - Telstra Domestic Wireless Packet Data Service)**

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- 13.1** If Telstra considers that the Supplier or the Customer or any person related to the Supplier or the Customer (including any pre-programmed software) is accessing or attempting to access LOLM for a purpose or in a manner which is not permitted under this Service Schedule, or is otherwise jeopardising the security or integrity of LOLM, Telstra may suspend, restrict, breach or cancel any access which the Supplier or the Customer has to LOLM, whether or not the person making unauthorized use is on-line at the time.
- 13.2** The Customer must ensure that no malicious software, viruses or similar computer programs are transmitted to Telstra's systems as a result of any access granted under or in connection with this Service Book.

## **14. Remedies Cumulative**

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- 14.1** The rights, powers and remedies provided in this agreement are cumulative with and not exclusive or limiting of the rights, powers or remedies provided by law or equity independently of this agreement.

## **15. Indemnities**

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- 15.1** Each indemnity in this Mobiles Service Book is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement for whatever reason.

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- 15.2** It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Telecommunications Service Book.

## **16. Other Taxes**

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- 16.1** If one party to this Telecommunications Service Book ("payer") is required to reimburse or indemnify another party ("payee") for any cost, loss or expense incurred by the payee, the requirement to pay does not extend to any part of the cost, loss or expense that is recoverable by the payee as an input tax credit. If the reimbursement or indemnity payment is consideration for a taxable supply by the payee to the payer, GST applies.
- 16.2** If any tax is increased or newly imposed (***Additional Tax***) in relation to a Service (including anything used by the Supplier in connection with that Service) then the Supplier may, by notice to the Customer, increase the then current Fee for the Service (***Base Charge***) so that, on payment of the Base Charge and the additional amount payable under this clause, the Supplier receives (after deducting the Additional Tax) at the time the Base Charge is due, the amount it would have received but for the Additional Tax.
- 16.3** Clause 16.2 applies regardless of anything else in this Telecommunications Service Book (including any validity period for a Fee in a Rate Card) but does not apply to GST or any tax in the nature of a tax on wealth, capital gains or income.

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## **Section C – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from AAPT Limited (AAPT) to the Supplier**

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Further details of the plans to which this Section C applies are set out in clause 1.5 of Section A.

### **1. Warranties (General Terms)**

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1.1 Each Party represents and warrants to the other party that:

- (i) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and carry on its business as now being owned, leased, operated and conducted; and
- (ii) it has full power and all necessary rights to enter into this Agreement and to perform its obligations according to the terms of this Agreement.

### **2. Installation of Services (Additional Terms and Conditions for Data Services)**

---

2.1 Subject to AAPT's compliance with the Customer's reasonable security and access requirements, the Customer will provide AAPT:

- (i) with all necessary access to the Customer's premises to carry out the Work; and
- (ii) access to any of the Customer's personnel that AAPT requires in order to assist in completion of the Works and otherwise provide AAPT with all necessary assistance at no charge.

2.2 Neither AAPT nor the Supplier is liable for any delay in performing the Work if the delay is due to either the Customer's or another party's actions or omissions (other than a contractor or agent engaged by AAPT to perform the Work), or the information that the Customer has provided to AAPT or the Supplier being inaccurate.

### **3. Cabling/Equipment (Additional Terms and Conditions for Data Services)**

---

3.1 Neither AAPT nor the Supplier are responsible for maintenance of the Customer's cabling or equipment.

### **4. General Conditions of Internet Services (Additional Terms and Conditions for Internet Services)**

---

4.1 The Customer must not use the Internet Service in such a manner that could reasonably be expected to substantially impair the use of the Internet Services by other customers of AAPT.

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- 4.2** The Customer must not use the Internet Services for any activities which are illegal and/or fraudulent including but not limited to activities prohibited under or in contravention of the applicable Australian State and Commonwealth laws, whether relating to crime, intellectual property, censorship, defamation or otherwise.
- 4.3** AAPT acknowledges that the AAPT Network is not necessarily a secure and confidential method of communications. The Customer acknowledges that the Customer transmits data on the AAPT Network at their own risk.
- 4.4** The Customer acknowledges that any electronic material accessed through the Customer's use of the Internet Services is varied and that AAPT or the Supplier is not in any way responsible to the Customer or any third party for the nature and content of that material, the Customers' access to that material or the Customers' use of that material.
- 4.5** The Customer is responsible for implementing and maintaining network security at the Customer's site. Where the Customer elects to implement an IP connection (via any means) AAPT will (upon the Supplier or CTA's request) use its best endeavours to implement access restrictions to the Supplier's network via the connection in accordance with the Customer's specifications.
- 4.6** The Customer acknowledges that AAPT makes neither representations nor warranties as to the effectiveness of the access restrictions or network security of the Supplier or the Customer's network. The Customer shall make no claim(s) against AAPT or the Supplier concerning the Customer's network security.

## **5. Conditions of Provision of Permanent Connection (Additional Terms and Conditions for Internet Services)**

---

- 5.1** AAPT is not responsible for payment of any costs associated with the data communications line (telephone line or similar link) used for connection to the AAPT Network.
- 5.2** The Customer must implement and maintain network security at the Customer's site.
- 5.3** AAPT will at the Supplier's request endeavour to implement access restrictions to the Customer via the connection and in accordance with any specifications of the Supplier or the Customer approved by AAPT.
- 5.4** The Customer acknowledges that to the extent permitted by law AAPT and the Supplier do not make any representations or warranties concerning the fitness for purpose or effectiveness of any access restrictions, or AAPT's network security, CTA's network security and/or the network security of the Supplier.

## **6. Disconnection of User (Additional Terms and Conditions for Internet Services)**

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- 6.1** The Customer acknowledges that AAPT may, without liability to the Customer, cease or suspend, in its absolute discretion, supply of Internet Services to any Customer which:

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- (a) in the reasonable opinion of AAPT, will or has misused or abused the Internet Service; or
- (b) is in breach of the Acceptable Use Policy.

**6.2** AAPT will immediately notify the Supplier of ceasing to supply Internet Services to any Customer. AAPT will use its best endeavours to notify the Supplier prior to disconnection of any Customer so as to allow the Supplier to notify that Customer.

## **7. Proprietary Rights and Information Protection (Additional Terms and Conditions for Internet Services)**

---

- 7.1** To the extent that the Internet Services contain software or programming, AAPT grants to the Supplier and the Customer a non-exclusive and non-transferable licence to use such software or programming for the sole purpose of enabling the Supplier and the Customer to use the Internet Service or any part thereof.
- 7.2** Title and property rights including all intellectual property rights to the Internet Service and to the software and/or programming referred to in clause 7.1 are and will remain with AAPT, whether or not embedded in the software and/or programming.

## Section D – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from Optus Networks Pty Limited (*Optus*) to the Supplier

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Further details of the plans to which this Section D applies are set out in clause 1.5 of Section A.

### 1. Definitions (General Terms)

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- 1.1 The following definitions apply to this Section D:
- (i) **Individual Service** means each individual service making up a Service; for example, an individual circuit or connection. For clarity, there may be more than one Individual Service;
  - (ii) **Operations Manual** means the service documentation published or varied by Optus from time to time in connection with the Service;
  - (iii) **Port** means the transfer of a Telephone Number associated with a local service between different carrier networks;
  - (iv) **Related Service Description** means the OWResidential Broadband Service Description; and
  - (v) **Simple Telephone Service** means a local service which comprises of a Standard Telephone Service and Telephone Number.

### 2. Optus' Supply of the Service (General Terms)

---

- 2.1 If the Supplier or a Customer is using any equipment other than equipment that complies with Australian Standards, Optus will not supply the Individual Service.
- 2.2 Installation and operation of a monitoring service may cause temporary disruption to an Individual Service.
- 2.3 Where the Customer has, or is acquiring, a monitoring service the Customer may need to install additional equipment (this equipment is not at Optus' cost and Optus has no responsibility for this equipment) to be able to receive the Service or Individual Service. All additional equipment should be installed prior to Optus providing the Service or Individual Service.
- 2.4 Optus or its Suppliers may at any time change the method of delivery of the Service or an Individual Service.
- 2.5 During the transfer of the Individual Service to Optus there may be a period when the Service is interrupted. Optus is not liable for any interruption or delay in the transfer process or for any other matter regarding limitation of service set out in the Operations Manual, including but not limited to:

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- (i) an interruption in the Service during a Port cutover period of approximately 15 minutes; or
  - (ii) inbound calls may be affected for an extended period during a Port of up to 2 days.
- 2.6** The Customer must act in accordance with any directions given by Optus under clause 3.2 of the General Terms.
- 2.7** Optus or a Supplier (which may be referred to as a carrier or supplier to the Supplier) is not liable to the Customer in any circumstances (including in negligence) in relation to any Service or Individual Service supplied to the Customer, any delay in supplying the Service or an Individual Service or any failure to supply the Service.
- 2.8** Due to technical, operational and commercial constraints, the Service may not be able to be supplied to the Supplier either error free or at all.
- 2.9** Optus will not provide priority assistance in respect of any Service.
- 2.10** If the Customer is provided with a long distance service by a carrier other than Optus, Optus may provide the Customer's details to that other carrier for the purposes of complying with a law, regulation or industry code.
- 2.11** If the Customer cancels the Simple Telephone Service, Optus or the Supplier may charge a fee for this under a Related Service Description.

## **3. Use of the Service (General Terms)**

---

- 3.1** It is a condition of this Agreement that a Customer will not use or attempt to use a Service:
- (i) to break any law or to infringe another person's rights;
  - (ii) to expose Optus to liability;
  - (iii) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - (iv) in any way which damages, interferes with or interrupts the Service, the Optus Network or a Supplier network.
- 3.2** The Supplier may ask the Customer to stop acting or failing to act in a manner which Optus reasonably believes is contrary to clause 3.1. The Customer will as soon as reasonably practicable (but in any case within two business days) comply with any such request. If the Customer does not, then Optus may take any steps reasonably necessary to ensure compliance with clause 3.1 or the request.

## **4. Maintenance (General Terms)**

---

- 4.1** Optus may conduct maintenance on the Optus Network. Optus will use all reasonable endeavours to conduct scheduled maintenance outside normal business hours (in the time zone in which the maintenance is being conducted) but may not always be able to do so.

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When conducting schedule maintenance Optus will attempt to provide the Customer with 15 Business Days' notice.

## **5. Service Charges (General Terms)**

---

- 5.1** Optus may charge the Customer an additional amount to cover actual costs incurred by Optus in servicing, modifying, repairing or replacing a Service or any equipment as a result of an Excluded Event (except an Intervening Event).
- 5.2** If agreed between the parties, Optus may charge the Customer an additional amount for installation, maintenance or other services which the Customer requests Optus to provide outside normal business hours (in the time zone in which the maintenance is being conducted) or additional amount for installation, if the information the Customer provided to Optus to determine the installation required was incomplete or inaccurate.
- 5.3** In calculating charges, Optus need only look at billing information generated or received by Optus or its Suppliers. Optus may round up any charge to the nearest cent.

## **6. Modifications (General Terms)**

---

- 6.1** The parties may agree to modify a Service. If the modification is a Downgrade, the Customer will pay a Downgrade Charge if one is specified.
- 6.2** The Customer acknowledges that if the Customer Downgrades a Service in accordance with paragraph 6.1 the Downgrade Charge represents a genuine pre-estimate of the loss Optus will suffer and is not a penalty.

## **7. Optus' Right to Suspend or Terminate (General Terms)**

---

- 7.1** Optus or the Supplier may, without liability, suspend or terminate a Service by giving notice:
- (i) immediately if the Customer does not comply with a notice from Optus issued in accordance with clause 3.2 relating to that Service;
  - (ii) the Customer breaches clause 3.1 or any other material term of the Agreement, that breach is incapable of remedy and the Customer does not remedy that breach as soon as possible but in all circumstances no later than 14 business days after Optus or the Supplier gives the Customer notice requiring the breach to be remedied;
  - (iii) immediately if the Service or that Individual Service is not being supplied and that non supply has continued for more than 10 business days as a result of an Intervening Event having occurred; or
  - (iv) Optus is otherwise entitled to do so under this Agreement.

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- 7.2** Optus or the Supplier may, without liability, cancel the Service at any time prior to the Service start date, if Optus reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer.
- 7.3** Optus or the Supplier may also terminate a Service if that Service is suspended for more than 10 business days.
- 7.4** If Optus or the Supplier suspends a service under this clause 7, then Optus may later terminate that Service for the same reason if that reason is continuing.
- 7.5** On termination:
- (i) of a Service for any reason, the Customer will (unless otherwise permitted by Optus in writing) immediately stop using the Service and the Optus owned equipment; and
  - (ii) of a Service for any reason, the Customer will immediately allow Optus or the Supplier to remove any related Optus owned equipment or equipment the Customer has purchased but not fully paid for.

## **Section E – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from PowerTel Limited (*PowerTel*) to the Supplier**

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Further details of the plans to which this Section E applies are set out in clause 1.5 of Section A.

### **1. Security (Operative Provisions)**

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- 1.1** PowerTel may suspend the Customer's Service if in PowerTel's opinion it is used in an excessive or unusual manner provided PowerTel has taken reasonable steps to contact the Supplier or the Customer prior to the suspension of the Service. Excessive or unusual use may include but is not limited to the following:
- (i) if the Customer has a call that remains connected for an unusually long period of time; or
  - (ii) where an unusually large volume of calls are being made from the Customer's Service.

### **2. Credit-Worthiness (Operative Provisions)**

---

- 2.1** The Customer agrees, within 10 Business Days of PowerTel's request, to provide to PowerTel, or any independent person nominated by PowerTel, any information reasonably required by PowerTel to confirm the credit-worthiness of the Customer.

### **3. Suspension and Termination (Operative Provisions)**

---

- 3.1** PowerTel and the Supplier may without liability terminate this Agreement and all or any Contract, with immediate effect from the date of delivery of a notice to the Customer (or with effect from such later date as PowerTel may nominate in such notice), if:
- (i) a Competition Notice which affects the subject matter of this Agreement is issued, or PowerTel reasonably believes that the ACCC is likely to issue such a Competition Notice, or a Regulator or court determines that any part of this Agreement contravenes the *Telecommunications Acts* or the *Trade Practices Act*;
  - (ii) the Customer has failed to provide information under clause 2.1 within the required time; or
  - (iii) PowerTel determines that the Customer is in breach of clause 4.1.

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## **4. Offences & Indemnities (Operative Provisions)**

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- 4.1** The Customer will not use, and must use best endeavours to ensure that others do not use, the Services:
- (i) to distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or illegal under any law at any place where transmissions are sent from, viewed or received;
  - (ii) to copy or distribute material where it has no right to do so (for example, someone else's copyrighted works or confidential information);
  - (iii) to commit a crime or in the course of committing a crime;
  - (iv) for an unlawful purpose;
  - (v) to do any act that may damage the network or systems or cause the quality of the Service to be impaired; or
  - (vi) in a manner that does not comply with the terms of any legislation or licence applicable to the Customer or that does not comply with any instructions given by PowerTel.
- 4.2** The Customer will indemnify PowerTel and the Supplier against all loss (including consequential and indirect loss or damage) arising from the Customer's breach of clause 4.1 (above).
- 4.3** If PowerTel or the Supplier uses the services of another Carrier in providing the Services, the Customer will indemnify PowerTel and the Supplier for all loss suffered by PowerTel and the Supplier as a result of a claim by the Customer or a third party against such Carrier (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services.

## **5. Privacy (Operative Provisions)**

---

- 5.1** For the purposes of this agreement:
- (a) the Customer agrees to PowerTel collecting, using and disclosing personal information about the Customer in accordance with PowerTel's privacy policy. This includes:
    - (i) the purpose of assessing credit worthiness;
    - (ii) all purposes associated with the provision of telecommunications Services to the Customer and the management of the Customer's account;
    - (iii) the purposes of communicating with the Customer about products and Services which PowerTel or partners or affiliates of PowerTel may provide to the Customer;
    - (iv) the purpose of implementing this Agreement; and
    - (v) the purpose of complying with legal requirements.

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- (b) PowerTel will comply with all relevant privacy laws in providing the Customer with access to their own personal information. PowerTel reserves the right to charge a reasonable fee for the provision of this information. PowerTel agrees to correct or amend any personal information held by PowerTel which is inaccurate or out of date, at the Customer's written request in accordance with privacy laws.
- (c) PowerTel will handle the Customer's personal information in accordance with the requirements of relevant laws and industry standards.
- (d) Subject to compliance with these provisions, PowerTel may, at any time in its absolute discretion:
  - (i) intercept the Services or the data being transmitted over the Services, for the purpose of complying with its obligations at law; and
  - (ii) monitor use of the Services.
- (e) The Customer acknowledges that if the Customer refuses to provide personal information requested by PowerTel, PowerTel may not be able to provide the Services to the Customer.

## Annexure A – Service Levels and Rebates

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### 6. Background

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- 6.1 This Annexure A is drafted in the context of PowerTel's resale of the Service to CTA. The provisions apply *mutatis mutandis* to the Supplier's resale of the Service to the Customer. A reference to "Partner", "you" and "your" is a reference to the Supplier. A reference to "we" and "our" is a reference to PowerTel. A reference to "End Customer" is a reference to the Customer.

### 7. Introduction

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- 7.1 This document describes the service level commitment to PowerTel Partners in relation to the following services (together referred to as the "Services");
- RequestXpress
  - RequestVPN
  - RequestVPN Lite
  - RequestCarrierTail
  - RequestDataLink
  - Partner Access Advantage
  - PowerTel Layer2 DSL

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## 8. Definitions and Scope

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- 8.1 'End Customer' is the business customer using the DSL service.
- 8.2 'Level 1 Support' is the support provided by the Partner to the End Customer.
- 8.3 'Level 2 Support' is the support provided by PowerTel to the Partner, and occurs after a Level 1 Support call has determined that a service issue is attributed to the PowerTel network.
- 8.4 'Partner' is the wholesale customer who has contracted with PowerTel (or Request Broadband Pty Limited ABN 89 091 530 586) for the provision of telecommunications services to them. The Partner is responsible for the sales, support and business relationship with the End Customer.
- 8.5 'Site Visit' is where PowerTel, or a nominated representative, is required to attend the End Customer's premises.

## 9. Fault Reporting

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- 9.1 Faults that are not resolved by Level 1 Support can be reported to PowerTel 24 hours per day, 7 days per week. PowerTel will receive fault reports by phone (1300 722 447 option 3) from the Partner, log fault reports and provide a fault reference number, as detailed in section 12 of this Annexure. Response to fault reporting is within the applicable coverage window, and is in accordance with sections 10 and 11 of this Annexure.
- 9.2 Please note that fees may be charged for effort expended in response to false faults and directly received Level 1 Support calls. These fees are detailed in [PMR 00 024 PowerTel Partners Miscellaneous Service Pricing](#).

## 10. Response and Restoration Targets

---

- 10.1 'Response Time' is the time from when PowerTel receives a Fault Call from the Partner, to the time that we provide a status advice to the Partner with an indication of the nature of the fault and estimated time to restore service.

Parameter	Target times	Applicable services
Response Time	1 hour within applicable Coverage Window	All Services

- 10.2 The 'Restoration Time' is calculated from the time that PowerTel receives a fault or trouble call from the Partner to the time when the affected Service ceases to be Unavailable. "Unavailable" means the Services are completely unavailable for use by the end customer.

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Parameter	Service	Price Band	Service Restoration Target
Restoration time	All Services	CBD / Metropolitan	4 hours (no site visit required) within applicable Coverage Window
			4 hours (site visit required) within applicable Coverage Window
	All Services	Regional	4 hours (not site visit required) within applicable Coverage Window
			24 hours (site visit required) within applicable Coverage Window

## 11. Coverage Window

**11.1** 'Coverage Window' refers to the PowerTel hours of operation for service response and restoration activity.

Type Of Service	Hours Of Operation (EST)	Applicable services
Business Hours	Monday to Friday*: 7:00am to 9:00pm Saturday*: 9:00am to 5:00pm	RequestXpress - standard RequestVPN - standard** RequestVPN Lite - standard RequestCarrierTail - standard PowerTel Layer2 DSL - standard
24 x 7	24 hrs per day, 7 days per week	RequestXpress - 24 x 7 option RequestVPN - 24 x 7 option** RequestVPN Lite - 24 x 7 option RequestCarrierTail - 24 x 7 option PowerTel Layer2 DSL - 24 x 7 option RequestDataLink Partner Access Advantage

Notes:

\* Excludes National Public Holidays

\*\* Includes RequestVRN using Alternative Access, Diversity and Roaming Access. 24 x 7 support is not available on Roaming Access.

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## 12. Fault Report Communications

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**12.1** In the event of a fault report, PowerTel will communicate with the Partner as follows:

- (i) **Receive Fault:** by phone call from the Partner to 1300 722 447 and PowerTel will provide a fault report reference number.
- (ii) **Response:** as per Response Time above within a target time of 1 hour.
- (iii) **Progress Advice:** PowerTel will contact the Partner every 4 hours within the coverage window, or more frequently if agreed, with a progress report on the fault.
- (iv) **Close Off:** PowerTel will contact the Partner upon restoring service to the End Customer and confirm that the service is operating satisfactorily.

## 13. Pro-active Outage Notifications

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### 13.1 Major Outages

In the event that a network outage should occur with the potential to impact multiple End Customers; PowerTel will pro-actively communicate to Partners with SMS and e-mail as follows:

Notifications will be via:

- SMS with summary details for a limited number of Partner contacts.
- E-mail with more detailed information for all nominated Partner contacts.

It is the Partner's responsibility to ensure that PowerTel has the correct and current list of nominated contacts and their contact details at all times.

Outage Notifications will be as follows:

- (i) **Initial Outage Advice:** target within 10 minutes of PowerTel being aware of the beginning of the outage and typically prior to diagnostic and further information is available. This notice will advise of the existence of the outage and is sent prior to further information being available.
- (ii) **Progress Advice:** an Initial Progress Advice notice will be sent within 1 hour after the beginning of the outage. Subsequent notices will be sent every 4 hours thereafter until the service is restored. Details will include estimated restoration time and the nature of the fault when available.
- (iii) **Close Off:** advice that the service is restored will be sent as soon as service restoration is complete.

### 13.2 Planned Service Outages

PowerTel will use best efforts to provide 5 working day notification of any scheduled or planned service outage ("Planned Service Outages") to affected Partners. Where practicable, Planned Service Outages for the DSL service will occur between 2am and 6 am, Tuesday and Thursday only, Eastern Time. Where practicable, Planned Service

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Outages for the Partner Access Advantage service will occur between 1am and 6 am, Thursday to Sunday, Eastern Time.

The process for notifying Partners of Planned Service Outages will be as follows:

- (i) PowerTel may plan a service outage to conduct necessary maintenance and upgrade to its network. Planned Service Outages may also originate from 3<sup>rd</sup> party carriers who are providing services to PowerTel.
- (ii) PowerTel will notify all affected Partners via e-mail. The e-mail will include the details of the Planned Service Outage.
- (iii) It is the responsibility of the Partner to notify their End Customers of the Planned Service Outage.

In circumstances where an emergency service interruption is required, PowerTel reserves the right to undertake the service interruption without notice. In such cases PowerTel will use its best efforts to notify the Partner prior to any service interruption. Notification via the SMS facility (as described in Section 13.1) may be used in case of an emergency service interruption.

## 13.3 Format of Planned Service Outage Email

### Planned Outage Email Notification

Partners will receive an email, addressed to the Technical Contact, detailing the PowerTel Planned Outage event. Attached to this email will be three files containing information on the planned outage. The email will be sent from **DL Planned Events Group**.

The title of the email will be of the format **PowerTel Planned Event — Ref. No. [ReferenceNo]**, where [ReferenceNo] is a unique six digit reference (e.g. 361643) to the planned outage and should be used in all correspondence with PowerTel regarding the outage.

The first file attached is a PDF file (filename format: **[ReferenceNo].pdf**, e.g. 361643.pdf), containing the following information:

- Service(s) Affected
- Planned Outage Reference Number
- Activity Description
- Planned Work Commencement Date/Time
- Planned Work Completion Date/Time
- Interruption Duration
- Whether the Customer is Required On Site
- Notification Sent By
  - Contact Address
  - Contact Telephone
  - Contact Facsimile

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## - After Hours Telephone

The second file is a Comma Separated Variable (CSV) file (filename format: **[ReferenceNo].csv**, e.g. 361643.csv), containing information on each of the end-user services impacted by the Planned Outage event. Below is an example of a CSV file (imported into a table format for illustration purposes):

Outage ID	Service	End Customer Name	State	Window Stats	Window Ends	Expected Duration
361643	0293846292	Freestone Engineering	NSW	15/05/2006 00:00	15/05/2006 06:00	5 minutes
361643	0292738404	Cartwright Industries	NSW	15/05/2006 00:00	15/05/2006 06:00	5 minutes
361643	0297364759	Hannan and Healy Partners	NSW	15/05/2006 00:00	15/05/2006 06:00	5 minutes

The third file is a text file (filename format: **[ReferenceNo].txt**, e.g. 361643.txt), containing a description of the Planned Outage.

## 14. Service Availability

---

**14.1** 'Service Availability' is defined as the percentage of time each service is available to the End Customer, via the primary connectivity medium, during the course of a year. The service availability is calculated in accordance with the following formula:

$$\text{Service Availability for the period} = \frac{\text{Total Hours for the period less Unavailable Hours}^*}{\text{Total Hours for the period}} \times 100$$

\* Unavailable Hours is the total number of hours that the service is unavailable due to issues with the PowerTel network except for programmed outages. The PowerTel network includes supply of Internet bandwidth when supplied by PowerTel to the Partner and the router on the premises of the End Customer where that router is under a rental or service agreement to PowerTel.

The PowerTel fault ticketing system will be the basis for determining times for Service Availability.

**14.2** The overall PowerTel network service availability will be advised by PowerTel to Partners on a periodic basis.

Parameter	Target Service Availability	Applicable services
Service Availability	99.95%	Partner Access Advantage
Service Availability	99.9%	All other Services

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**14.3** Services with a primary and secondary connectivity medium (such as those with a diversity path) are expected to have an overall service uptime greater than that of the primary medium alone. 'Service Uptime' is defined as the Service Availability for the combination of the primary and secondary connections.

Parameter	Target Service Uptime	Applicable services
Service Uptime	99.98%	RequestVPN with Diversity

## 15. Fee Rebates Due To Service Unavailability

**15.1** Where a fault is attributed to the PowerTel network, and the primary connectivity service of the End Customer is unavailable for use within the coverage window for more than the hours stipulated in Section 10 (Target Restoration Time), then PowerTel will provide a service fee rebate to the Partner who will in turn provide that rebate through to the End Customer.

Service Unavailability (Total Hours per month within Coverage Window)	Price Band	Rebate % of Monthly Recurring Charge* (refers to what PowerTel invoiced to the Partner)	Applicable Services
More than 4 hours but less than or equal to 6 hours	CBD/Metropolitan; Regional (site visit not required)	15%	RequestVPN with DSL access RequestXpress RequestCarrierTail
More than 24 hours but less than or equal to 26 hours	Regional (site visit required)		RequestDataLink Partner Access Advantage PowerTel Layer2 DSL
More than 6 hours	CBD/Metropolitan; Regional (site visit not required)	30%	RequestVPN - only with DSL access RequestXpress RequestCarrierTail
More than 26 hours	Regional (site visit required)		RequestDataLink Partner Access Advantage PowerTel Layer2 DSL

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\* Please note that the Monthly Recurring Charge mentioned above does not include the VPN server monthly fee, any domestic link charges or ISDN Diversity charges. However, the VPN client monthly fee is included in the rebate, if applicable.

**15.2** Where a fault is attributed to the PowerTel network, and both the primary & secondary connections of the End Customer are unavailable for use, then PowerTel will provide a service fee rebate to the Partner who will in turn provide that rebate through to the End Customer. In the instance when a combination of both scenarios occur ('DSL unavailability' & 'DSL and ISDN diversity' unavailability), the greater of the two rebates will be payable.

<b>Service Downtime</b> (Total Hours per month within Coverage Window)	<b>Price Band</b>	<b>Rebate</b> % of Monthly Recurring Charge* (refers to what PowerTel invoiced to the Partner)	<b>Applicable Services</b>
More than 1 hour but less than or equal to 4 hours	CBD/Metropolitan; Regional (site visit not required)	15%	RequestVPN with Diversity
More than 24 hours but less than or equal to 26 hours	Regional (site visit required)		
More than 4 hours	CBD/Metropolitan; Regional (site visit not required)	30%	RequestVPN with Diversity
More than 26 hours	Regional (site visit required)		

\* Please note that the Monthly Recurring Charge mentioned above does not include the VPN server monthly fee or any domestic link charges, However, the VPN client monthly Recurring Charge and the monthly diversity fee are included in the rebate, if applicable.

**15.3** Fee rebates will be provided upon submission of PMR 00 057 Rebate Form for Service Unavailability and Activation Delays together with a written request from an End Customer sent to PowerTel through the Partner, and on the basis that the End Customer has reason to believe that a rebate will be due. The written request with the attached Rebate Form should be received by PowerTel within 14 days of the end of the month. Upon receipt of the written request with the attached Rebate Form, availability calculations will be provided to the Partner to substantiate the validity of the claim. If valid, the rebate will be provided in the form of a credit for the next monthly bill to the Partner. The fee rebate corresponds to

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the accumulated service unavailability of a given month and can only be claimed once a month.

- 15.4** Rebate does not apply in instances where the end customer failed to provide access to their premises for PowerTel to affect repair.

## 16. Service Activation Lead Times

- 16.1** 'Service Activation Lead Time' is the number of working days, from the date that PowerTel acknowledges as complete an End Customer Service Application Form from the Partner to delivery of an activated service. Service Activation Lead Time is subject to confirmation of service being available in the requested location. Service Activation Lead Times only apply to correct and complete End Customer Service Activation Forms.

- 16.2** The RequestVPN lead-time is subject to the activation of VPN Server and Head Office location.

Service Type	Target Service Activation Lead Time	Applicable Services
New Service	17 working days	All Services (Partner Access Advantage excluded)
Service relocation*	17 working days	All Services (Partner Access Advantage excluded)
Speed change**		All Services
On net	1 working day	
Extended Network	5 working days	
Router configuration and addressing Changes (NAT/PAT)***	3 working days	All Services
Activate RequestXpress on an exiting service****	5 working days	All Services
Activate RequestVPN on an existing RequestXpress service****	10 working days*****	RequestVPN
New Service - Request VPN Roaming Access and ISDN Alternative access with Self Managed CPE	5 working days	RequestVPN
New Partner Access Advantage service with no Local Number Portability	25 working days	Partner Access Advantage

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New Partner Access Advantage service Local Number Portability	Lead times in accordance with ACIF C540:2003 for Local Number Portability	Partner Access Advantage
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- \* Assuming that a full service installation is needed. Full service installations are classified as new services.
- \*\* The target lead-time applies from the receipt of speed change request (phone or email). Speed change lead-time for Speed Upgrade Promotion differs from the above (i.e. 3 days for on-net, 10 days for extended network). Changes from ADSL to G.SHDSL, or vice-versa are classified as new services.
- \*\*\* Provided the customer supplies address details.
- \*\*\*\* Must have a Multiservice compatible router.
- \*\*\*\*\* Applies from the receipt of Server Service Application Form and the Head Office Client Service Application Form.

## 17. Service Activation Communications

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17.1 PowerTel will communicate with the Partner as follows throughout the process of service activation as follows:

(i) **End Customer Service Application Form (Order)**

Orders for RequestXpress, RequestVPN (i.e. client sites using DSL access, ISDN and Roaming Access), RequestVPN Lite, Partner Access Advantage and Layer 2 DSL must be submitted via the Customer Service Portal (CSP) located at [www.powertel.com.au](http://www.powertel.com.au). Orders for RequestVPN Server, RequestVPN Alternative Access via ATM or Ethernet should be submitted via [partnerforms@powertelpartners.com.au](mailto:partnerforms@powertelpartners.com.au).

(ii) **Acknowledgement**

Within 1 working day of receipt of a complete Order, PowerTel e-mails the Partner with acknowledgement of the Order and notification that an order has been made with Telstra or XYZed (applicable for On-Net XYZed based services) for the appropriate line. Incomplete orders will be returned, unprocessed, to the Partner for re-submission.

(iii) **Confirmation**

Upon the order being entered into our systems the target installation date will be nominated as the order entry date plus the specified number of business days. Within 5 business days of receipt of the order, PowerTel emails the Partner with confirmation of a cutover scheduled date or advises the Partner of the reason why the order was rejected by Telstra. Once the cutover is scheduled the target install is scheduled as 'scheduled cutover date + 3 business days'.

(iv) **Daily Progress Report**

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PowerTel will e-mail the Partner a daily progress report with details of each Order in progress, status and 'Planned Completion Date'.

(v) **Installation Co-ordination (if applicable)**

PowerTel (or our agent) will arrange an installation appointment with the End Customer and notify the Partner of the appointment date.

(vi) **Installation Completion Advice**

Within ½ day of service commissioning, PowerTel (or our agent) will e-mail the Partner to confirm that the service is complete.

(vii) **Rescheduling The Planned Completion Date**

In the event of a requirement to re-schedule (either PowerTel or customer initiated), then PowerTel will establish a revised 'Planned Completion Date' and e-mail the Partner at the earliest opportunity.

(viii) **Enquires re Order Progress**

Call PowerTel Operations on 1300 722 447 (option 1) or e-mail PowerTel at [orders@powertelpartners.com.au](mailto:orders@powertelpartners.com.au) for enquires about Order progress.

## 18. Fee Rebates Due To Service Activation Delays

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**18.1** Where PowerTel does not activate the service within the Service Activation Lead Time, and if it is our fault, then PowerTel will provide a fee rebate to the Partner who will in turn provide that rebate through to the End Customer. These rebates apply to new services and service relocations only.

**18.2** Fee rebates will be provided upon submission of PMR 00 057 Rebate Form for Service Unavailability and Activation Delays together with a written request from an End Customer sent to PowerTel through the Partner, and on the basis that the End Customer has reason to believe that a rebate will be due. Rebates will not be applicable for service activation delays that were requested by the Partner or End Customer, or for orders with an agreed installation date that falls outside of the target. The Service Activation commitment is subject to confirmation of Telstra line availability. Requests for rebate must be claimed within 14 days of service activation.

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<b>Service Activation Delay</b> (Working days beyond Service Activation Lead Time)	<b>Rebate</b> % of Installation Charge	<b>Applicable services</b>
From 1 to 5 days	10%	RequestVPN with DSL access RequestVPN with Diversity RequestXpress Partner Access Advantage PowerTel Layer2 DSL
From 6 to 10 days	25%	RequestVPN with DSL access RequestVPN with Diversity RequestXpress Partner Access Advantage PowerTel Layer2 DSL
From 11 to 15 days	50%	RequestVPN with DSL access RequestVPN with Diversity RequestXpress Partner Access Advantage PowerTel Layer2 DSL
More than 15 days	100%	RequestVPN with DSL access RequestVPN with Diversity RequestXpress Partner Access Advantage PowerTel Layer2 DSL

\* Note: Promotional campaign involving free install is not entitled for a rebate.

## 19. Chargeable Activities

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**19.1** Fees for the chargeable activities are detailed in PMR 00 024 PowerTel Partners Miscellaneous Service Pricing.

## 20. Service Level Agreement Terms & Conditions

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**20.1** The terms and conditions set out below are incorporated into and form part of the PowerTel Partner Agreement with the Partner (you/your):

All terms have meanings as per the Definitions in the Partner Agreement, and in addition:

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**Service Levels** means the services levels as specified in this Service Level Agreement and as updated by PowerTel from time to time.

**Service Level Agreement** means this document published (and any updates published from time to time by PowerTel) which describes the Service Levels for the relevant DSL Service and the applicable rebates (if any).

- (i) PowerTel will use reasonable endeavours to meet the Service Levels for the DSL Service. If PowerTel fails to achieve the relevant Service Levels in any period set out in the Service Level Agreement, you will be entitled to a rebate to the Fees, calculated by reference to the percentage rate rebates specified in the Service Level Agreement.
- (ii) Notwithstanding any other provision of the Agreement, you will not be entitled to a rebate where PowerTel's failure to achieve the relevant Service Levels, is caused directly or indirectly by:
  - (a) any act or omission by you or any third party;
  - (b) scheduled maintenance;
  - (c) unscheduled maintenance in cases of emergency; or
  - (d) components of the DSL Service provided using facilities outside the direct control of PowerTel.
- (iii) You agree that to the extent permitted by law, any rebate payable by PowerTel to you pursuant to this clause, will be the sole remedy available to you in respect of the event giving rise to the rebate entitlement.
- (iv) You acknowledge and agree that all rebates provided by PowerTel pursuant to a Service Level Agreement shall be passed on, in total, to all End Customers affected by PowerTel's failure to achieve the relevant Service Level.
- (v) Your continued use of existing DSL Services and the ordering of new DSL Services after the introduction of this Service Level Agreement shall be deemed to constitute acceptance of the terms and conditions of this Service Level Agreement.

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## **Section F – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from M2 Wholesale Pty Ltd (M2) to the Supplier**

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Further details of the plans to which this Section F applies are set out in clause 1.5 of Section A.

### **1. No On-selling of Wholesale Service (Appendix A)**

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- 1.1 The Customer must not on-sell the Service on a wholesale basis, unless otherwise agreed in writing by the Supplier and M2.

### **2. Optus Property (Appendix A)**

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- 2.1 The Customer acknowledges that each of Optus and M2 does not warrant the performance, suitability, compatibility or otherwise of the Supplier Equipment.

### **3. Indemnity (Appendix A)**

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- 3.1 The Customer must indemnify the Supplier, M2 and Optus and each Related Body Corporate of the Supplier, M2 and Optus against all losses incurred by or awarded against that company arising out of:
- (a) any claim (whether based in contract, tort (including negligence), statute or otherwise) by the Customer against any supplier of goods and services (including interconnection services) which are used directly or indirectly by Optus, M2, or the Supplier to provide the Services;
  - (b) any errors in or incomplete End-User Customer Details disclosed to the Supplier or any failure to disclose the End-User Customer Details to the Supplier in accordance with this Agreement.
- 3.2 The indemnity in clause 3.1 does not apply to any claim by any person for bodily injury or death to the extent it is caused by the negligence of the Supplier.

### **4. Exclusion and Limitation of Liability (Appendix A)**

---

- 4.1 M2 and Optus are not liable to the Customer (in contract, tort (including negligence) or otherwise) in relation to any Service resupplied to the Customer by CTA or the Supplier, any delay or any failure to provide Services.
- 4.2 Except where to do so would contravene any statute or cause any part of this agreement to be void or unenforceable, the Supplier, M2 and Optus:
- (a) exclude liability for any and all losses suffered or incurred by the Customer in connection with:

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- (i) any SIM cards or failure or delay in supplying SIM Cards;
- (ii) failure for any reason to activate, reactivate or to deactivate a Service or a Service Number;
- (iii) deactivation of the Service (whether or not requested);
- (iv) any failure to provide all or part of any of the Service, including due to any network failure, any network congestion or any call drop out, or any delay in providing the Service.

**4.3** Without limiting the exclusions or limitations of liability in this clause 4, the Customer acknowledges that:

- (a) the Supplier and M2 do not warrant that the Supplier or M2 or Optus will be able to supply the Service or SIM Cards; and
- (b) if the actual volume of activations, deactivations of the Service exceeds what is set out in the volume forecasts provided by the Supplier then M2 or Optus may not be able to activate or deactivate the Service for Service Numbers or supply the Service to activated Service Numbers and the Supplier, M2 and Optus will have no liability to the Customer or any other person for any of the resulting degradation in the quality or level of service, including unsuccessful calls.

**4.4** In this clause 4, limitations and exclusions in favour of “the Supplier” or “M2” are to be construed as limitations and exclusions in favour of each Related Body Corporate of the Supplier and M2.

## **5. Rate Plan (General Terms)**

---

If arrangements between M2 and CTA are terminated, M2 may arrange to supply the Customer directly. The Customer acknowledges that the rate plan applicable to the provision of Services to the Customer may be altered to the nearest applicable M2 rate plan in the event that the rights and obligations of CTA or the Supplier under the Customer Contract are assigned or novated to M2 so that M2 provides the Services directly to Customers.

## **6. Assignment (General Terms)**

---

The Supplier shall have the right to assign or novate all or part of its rights and obligations under the Customer Contract to M2 without the consent of the Customer. The Customer cannot assign or novate all or part of its rights and obligations under the Customer Contract other than in accordance with this paragraph 6.

For the purposes of novation, the Customer agrees to novate the Customer Contract to M2 on receipt of a notice from either CTA, the Supplier or M2, such novation to be on terms no less favourable than the terms of the Customer Contract in existence immediately prior to the novation.

## **7. Privacy & Marketing Consents (General Terms)**

---

The Customer consents to allow CTA or the Supplier to disclose to M2 or Optus (or its related bodies corporate) the Customer Details including information relating to the affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to the Customer.

The Customer consents to allow M2 or Optus (or its related bodies corporate) to use that information in order to facilitate the supply of carriage services to the Customer by CTA or the Supplier, M2 or by Optus. Without the express permission of CTA or the Supplier, M2 or Optus (or its related bodies corporate) may not directly contact the Customer with offers and information via electronic messaging (such as SMS) for marketing purposes.

## **8. Carriers and Carriage Service Providers (General Terms)**

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The Customer confirms that it is not a Carrier or Carriage Service Provider (as those terms are defined in the *Telecommunications Act 1997 (Cth)*).

If the Customer becomes a Carrier or Carriage Service Provider, then CTA, the Supplier, M2 or Optus may immediately cancel the Service by notice to the Customer. If CTA, the Supplier, M2 or Optus does so, that party will negotiate in good faith with the Customer to enter into an agreement governing supply of the Service, on terms to be agreed.

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## Section G – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from NEC Australia Pty Ltd trading as NEXTEP Broadband (*Nextep*) to the Supplier

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Further details of the plans to which this Section G applies are set out in clause 1.5 of Section A.

### 1. Definitions

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"**Cooling-Off Period**" means a cooling-off period required by any applicable State or Territory door-to-door sales legislation.

"**Customer Provided Equipment**" is that provided by the Customer to facilitate the NEXTEP Broadband Service as advised by us. Such equipment might include a personal computer, set top box, data or network terminating equipment.

"**Installation**" means the provision of the modem and connection to the NEXTEP Broadband Service network at the Customer premises.

"**Maintenance**" means the ongoing support and operation of the NEXTEP Broadband Service during the course of the Term.

"**Minimum Term**" commences on the day that we first provide the NEXTEP Broadband Service to the Customer and continues thereafter for 12 months or any longer term specified in the service application form

"**Monthly Fee**" means the monthly fee for the NEXTEP Broadband Service as set out in the Pricing Schedule.

"**Network Equipment and Facilities**" is that infrastructure provided by a third party such as the Telstra twisted pair lines, Telstra switched data network, NEC switching network, interfaces to third party content and any other equipment or facilities provided but not included in this Agreement.

"**NEXTEP Broadband Provided Equipment**" comprising the modem and ancillary equipment to be provided by us to the Customer.

"**Service**" includes the provision of a modem and connection of broadband Services (including the internet) provided by us, which may be subject to modification from time to time by us.

"**Service Provider**" means a person who provides or is considering providing products or Services in connection with the NEXTEP Broadband network or in conjunction with us or any related entity, but does not include us or any related entity.

"**Software**" refers to any of the type referred to in Clause 3.

"**Term**" means the Minimum term as extended by each month the Customer continues to use the NEXTEP Broadband Service after the ending of the Minimum Term.

"**we**" and "**us**" means, cumulatively, NEXTEP Broadband's authorised Channel Partner who sells NEXTEP Broadband's Services to the Customer, the Supplier and Nextep Broadband.

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## **2. THE NEXTEP BROADBAND SERVICE**

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- 2.1** In order to receive the NEXTEP Broadband Service, the Customer must:
- (c) meet the system requirements as notified by us; and
  - (d) install or arrange for installation of the Customer Provided Equipment.
- 2.2** Subject to this Agreement, we will use reasonable skill and care in providing the Customer with the NEXTEP Broadband Service. The Customer acknowledges that the NEXTEP Broadband Service is provided without warranty that it is continuous or fault-free. Subject to law, we are not liable for any loss or disappointment the Customer may suffer as a result of any faults or interruptions in the NEXTEP Broadband Service other than as specified in these Terms and Conditions.
- 2.3** In the case of the NEXTEP Broadband Service:
- (e) the Customer acknowledges that due to the carrying out of engineering work, there may be a minor disruption to the Customer's standard telephone Service during Service provisioning
  - (f) the Customer acknowledges that certain incompatible products may not be available to the Customer.
- 2.4** We are not liable to provide the NEXTEP Broadband Service or NEXTEP Broadband Provided Equipment if the necessary equipment and facilities are not available for the Customer's Premise.

## **3. OTHER SERVICES**

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- 3.1** If the Customer acquires other services from us or a Service Provider for use in conjunction with the NEXTEP Broadband Service, the Customer agrees to comply with the terms of such services including of any relevant software licences supplied or granted in connection with those services.

## **4. EQUIPMENT**

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- 4.1** We will agree with the Customer the date on which we will install the NEXTEP Broadband Provided Equipment at the Customer's Premises. Where we specify a date to the Customer for installation, we will try to keep to the specified date, but we cannot be liable for any loss the Customer may suffer if we fail to do so.
- 4.2** We will install the NEXTEP Broadband Provided Equipment in the Customer's Premises and will maintain that equipment while we are supplying the NEXTEP Broadband Service to the Customer free of charge and warrant it to be free of defects during the Minimum Term.

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- 4.3** We will try to install the NEXTEP Broadband Provided Equipment to the Customer's premises in the way the Customer would like, but for technical and commercial reasons, we have the final decision on installation, for example, the position of any connection point or cables. We cannot guarantee that the NEXTEP Broadband Provided Equipment will be fault-free.
- 4.4** The Customer must provide us with safe access to the Customer's premises to install, maintain or remove the NEXTEP Broadband Provided Equipment. The Customer represents to us that the Customer is either the owner or occupier of the Customer's premises and that the Customer has obtained any necessary permission to allow us to perform this Agreement.
- 4.5** The Customer must indemnify us against any liability we may incur to any person with an interest in the Customer's premises in connection with the Installation, Maintenance or removal of the NEXTEP Broadband Service or NEXTEP Broadband Provided Equipment.
- 4.6** If it is necessary in providing the NEXTEP Broadband Service, to disconnect the Customer from a third party operated network, we will seek the Customer's approval prior to disconnection.
- 4.7** We reserve the right to quote and charge the Customer if the Customer requires us to remove any part of the broadband transmission facilities. We will not be obliged to repair any damage to the Customer's Premises or property caused by the removal of the NEXTEP Broadband Service or NEXTEP Broadband Provided Equipment.

## **5. SUPPLY OF MODEMS**

---

If the Customer is sold or supplied with a Modem by us or by NEXTEP Broadband on our behalf, the Customer acknowledges and agrees that:

- 5.1** the sale or lease (as applicable) of the Modem is on the terms and condition of this agreement;
- 5.2** we will arrange for the Modem to be delivered, installed and configured at the premises specified in the Application Form;
- 5.3** if the Customer rents a Modem from us then:
- (a) the Customer's possession and use of the Modem is subject to our title and other rights and our supplier and the Customer has no legal or other interest in the Modem other than under this agreement;
  - (b) the Customer grants us and our nominees an irrevocable license to access the premises where the Modem is situated to inspect, repair, modify and/or remove the Modem during the term of this agreement and to disconnect and remove the Modem on the expiration or termination of this agreement, or on default by us under any agreement between us and NEXTEP Broadband or on the expiration or

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termination of any agreement necessary for us to provide the Service or the Modem, whether or not we are a party to that agreement;

- (c) the Customer will not remove the Modem from the Customer Premises without our prior written consent;
- (d) the Customer will not remove any nameplate identifying the Modem as the property of any third party or make any alterations or additions to the Modem;
- (e) the Customer will not sublet, part with possession, assign, sell, transfer, deposit, pledge, lend bail or otherwise dispose of the Modem without our prior written consent. If any person seizes or attempts to seize the Modem, the Customer will notify us and the Customer will notify that person of the title and other rights belonging to us concerning the Modem.
- (f) if the Modem is no longer able to be used, is not operating or is lost, destroyed or damaged while on the Customer premises, the Customer will notify us. We may require the Customer to reimburse us for the reasonable cost of replacement or repair. If The Modem is not in the Customer's possession, the Customer will do everything the Customer can to assist us to locate the Modem, and
- (g) the Customer must immediately return the Modem to us upon the expiry or termination of this agreement for any reason.

**5.4** if the Customer purchases the Modem from us:

- (a) the charges for the Modem will be included as part of the fees applicable to the Service and will be subject to the payment terms that apply to the Customer;
- (b) title in the Modem remains with us until we have been paid in full the charges for the Modem;
- (c) risk in the Modem passes to the Customer upon delivery at the Customer's premises; and
- (d) if the Modem is no longer able to be used, is not operating or is lost, destroyed or damaged while on the Customer premises, the Customer will notify us.

**5.5** the Customer will ensure that the Modem is operated and housed in an environment which meets the manufacturer's requirements and will not affix the Modem to any real property;

**5.6** the Customer will use the Modem for ordinary business purposes only. The Customer will not use the Modem for any illegal or unlawful purpose which may result in its confiscation or seize or to supply the Service or similar services to third parties.

## **6. INDEMNITY AND LIMITATION OF LIABILITY**

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**6.1** The Customer must indemnify us against any loss, damage, liability, expense, cost or charge arising from or incurred in connection with:

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- (a) any fault in the NEXTEP Broadband Service, the NEXTEP Broadband Provided Equipment or the Software due to the Customer's negligence or wilful misuse, or any unauthorised use of any of them; and
  - (b) any breach by the Customer of the Acceptable Use Policy.
- 6.2** Subject to clause 4.2, we accept liability for the supply of the NEXTEP Broadband Service but only to the extent provided in this clause 6.
- 6.3** We accept liability where:
- (a) the NEXTEP Broadband Service is not supplied with due care and skill;
  - (b) any materials supplied in connection with the NEXTEP Broadband Service (including the NEXTEP Broadband Provided Equipment) are not reasonably fit for the purpose for which they are supplied; and
  - (c) it is otherwise required to do so by the Trade Practices Act.
- 6.4** To the extent (if any) that the NEXTEP Broadband Service is not of a kind ordinarily acquired for personal, domestic or household use, our liability under clause 6.3 is limited to, at our option, resupplying or paying for the resupply of the Service.
- 6.5** Except as stated above, we are not liable in tort (including negligence), contract or otherwise for any damages, including loss of profits, business or anticipated savings or any other indirect or consequential damage.
- 6.6** The Customer indemnifies us in respect of any loss, liability or expense arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by the Customer, using the Service.

## **7. SERVICE SUSPENSION, CANCELLATION OR AMENDMENT**

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- 7.1** Subject to clause 7.5, The Customer can terminate the NEXTEP Broadband Service by giving 30 days notice to us.
- 7.2** If we suspect that the Customer has breached any material term of the Terms and Conditions of this Agreement including engaging in conduct that is contrary to the Acceptable Use Policy, we can without affecting any other rights we may have, immediately terminate or suspend the Customer's Service.
- 7.3** The Customer will still be liable to pay Monthly Fees during the period of suspension if we terminate this Agreement and the Customer has not paid the cancellation fee in clause 7.5, the customer must return to us all NEXTEP Broadband Provided Equipment.
- 7.4** We are otherwise entitled to terminate this Agreement by giving the Customer 30 days notice.

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**7.5** If the Customer decides to terminate the NEXTEP Broadband Service after the end of the Cooling Off Period, if applicable, and before the end of the Minimum Term, the Customer must pay to us a cancellation fee which is made up of the following cancellation charges:

- (a) Balance of Minimum Term monthly fees
- (b) Balance of Modem cost OR return of the modem (if applicable)
- (c) Disconnection fee (if applicable)

Cancellation charges payable for cancellation before Minimum Term expires are - (a), (b) and (c).

Cancellation charges listed above do not apply for cancellations after the Minimum Term expires.

## **8. RESALE OF SERVICE**

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**8.1** The Customer agrees that the Service is for the Customer's use and agrees that the Service is not for resale.

## **Annexure A – NexVoice Service Addendum**

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### **1. Background**

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**1.1** This Annexure applies to all Customers who obtain a “NexVoice Service” and the product lines offered under NexVoice from the Supplier on a resale basis by Nextep Broadband. In this Annexure:

- (i) “**Device**” means any customer premise equipment required to operate the voice service;
- (ii) “**NexVoice Service**” means the name of the voice service using IP technology sold by Nextep, a product description for which is published on the Nextep Channel Partner website and provided to the CTA or the Supplier in writing from time to time.

### **2. Reasonable Use Policy**

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**2.1 Behaviour of Use.** The Customer is prohibited from using the Service or the Device for auto-dialling, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling) or fax or voicemail broadcasting. Nextep and the Supplier reserves the right to immediately terminate or modify the Service if Nextep determines, in their sole and absolute discretion, that the Service or Device is used for any of the aforementioned or similar activities, or at any time was, inconsistent with small business usage patterns.

**2.2 Unreasonable Use.** The Customer acknowledges and agrees that the Customer will make reasonable use of the NexVoice Service and use such services for voice calls only. For the avoidance of doubt, it is unreasonable use of the NexVoice Service if, on average, 95% of

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local calls and on-network calls made have duration of 60 minutes or more on any particular line. Such unreasonable use of NexVoice Services will be considered misuse and Nextep may immediately terminate the service.

- 2.3 Prohibited Unlawful Use.** The Customer shall use the Service and the device only for lawful purposes. Nextep and the Supplier reserves the right to immediately terminate a Service if, in Nextep's sole and absolute discretion, Nextep determines that the Customer has used the Service or the device for an unlawful purpose. In the event of such termination, the Customer will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of the Service.
- 2.4 Inappropriate Use.** The Customer must not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libellous, deceptive, fraudulent, invasive of another's privacy, or any similar behaviour. Nextep and the Supplier reserves the right to immediately terminate a Service if, in Nextep's sole and absolute discretion, Nextep determines that the Customer has used the Service or the Device in any of the aforementioned ways. In the event of such termination, the Customer will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of the Service.
- 2.5 Use of Service and Device by subscribers Outside Australia.** Although Nextep encourages the use of the Service to place calls to foreign countries from within Australia, Nextep does not presently offer or support the Service in any countries other than the Australia. If the Service or the Device is used outside of Australia, the Customer will be solely responsible for any violations of local laws and regulations resulting from such use. Nextep and the Supplier reserves the right to terminate the Service immediately if Nextep determines, in Nextep's sole and absolute discretion, that the Customer has used the Service or the Device outside of Australia.
- 2.6 Theft of Service.** The Customer shall notify Nextep immediately, in writing or by calling Nexep's customer support line, if the Customer's Device is stolen or if the Customer becomes aware at any time that a Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. The Customer must provide the account numbers on the affected device and provide a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of this Service. Until such time as Nexep receive notice of the theft, fraudulent use or unauthorized use, the Customer will be liable for all use of the Service using a Device stolen from the Customer and any fraudulent or unauthorized use of the Service.
- 2.7 Content.** The Customer will be liable for any and all liability that may arise out of the content transmitted by the Customer or to any person, whether authorized or unauthorized, using a NexVoice Service or Device. The Customer shall assure that the Customer's use of

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the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. Nextep and the Supplier reserves the right to terminate or suspend a Service and remove the Customer's content from the Service, if Nextep determines, in Nextep's sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with Nextep's ability to provide Services to the Customer or others. Nextep or the Supplier's action or inaction under this Section will not constitute any review or approval of the Customer's use or content.

- 2.8** If Nextep believes that the Customer has used the Service or the device in any of the aforementioned ways, Nextep may forward the relevant communication and other information, including the Customer's identity, to the appropriate authorities for investigation and prosecution. The Customer hereby consents to Nextep forwarding of any such communications and information to these authorities. In addition, Nextep will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the Customer or others.

## **3. Emergency Services**

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- 3.1** For each phone number used with a NexVoice service, the Customer must register with Nextep the physical location where the Service will be used with that phone number. Should the Customer move the ATA to another location, the Customer must register with Nextep the new location. If the Customer does not register the new location, any call made to an Emergency service (eg. 000) from this service, may be sent to an emergency centre with the old address.

The Customer will register the initial location of use of this number when the Service is first applied for. Nextep will not be able to automatically resolve the caller's site address should the Customer relocate the ATA device. It is the Supplier's responsibility to maintain up-to-date records of the location of the ATA especially when moved into a location different to that nominated during service application. For the purpose of Emergency dialling, the Customer may only register one location at a time for each phone line used with this Service. Nextep Broadband and the Supplier is neither liable nor responsible for any loss or damages whatsoever caused by incorrect use or lack of proper instruction to Customer's of this service.

- 3.2** In the case that an Emergency Centre does not have the address of the Customer or is unable to identify the phone number of the Caller, the Supplier must advise Customers that they will be required to verbally state the nature of the emergency promptly and clearly, including their location (and possibly their telephone number), as the operator may not have this information. Emergency personnel will not be able to find the Customer's location if the call is not completed or is not forwarded, is dropped or disconnected, if the Customer is unable to speak to tell the operator their location, or if the Service is not operational for any reason.

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- 3.3** In the case that electrical power is lost, telephone services are only available if the ATA selected for operation has a failover feature that provides direct access to a standard telephony service over a PSTN line. In any other case, interruption in the power supply will render the Service, including Emergency Dialling, unavailable. Following a power failure or disruption, the Customer may need to reset or reconfigure the device prior to utilizing the Service, including Emergency Dialling. Nextep recommends that Customers maintain access to at least one standard telephone service from the PSTN and inform all NexVoice subscribers of these limitations.
- 3.4** Emergency dialling does not function if the Customer changes their phone number or if they add or port new phone numbers to their account, unless and until the Customer successfully registers their location of use for each changed, newly added or newly ported phone number.
- 3.5** There may be a greater possibility of network congestion and/or reduced speed in the routing of Emergency dialling calls made utilizing the Service as compared to traditional Emergency dialling over traditional public switched telephone networks.
- 3.6** Service outages or suspensions or terminations of service by the Customer's broadband provider or ISP will prevent all Services, including Emergency dialling, from functioning. Similarly, Service outages due to suspension or termination of a NexVoice account will prevent all Services, including Emergency dialling, from functioning.
- 3.7** If there is a Service outage for any reason, such outages will prevent all Services, including Emergency dialling, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

## **4. Voice Quality**

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- 4.1** Customers may choose between two voice codecs that deliver toll-quality and near toll-quality voice. Customers should be aware that due to a trade-off between available bandwidth and voice quality, Customers may notice a slightly lower perceived voice quality to that of a normal PSTN service where a near-toll quality voice codec is used.

## **5. Service Incompatibilities**

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- 5.1** Operator Assisted Calling. The Service does not support operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls).
- 5.2** Security Systems. The Service may not be compatible with home and office security systems. The Customer may be required to maintain a telephone connection through their local exchange carrier in order to use any alarm monitoring functions for any security system installed in the home or business. The Customer is responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

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- 5.3** Certain Broadband and Cable Modem Services. The Customer acknowledges that some providers of broadband services may provide modems that prevent the transmission of communications using the Service. Nextep and the Supplier does not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

## **6. Limitations of Liability and Indemnity**

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- 6.1** **Limitation of Liability.** Nextep and the Supplier will not be liable for any delay or failure to provide the Service, including Emergency dialling, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;
- device, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- device, network or facility shortage; device or facility relocation;
- service, device, network or facility failure caused by the loss of power to the Customer's site; outage of, or blocking of ports by, the Customer's ISP or broadband service provider or other impediment to usage of the Service caused by any third party;
- any act or omission by the Customer or any person using the Service or Device provided to the Customer; or
- any other cause that is beyond Nextep or the Supplier's control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, Emergency dialling) to be connected or completed, or forwarded.

Nextep and the Supplier's aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period.

- 6.2** In addition to the indemnities set out in this Agreement, the Customer agrees to indemnify and hold Nextep and the Supplier harmless against all loss, damages, liability, expenses, costs and charges arising from or as a result of:

- The transmission of any illegal, fraudulent or offensive material by the Customer, its employees, agents, contractors or customers; or
- Any wilful, unlawful or negligent act or omission by the Customer, its employees, agents, contractors, or customers.

- 6.3** **Disclaimer of Liability for Damages.** In no event will Nextep or the Supplier, its officers, directors or employees be liable for any direct, indirect, special, punitive, exemplary or

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consequential damages, or for any other damages including but not limited to personal injury, wrongful death, property damage, loss of data, loss of revenue or profits, or damages arising out of or in connection with the use or inability to use the service, including inability to access emergency service personnel through the Emergency dialling service or to obtain emergency help.

## **7. Future Changes to this Annexure**

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- 7.1** Nextep and the Supplier may change the terms and conditions of this Annexure, including all service charges, product features, and service levels from time to time. Notice of such changes will be considered given and effective from the date posted on <http://nexvoice.nextep.com.au>, such changes will then become binding on the Customer 15 days after such changes are posted to the NexVoice website and no further notice by Nextep or the Supplier is required upon the Customer's continued use of the Service. The Annexure, including all changes as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device.

## **Section H – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from InterCall Australia Pty Ltd (*InterCall*) to the Supplier**

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Further details of the plans to which this Section H applies are set out in clause 1.5 of Section A.

### **1. Customer's Obligations (Operative Provisions)**

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- 1.1** The Customer is the sole owner of content and is solely responsible for the content of all conference communications (visual, written or audible) using the Customer's accounts.
- 1.2** The Customer represents and warrants that they will not use the Services to send unsolicited mass mailings, surveys, pyramid schemes, chain letters, or contests to any person who has not given specified permission to be included in such a process (commercial or otherwise); to communicate any message or material that is harassing, trade libellous, unlawfully threatening, obscene or harmful to minors, or is otherwise unlawful or that would give rise to civil liability, is defamatory or that constitutes or encourages conduct that could constitute criminal offence under any applicable law or regulation. Although InterCall is not responsible for any such communications, InterCall may suspend any such communications of which InterCall is made aware.
- 1.3** For conferences conducted utilising any recording feature of the Service, the Customer is responsible for and obligated to provide notification to the participants prior to commencement of said conference that this is a "recorded session".

### **2. Warranties (Operative Provisions)**

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- 2.1** The customer understands and agrees that Intercall's services are provided "as is" and "as available". Intercall and the supplier expressly disclaim all warranties of any kind, express or implied, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or non-infringement. Intercall and the supplier make no warranty or representation regarding Intercall's services, any information, materials, goods or services obtained through Intercall's services or websites, or that Intercall's services will meet any of the customer's requirements, or be uninterrupted, timely, secure or error free. Use of Intercall's services and website are at the customer's sole risk. The customer will be solely responsible for any damage to the customer resulting from the use of such services or website. Because some jurisdictions do not allow limitations on implied warranties, the above limitation shall be applied to provide the minimum warranty period or scope allowed by the applicable law.

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## **3. Service Security (Operative Provisions)**

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- 3.1** The Customer will access the Services by using the public telephone network for audio conferencing and InterCall's offshore bridging for international and multi-point video conferencing.
- 3.2** The Customer will determine the level of security necessary for a conference call. No extra security precautions will be undertaken by InterCall unless the Supplier or the Customer has so requested.
- 3.3** Use of call taping or Encore features may subject the Supplier or Customer to Australian laws or regulations regarding the notification to participants of the use of these features. InterCall and the Supplier do not assume responsibility for any required notification to any conference call participants.

## **Section I – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from IBM Australia Limited (IBM) to the Supplier**

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Further details of the plans to which this Section I applies are set out in clause 1.5 of Section A

### **1. Liability (General Terms)**

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- 1.1** Circumstances may arise where, because of a default or other liability, one of the parties is entitled to recover damages from the other. In each such instance, regardless of the basis on which damages can be claimed, the following terms apply as the Customer's exclusive remedy and IBM's exclusive liability.
- 1.2** IBM is responsible for no more than:
- (i) damages for bodily injury (including death) caused by IBM's negligence;
  - (ii) actual direct loss or damage to real property or tangible personal property caused by IBM's negligence; and
  - (iii) the amount of any other actual direct loss or damage arising from IBM's negligence, up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges for the Product or Service that is the subject of the claim.
- 1.3** Where IBM is in breach of a condition or warranty implied by the *Trade Practices Act 1974*; 1) IBM's liability is limited to, for services, the payment of the cost of having the services supplied again, and for goods, the repair or replacement of the goods or the supply of equivalent goods; and 2) where this condition or warranty relates to the right to sell, quiet possession, or clear title (i.e. Section 69 of the *Trade Practices Act*) or the goods are of a kind ordinarily acquired for personal, domestic, or household use or consumption, then none of the limitations in this Section apply.
- 1.4** Under no circumstances (except as required by law) is IBM liable for any of the following even if IBM is informed of their possibility:
- (i) third-party claims against it for damages (other than those under the first two items above in clause 1.2);
  - (ii) loss of, or damage to, the Customer's records or data;
  - (iii) special, incidental, or indirect damages, or for any economic consequential damages; or
  - (iv) lost profits, business, revenue, goodwill or anticipated savings.
- 1.5** In addition to damages for which the Customer is liable under law and the terms of this Agreement, the Customer will indemnify IBM for claims made against IBM and the Supplier by others (particularly regarding statements, representations, or warranties not authorised

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by IBM) arising out of the Customer's conduct under the Agreement or as a result of the Customer's relations with anyone else.

## **Section J – Additional terms and conditions for Customers who obtain telecommunication services supplied on a resale basis from Conetix Pty Ltd (Conetix) to the Supplier**

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Further details of the plans to which this Section J applies are set out in clause 1.5 of Section A.

### **1. Liability**

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- 1.1 The customer acknowledges and agrees that the Supplier and Conetix shall not be responsible or liable, whether directly or indirectly, in respect of the Customer's use of the Conetix service(s).

### **2. Use of the Service**

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- 2.1 The Customer must not use the Conetix service in any manner which could materially damage, disable, or impair any Conetix service(s) (or the network(s) connected to any Conetix service(s)) or otherwise interfere with any other party's use and enjoyment of any Conetix service(s).

### **3. Disclaimer**

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- 3.1 The Supplier and Conetix disclaims all warranties that the Conetix service will be continuous or error free; nor does the Supplier or Conetix make any warranty as to the results that may be obtained from the use of the Conetix service and/or equipment or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Conetix services and/or equipment.

### **4. Intellectual Property**

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- 4.1 No part of parts of the content of the Conetix website may be reproduced, distributed, republished, commercially exploited, displayed, broadcast, hyperlinked or transmitted in any manner or by any means or stored in an information retrieval system without the prior written permission of Conetix provided that permission is granted to download and/or print the materials from the Conetix website for personal, non-commercial use only. The Customer must not modify the materials and Conetix retains all copyright and other proprietary notices contained in the materials. The Customer must not, without Conetix's permission, create derivative works from the content or insert a hyperlink to the Conetix website or "mirror" any material contained on the Conetix website on any other server.
- 4.2 The customer must not alter or remove any copyright, trademark, patent, and/or other legal notices contained in or on the Conetix Website.

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- 4.3** The Customer must provide all reasonable assistance as required by the Supplier in response to any third party requests including but not limited to compliance with any regulatory obligations, or a request for removal of content by an authorised owner or licensor of that content in accordance with intellectual property laws or the *Privacy Act 1988*.

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## **Section K – Additional terms and conditions for Customers who obtain telecommunications services supplied on a resale basis from Bendigo Community Telco (BCT) to the Supplier**

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Further details of the plans to which this Section K applies are set out in clause 1.5 of Section A.

### **1. Limitation of Liability**

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Where we are not permitted to exclude our liability for any loss or damage in connection with our breach of a term, condition or warranty, but are permitted to limit our liability for such a breach, our liability to you is limited:

- if the breach relates to the supply of Equipment, the repair or replacement of the Equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the Equipment or supplying equivalent equipment; or
- If the breach relates to the supply of a Service, resupplying the Service or payment of the cost of having the Service resupplied.

All conditions, terms and warranties which would otherwise be implied into our Agreement are expressly excluded except to the extent such exclusion is prohibited by law.

### **2. Exclusion of Liability**

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To the extent permitted by law, we have no liability to you or to any other person for:

- any Claim by you or any other person for loss of profits, economic loss, loss of data or any indirect or consequential loss or damage arising from or in connection with any breach of contract, any tort (including negligence) or any other basis;
- faults or defects in any facility or Equipment we provide to you or the Services which are caused by or contributed to by your conduct or misuse;
- any failure on our behalf to perform our obligations under this Agreement where that failure is due to an event occurring outside our reasonable control, including explosions, natural disasters, war or an act of God; and
- Acts, omissions or defaults of any Supplier or any person who provides goods or services directly to you for use in connection with a Service.

However, we will use reasonable endeavours to ensure that any Supplier cooperates in order to deliver the Service in a timely manner, provides and maintains the Service in a responsible fashion and rectifies any faults in relation to the Service in a timely manner.

### **3. Pricing**

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#### **3.1 Price Changes**

BCT may review and modify pricing and will communicate such changes by giving you 30 calendar days notice in writing.

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## 3.2 Plan Withdrawal

BCT reserves the right to withdraw any of the available plans which will remove such plans from our service ordering portal (CT Ordering). We will communicate such action by giving CTA 30 calendar days notice in writing. After this date CTA will no longer be able to order withdrawn plans.

## 3.3 Plan Cancellation

BCT reserves the right to cancel any of the available plans which will remove such plans from the service ordering portal (CT Ordering). BCT will communicate such action by giving CTA at least 90 calendar days notice in writing upon mutual agreement of the cancellation deadline. After this date CTA will no longer be able to order cancelled plans and all active services on such plans will be cancelled. It is CTA's responsibility to migrate all affected services onto alternative plans by the due date. CTA will be liable for any and all associated charges for remaining active services.

## Section L – Definitions

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1. In this Telecommunications Service Book, the following terms have the following meanings and apply *mutatis mutandis*:
  - 1.1 **AAPT Network** means the telecommunications network operated and controlled by AAPT or its Related Bodies Corporate.
  - 1.2 **Acceptable Use Policy** means, unless specified otherwise within one of the Sections of this Service Book, the policy set by the Supplier, as referred to on the Application Form and as amended from time to time.
  - 1.3 **Agreement** means the agreement between the Customer and the Supplier for the Services, comprising the terms stated in the Application Form, the Standard Form of Agreement, the Rate Card, the Schedule of Charges and this Service Book.
  - 1.4 **Application Form** means an application, in a form approved by the Supplier, made by the Customer for the provision of Services by the Supplier.
  - 1.5 **Bill** means a bill for Fees which meets the requirements for a Tax Invoice.
  - 1.6 **Bill Issue Date** means the date specified on a Bill which will be a date no earlier than the date of despatch of the Bill to the Customer.
  - 1.7 **Business Day (General)** means a day on which the banks in Victoria and New South Wales are open for business.
  - 1.8 **Business Day (PowerTel)** means any day other than a Saturday, Sunday or public holiday in Sydney.
  - 1.9 **Carrier** means a carrier as defined in the *Telecommunications Act 1997*.
  - 1.10 **Carriage Service Provider** means a carriage service provider as defined in the *Telecommunications Act 1997*.
  - 1.11 **Commencement Date** means the date of commencement of a Service in accordance with this Agreement.
  - 1.12 **Competition Notice** means a notice issued under Part XIB of the *Trade Practices Act (Cth) 1974*.

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- 1.13 **Confidential Information** of a party includes all information of a party marked as confidential or which the other party knows or ought reasonably to be aware is confidential (regardless of its form and whether the other party becomes aware of it before, on or after the date of this Agreement) but excludes information that is public knowledge otherwise than as a result of a breach of the obligations of confidentiality under this Agreement.
- 1.14 **Contract (PowerTel)** means a contract formed between PowerTel and the Supplier.
- 1.15 **CTA** means Community Telco Australia Pty Limited (ACN 094 908 326).
- 1.16 **BCT** means Bendigo Community Telco Limited (ACN 089 782 203)
- 1.17 **VPN** means Virtual Private Networks
- 1.18 **Customer** means an existing or prospective customer of the Supplier, who acquires or might acquire any of the Services for that person's own use.
- 1.19 **Customer Premises** means a building, structure, premises or site owned, leased or controlled by the Supplier or its Customer and nominated by the Supplier or its Customer as Customer premises for the purposes of this Agreement.
- 1.20 **Dealer** means the Supplier.
- 1.21 **Downgrade** means any modification to a Service which reduces the capacity, use or utility of that Service.
- 1.22 **Downgrade Charge** means the relevant downgrade charge (if any) calculated in accordance with the Service Description or any appendix to the Service Description.
- 1.23 **Due Date** means the date 30 days after the Bill Issue Date as specified on the Bill.
- 1.24 **End-User Customer Contract** means the Standard Form of Agreement between the Supplier and a Customer for the resupply of Services by the Supplier (including any contract legally and/or equitably assigned to the Supplier at any time).
- 1.25 **End-User Customer Details** means all information about a Customer including full name, billing address, street address, Service Numbers and whether Service Numbers are silent or not.
- 1.26 **Excluded Event** means:
- (i) a breach of the Agreement by the Customer;
  - (ii) an Intervening Event;
  - (iii) a negligent or fraudulent act or omission of the Customer or any of its People; or
  - (iv) a failure of any of the Customer's equipment.
- 1.27 **Fault** means:
- (a) a failure in the normal operation of a Network or in the delivery of a Service; or

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- (b) any issue as to the availability or quality of a Service supplied to a Customer via the Supplier, notified by the Customer to the Supplier's help desk.
- 1.28 **Fees** means the charge(s) for the supply of the Services or associated work calculated in accordance with a Rate Card for this Service Book or any other costs or amounts payable under this Service Book.
- 1.29 **Force Majeure** has the meaning set out in clause 13 of the General Terms.
- 1.30 **Intellectual Property** means all statutory, civil and common law, and other proprietary rights (including rights to require information be kept confidential), whether registered or not or capable of registration or not, and including all applications and the right to apply for any registrations in respect of inventions, copyright, trade marks, designs, patents, know-how, trade secrets and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.
- 1.31 **Internet Service (AAPT)** means the internet services supplied to the Supplier on a wholesale basis from AAPT, and further re-supplied to the Customer by the Supplier.
- 1.32 **Internet Service Fee** means the internet service fee described in a Rate Card provided by the Supplier to the Customer.
- 1.33 **Intervening Event** means an event affecting a person outside that person's reasonable control, and includes fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation, an act or omission of any regulator or an act or omission of any third party (including any Supplier) where the act or omission is caused by an event or circumstance outside that third party's reasonable control (including any of the things mentioned in this definition).
- 1.34 **LOLM (Telstra)** means the systems interface, Linx Online Mobiles.
- 1.35 **Optus Group Company** means Singapore Telecommunications Limited ABN 096 701 567 and each of its related companies.
- 1.36 **Optus Network** means the telecommunications network operated and controlled by Optus or its related companies.
- 1.37 **People** means the relevant party's directors, officers, employees, agents, contractors, advisers and representatives.
- 1.38 **Permanent Connection** means a data communications link between the Supplier and its supplier or the Customer and its Customers whereby for the provision of Internet Services.
- 1.39 **Rate Card** means the Supplier's price list in respect of a Service.

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- 1.40 **Regulator** means, as the case requires, the minister responsible for the administration of the *Telecommunications Act 1997*, the ACMA, the ACCC, or any two or more of them.
- 1.41 **Related Body Corporate** of an entity means a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act*.
- 1.42 **Schedule of Charges** means the Supplier's price list for administrative charges payable in accordance with this Agreement, as displayed from time to time on its website.
- 1.43 **Service(s)** means a product or service which the Supplier has agreed to supply to the Customer as stated in the Application Form.
- 1.44 **Specifications (Telstra)** means the technical documents listed in the Telstra Service descriptions and includes the WPD Specification and Call Detail Record Interface.
- 1.45 **Standard Form of Agreement** means the standard terms and conditions that apply to all Customers of all Services obtained from the Supplier, which is filed with the Australian Communications and Media Authority and comprises part of the Customer's Agreement with the Supplier.
- 1.46 **Supplier Equipment** means any equipment owned by the Supplier or its supplier or provided by the Supplier or its supplier to the Customer that is located on the Customer's premises or used in connection with the Services, other than equipment provided to the Customer by outright sale.
- 1.47 **Supplier Group** means the Supplier and its related companies.
- 1.48 **Tax Invoice** has the same meaning as in the *A New Tax System (Good and Services Tax) Act 1999* (Cth).
- 1.49 **Telstra Equipment** means the equipment provided by Telstra to the Supplier and the Customer as part of each individual Service.
- 1.50 **Telstra Manuals** means the GSM Manual and LOLM Manual (as applicable).
- 1.51 **Telstra Network** means the telecommunications network operated and controlled by Telstra or its related companies.
- 1.52 **The Supplier Wholesale User Guide** means the document by that name (or otherwise nominated as that document) provided to the Customer by the Supplier, as amended from time to time.
- 1.53 **Upstream Supplier** means any wholesale supplier of telecommunications services (including component parts of services) to the Supplier.
- 1.54 **Wireless Device** means a mobile phone or other device, which is compatible with Telstra's Mobile Networks, and which is used by Customers to send or receive Wireless Packet Data.
- 1.55 **Wireless Packet Data** or **WPD** means MMS Messages, VPN Services, Packet Data, WAP Data, WAP content, Internet content and other application data uploaded or downloaded by Customers using the Service.

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- 1.56 **Works** means any design, installation or commissioning works required to enable provision of the Services or as agreed in writing by the parties from time to time.
2. Terms which have a defined meaning in the Standard Form of Agreement have a corresponding meaning in this Service Book.