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# NextVoice Master Services & Equipment Supply Agreement



7x Service Award winner

[nexttelecom.co.nz](http://nexttelecom.co.nz)

# NextVoice Master Services & Equipment Supply Agreement

## IT IS AGREED THAT

(1) Next Telecom Limited (*Next Telecom*) will supply the equipment (*Equipment*) and services (*Services*) described in Next Telecom's proposal or other document negotiated with the customer (the *Customer*), and the Customer will purchase the Equipment and Services;

(2) from the date on which the Equipment becomes operational (the *Commencement Date*) for the minimum number of months (the *Initial Term*) described in Next Telecom's proposal or other document negotiated with the Customer:

(a) Next Telecom will license the Customer to use the NextVoice software and provide the services described in Sections B, C and D (if selected); and

(b) Customer will accept and pay for the licence and services, on the terms of the Agreement, which comprises Section A: General Terms; Section B: NextVoice Software Licence; Section C: Telecommunication Service; (if selected) Section D: Cloud Service Terms. Next Telecom's Terms and Conditions, which can be viewed at <https://nexttelecom.co.nz/terms-conditions>, also apply to the extent that they address matters not dealt with in Sections A to D.

## CUSTOMER CONSENTS & ACKNOWLEDGEMENTS

The Customer warrants that the information it has supplied is accurate and complete in all respects. The Customer will disclose to Next Telecom any information that may materially affect Next Telecom's decision to continue granting credit or supplying goods or services to the Customer.

The Customer consents to Next Telecom using the information supplied for the purpose of registering a financing statement on the Personal Property Securities Register.

Next Telecom will extend credit and provide any goods or services on the terms of and the Customer will be bound by the Agreement.

The Customer will not grant any other security interest over the same collateral as that secured by any security interest granted to Next Telecom.

If the Customer is not an individual, the Customer warrants that the person whose signature appears below is duly authorised to sign.

## PRIVACY ACT

The Customer authorises Next Telecom to make credit reference and other enquiries required for the purposes of and authorises any person to disclose to Next Telecom any personal information for that purpose. The Customer also authorises Next Telecom to disclose personal information about the Customer within Next Telecom's group of related companies, to Next Telecom's credit rating/reporting agencies and anyone that Next Telecom may appoint to collect an outstanding debt.

## SECTION A: GENERAL TERMS

### 1. DEFINITIONS

In this Section A:

*Agreement* means the document to which these General Terms are attached;

*Event of Default* means an event where:

(a) a party fails to comply with the Agreement; or

(b) a party is subject to bankruptcy, liquidation, receivership or insolvency; or

(c) in the case of the Customer, its creditworthiness, the value of the Equipment the subject of the Security Interest, or the Customer's ability to comply with the Agreement is adversely affected;

*Fees* means the prices and rates agreed by the parties for the supply of the Equipment and Services;

*Equipment* means the equipment described in Next Telecom's proposal or other document negotiated with the Customer, and includes all proceeds of sale of the Equipment and any product of which the Equipment subsequently become part;

*Intellectual Property Rights* means all copyright, patents, designs, trademarks, know-how, trade secrets, inventions and other forms of intellectual property;

*PPSA* means the Personal Property Securities Act 1999;

*Security Interest* means the security interest granted pursuant to these General Terms;

*Services* means the services described in Next Telecom's proposal or other document negotiated with the Customer, and may include the services in Sections B, C and/or D.

### 2. PAYMENT

2.1. The Customer will pay to Next Telecom the Fees in the manner specified in other parts of the Agreement or, if not specified, in the manner stated in Next Telecom's invoices or as otherwise agreed by the parties.

2.2. All Fees are to be paid in full without set-off or counterclaim and free of any deduction for tax or otherwise.

2.3. All amounts exclude GST or other sales taxes, unless stated otherwise.

2.4. If payment is not made by the due date, the Customer will, on demand (and without affecting Next Telecom's other rights) pay interest to Next Telecom on the unpaid amount at 5% above Next Telecom's bankers' base lending rate, such interest being payable from the due date until the date of actual payment accruing on a daily basis.

2.5. While any Fees are owing, the Customer will not sell or dispose of the Equipment, save for a sale in the ordinary course of its business to a good faith purchaser. If the Equipment is sold or otherwise disposed of by the Customer prior to payment for the Equipment, the Customer will account to Next Telecom for the proceeds of the sale or disposal. Next Telecom will be legally and beneficially entitled to the proceeds from the sale or disposal of any Equipment (but excluding the Customer's profit margin on the resale). The Customer must, if requested by Next Telecom, pay the proceeds into a separate bank account established for this purpose.

### 3. RISK AND PROPERTY IN EQUIPMENT

3.1. Next Telecom will retain ownership of the Equipment until the Customer either (i) pays for the Equipment in full; or (ii) the Customer resells the Equipment with Next Telecom's permission.

3.2. Risk of loss or damage to Equipment will pass to the Customer on delivery. Delivery will occur when the Equipment is unloaded at the location designated by the Customer or when the Equipment is provided to a carrier,

whichever happens first.

3.3. The Customer will pay all delivery costs.

3.4. The Customer will not be entitled to cancel any late delivery of Equipment or Services.

3.5. If Equipment is delivered by instalments, the Customer may not reject an instalment and must still pay for all of the Equipment.

3.6. Until the Equipment has been paid for in full:

(a) the Customer will hold the Equipment as fiduciary bailee for Next Telecom and will store it so that it is clearly identifiable as Next Telecom's property;

(b) the Customer will insure the Equipment in Next Telecom's and the Customer's names for their respective rights and interests from the time of delivery; and

(c) Next Telecom may apply any payments received from the Customer in reduction of the Fees in such manner as Next Telecom thinks fit.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1. Unless otherwise agreed in writing, all Intellectual Property Rights in Equipment supplied by Next Telecom and anything developed by Next Telecom in the course of providing the Services will belong to Next Telecom.

4.2. The Customer's use of any software provided by Next Telecom (including third party software) will be subject to the terms of the licence for that software.

4.3. The Customer will ensure that all designs, instructions, marks and information supplied to Next Telecom do not cause Next Telecom to infringe the Intellectual Property Rights of any other person.

#### **5. MATERIAL CHANGE**

If the Customer's requirements in relation to the Equipment or Services change materially, Next Telecom may, on giving notice to the Customer increase the Fees to cover any additional costs and time incurred by Next Telecom as a result of the change.

#### **6. SERVICES**

6.1. Next Telecom may provide Services by remotely accessing the Customer's systems.

6.2. Where Services are provided on-site, the Customer will pay Next Telecom's travel expenses and, where Fees are determined on a time and materials basis, the calculation of the Fees will include travel time.

6.3. All time spent by Next Telecom reviewing, re-coding, bug-fixing, trouble-shooting, diagnosis, quality assuring and testing Equipment or Services and other work needed to make software or systems serviceable, to meet the Customer's requirements or to provide Services, will be added to the Fees.

#### **7. CONFIDENTIALITY**

Each party will keep confidential any information it learns about the other party or its business in the course of carrying out its obligations under the Agreement, unless prior written consent is given by the other party or disclosure is required by law.

#### **8. LIABILITY**

8.1. All warranties and representations implied by law, trade, custom or otherwise are excluded to the fullest extent permitted by law.

8.2. The Consumer Guarantees Act will not apply, as the Equipment and Services are acquired for the purpose of a business.

8.3. In no circumstances will Next Telecom be liable for any indirect or consequential loss or damage arising out of the supply of the Equipment or Services.

8.4. No claim by the Customer against Next Telecom will be accepted if made more than 12 months after the Customer becomes entitled to make the claim.

8.5. If, despite the preceding provisions, Next Telecom is

found to be liable to the Customer, that liability is limited to the lesser of: (1) the Fees paid for the Equipment and the Services in respect of which the liability arose or (2) the Fees paid by the Customer to Next Telecom in the year prior to the date on which the liability first arose.

#### **9. REMEDIES**

9.1. If an Event of Default occurs in respect of the Customer, Next Telecom may, without prejudice to its other rights:

(a) require immediate payment of the Fees;

(b) withhold supplies of further Equipment and Services;

(c) require cash payment for all future supplies of Equipment and Services;

(d) recover and resell any Equipment and enter any premises where Equipment are believed to be stored, without being liable in damages in respect of such recovery and resale (but Next Telecom will account to the Customer for any sums recovered in excess of the Fees owing);

(e) enforce any Security Interest;

(f) appoint a receiver, who is authorised to exercise all rights and powers conferred on a receiver by law.

9.2. If the Customer defaults in payment, the Customer will, on demand, pay to Next Telecom all costs of collection.

9.3. Where a deposit is paid for any Equipment or Services:

(a) the deposit is a good faith pre-estimate of the loss that Next Telecom will incur as a consequence of the Customer's breach of the Agreement;

(b) if the Customer breaches the Agreement, Next Telecom may retain the deposit as liquidated damages in respect of the breach; and

(c) Next Telecom will refund that part of the deposit that exceeds the Fees in respect of the Equipment and Services actually provided to the Customer, if the Customer validly terminates the Agreement pursuant to clause 12.1.

#### **10. SECURITY OVER EQUIPMENT**

10.1. The Agreement creates, in favour of Next Telecom, a Security Interest in all present and after acquired Equipment supplied by Next Telecom to the Customer to secure the payment by the Customer of the Fees owing.

10.2. The Customer waives its right to receive a verification statement in respect of any financing statement relating to a Security Interest.

10.3. The parties contract out of sections 114(1)(a), 117(1)(c) and 133 of the PPSA and the Customer's rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

10.4. The Security Interest will continue until Next Telecom gives the Customer a final release.

10.5. The Customer will:

(a) promptly do everything Next Telecom may require to perfect and maintain its Security Interest;

(b) give Next Telecom not less than 14 days' prior written notice of any proposed change in the Customer's name and any other details.

#### **11. TERMINATION**

11.1. If an Event of Default occurs in respect of a party and is not remedied within 30 days of notice being given by the other party, the other party may terminate the Agreement on giving further written notice to the defaulting party.

11.2. Termination will be without prejudice to any rights or obligations of either party which have accrued up to the date of termination.

11.3. Clauses 3, 4, 5, 8, 9, 10 and 11 will survive termination of the Agreement.

## 12. CONSEQUENCES OF TERMINATION

12.1. If the Customer asks Next Telecom to cease providing any Service or if the Agreement is terminated before the end of the Initial Term, the Customer will (without prejudice to Next Telecom's other remedies) pay:

- (a) an amount equal to the fixed Fees that would have been payable from the termination date to the end of the Initial Term; and
- (b) if Next Telecom has waived a set-up charge, the amount equal to the set-up charge multiplied by the number of months remaining in the Initial Term at the termination date divided by the total number of months in the Initial Term; and
- (c) if Next Telecom has given a discount to the Customer's usage charges, the value of the discount received by the Customer multiplied by the number of months remaining in the Initial Term at the termination date divided by the total number of months in the Initial Term.

12.2. The payments referred to in clause 12.1 are a good faith pre-estimate of the loss which Next Telecom may suffer as a consequence of the Customer's termination of the Agreement and constitute liquidated damages in respect of the termination.

## 13. GENERAL

13.1. The Customer may not assign the Agreement without Next Telecom's written consent.

13.2. No provision of the Agreement may be waived by a party unless the waiver is given in writing.

13.3. Failure by a party to enforce a provision of the Agreement will not affect that party's right to avail itself of its remedies in respect of any subsequent breach of that provision.

13.4. Failure by either party to comply with the Agreement will be excused by an event beyond that party's control. Compliance with the Agreement is to resume as soon as the event has ended. If the event has not ended within 60 days, the other party may terminate the Agreement on giving written notice.

13.5. Any notice is to be in writing and will be deemed to be given:

- (a) if delivered by hand, when delivered;
- (b) if sent by fax, on receipt of transmission if received on a business day or otherwise at the beginning of the first business day following transmission; or
- (c) if sent by post, on the 3rd business day following posting.

13.6. The Agreement is governed by New Zealand law.

## SECTION B:

### NextVoice SOFTWARE LICENCE

#### 1. LICENCE

Next Telecom grants to the Customer a non-exclusive, non-transferable licence to use the Software and the Next Telecom Material for its internal business purposes at the Site, on the following terms of this Licence.

#### 2. DEFINITIONS

In this Section B:

*Additional Module* means an additional module that Next Telecom agrees to license to the Customer;

*Documentation* means any documentation for the Software made available to the Customer by us;

*Customer Data* means data stored or processed by the Software excluding the Next Telecom Material;

*Licence* means the licence to use the Software in this Section B;

*Licence Fees* means the fees payable for the right to use the Software (which includes any Additional Module);

*Open Source Components* means the open source software tools used in conjunction with the Software;

*Reseller* means Next Telecom's authorised reseller who facilitates the Customer's entry into this Licence;

*Service Agreement* means the Service Agreement entered into between the Customer and Next Telecom on or about the date of this Licence;

*Site* means any location from which the Customer operates its business;

*Software* means the NextVoice software application, which includes (i) NextVoice Administration Tools and NextVoice Buddy Software, (ii) the associated database data and schema and related files and components, (iii) any Additional Modules, (iv) the Next Telecom Material, and (v) any updates or upgrades to such software or database which Next Telecom provides to the Customer;

*Next Telecom Material* means any material made available by Next Telecom to the Customer for the purposes of the Licence;

*VPN Connection* means virtual private network automatically established by the Software on start-up back to Next Telecom's service infrastructure.

#### 3. USE OF SOFTWARE

3.1 Subject to payment of the Licence Fees the Customer may use:

- (a) the Software on the terms of this Licence;
- (b) the Open Source Components on the terms of their licences.

3.2 The Customer will not:

- (a) modify, merge, adapt, translate, decode or reverse-engineer the Software;
- (b) transfer, sublicense, grant any other rights in respect of the Software to others, or allow others to use the Software.

#### 4. CUSTOMER DATA

4.1 The Customer retains all rights in the Customer Data.

4.2 Except as permitted in clause 4.3 Next Telecom will not use, copy or modify the Customer Data without the Customer's prior consent.

4.3 The Customer grants to Next Telecom and its contractors a non-exclusive, irrevocable licence to access and use the Customer Data in connection with any services it provides to the Customer. Customer Data may be accessed remotely by or provided online to Next Telecom.

#### 5. CUSTOMER RESPONSIBILITIES

5.1 The Customer will:

- (a) ensure the equipment on which the Software is to be installed meets Next Telecom's specifications;
- (b) instruct its network provider to enable a VPN Connection and allow Next Telecom to establish a VPN connection to Next Telecom's infrastructure on installation of the Software;
- (c) ensure that the site or site's has sufficient cabling and infrastructure to operate the Software and telephony equipment;
- (d) comply with all directions given by Next Telecom in connection with the installation and use of the Software; and
- (e) use the Software in accordance with the Documentation.

5.2 The Customer acknowledges that:

- (a) the Software requires third party software recommended by Next Telecom to function and the performance of the Software may be affected if the Customer does not use that software;
- (b) the Software will be delivered via a Cloud provider, or pre-installed on a physical server;
- (c) it is not entitled to have the administrative "root" access to the system underlying Next Telecom's operating system.

5.3 The Customer is responsible for protecting its system and Customer Data and accordingly will:

- (a) perform regular back-ups and off-site storage of the Customer Data and Software;
- (b) validate the fidelity and recoverability of the Customer's back-ups;
- (c) Install and maintain up-to-date anti-virus protection;
- (d) use trained personnel to operate the Software;
- (e) promptly notify Next Telecom of any problems with the Software.

5.4 The Customer will:

- (a) use best endeavours to prevent the unlawful copying of the Software;
- (b) notify Next Telecom if it becomes aware of any infringement or unauthorised use of the Software and will take any action required by Next Telecom in connection with the infringement or unauthorised use;
- (c) ensure its employees, sub-contractors and agents who have access to the Software comply with this Licence.

5.5 The Customer acknowledges that Next Telecom may:

- (a) update the Software from time to time without notice to the Customer;
- (b) charge a fee to update the Software at the Customer's specific request.

## 6. PAYMENT

6.1 If the Customer has acquired the Software from a Reseller the Customer will pay the Licence Fees directly to the Reseller. If the Reseller:

- (a) ceases to be an authorised reseller; or
  - (b) does not pay the Licence Fees to Next Telecom,
- Next Telecom may collect those Licence Fees from the Customer directly.

6.2 Upgrades or updates to the Software will be charged separately under the Service Agreement.

## 7. INSPECTION

7.1 Next Telecom may enter the Site to inspect the Software, the Customer's records and equipment during regular business hours to verify the Customer's compliance with this Licence. The Customer will promptly give Next Telecom any assistance Next Telecom require for the purpose of complying with this clause.

7.2 If an inspection reveals that the Customer has failed to comply with this Licence, the Customer will pay:

- (a) Next Telecom's costs in connection with that inspection; and
- (b) all Licence Fees that have been underpaid, together with interest at the rate specified in the General Terms.

## 8. SOFTWARE WARRANTIES

8.1 The Customer acknowledges that;

- (a) it has had the opportunity to satisfy itself that the Software operates in an acceptable manner and meets its requirements;

(b) the Software and the Open Source Components may not be error free.

8.2 Next Telecom warrants that the Software is owned by or licensed to Next Telecom.

8.3 Next Telecom gives no warranty in respect of the Open Source Components and will not be liable to the Customer for any loss, damages or costs incurred by the Customer due to the failure of the Open Source Components.

8.4 Any express warranty given by Next Telecom in respect of the Software is conditional on the Customer's complying with Next Telecom's operating, security and data control procedures for the Software.

8.5. Next Telecom will not be responsible for obsolescence of the Software that may result from changes in the

Customer's requirements or for the Customer's use or superseded or uncorrected versions of the Software.

8.6 To the maximum extent permitted at law, Next Telecom disclaims all other warranties, either express or implied, with regard to the Software.

## 9. TRANSFER OF SOFTWARE

9.1. The Customer may only transfer the Software to another person with Next Telecom's prior written approval and subject to:

- (a) payment of Next Telecom's transfer fee (Next Telecom will provide new registration keys to registered users for this purpose upon request);
- (b) the transferee agreeing in writing to be bound by this Licence for at least the remainder of the term of this Licence.

## 10. TERMINATION OF LICENCE

10.1 Next Telecom may, in addition to its rights in the General Terms, terminate this Licence on giving notice to the Customer if:

- (a) the VPN Connection cannot be maintained; or
- (b) the Customer tries to obtain administrative "root" access to the system underlying Next Telecom's operating system; or
- (c) the Customer breaches any other provision of this Licence and fails to remedy the breach within 14 days after receiving notice from Next Telecom requiring the breach to be remedied; or
- (d) the Service Agreement is terminated.

10.2 The Customer may terminate this Licence on giving at least 14 days' written notice to Next Telecom.

10.3 This Licence will terminate automatically on the date of termination of the Service Agreement.

10.4 On termination of this Licence the Customer will:

- (a) immediately cease using the Software, permanently remove the Software from the Customer's servers, return all Next Telecom Material to Next Telecom and destroy all copies of the Software;
- (b) remain liable for all Licence Fees payable for the balance of the term of this Licence and other amounts that become due for payment before or after termination;
- (c) not be entitled to a refund of any Licence Fees relating to the period after the date of the termination of this Licence.

## SECTION C: TELECOMMUNICATION SERVICES

Next Telecom will provide the Customer with the following Telecommunication Services either directly or as an agent, distributor or reseller of a telecommunication service provider.

### 1. DEFINITIONS

In this Section C:

*Connected* means connection to the Network so that the Customer can receive the Services;

*Customer's Equipment* means the equipment (including a mobile telecommunication or other telecommunications device) provided by the Customer in order to use the Telecommunication Service.

*Disconnected* means disconnection from the Network so that the Customer can no longer receive the Services;

*End User* means a person who uses the Telecommunication Service;

*Network* means the telecommunications network used by the Telco to provide the Services;

*Network Operator* means an entity that passes of customer generated or customer destined communications between Next Telecom and that entity;

*Phone Number* means a mobile or landline telecommunication number, which is allocated to the Customer or which the Customer seeks to Port;

*Port* means transfer a Phone Number from one telecommunication service provider to another;

*Telco* means the telecommunication service provider contracted by Next Telecom to provide the Telecommunication Service;

*Telecommunication Equipment* means any telecommunications and other electronic or related equipment (including PABXs, antenna, transmission equipment, routers, switches, power supplies and software), which Next Telecom provides (directly or indirectly) to the Customer in connection with the Services;

*Telecommunication Service* means the service provided by Next Telecom as an agent, distributor or reseller of the Telco.

## **2. TELECOMMUNICATION SERVICE**

2.1 Next Telecom will use reasonable efforts to ensure that:

(a) subject to clause 2.2, the Telecommunication Service is reliable at all times;

(b) the Telco remedies any fault or outage with the Telecommunication Service within a reasonable timeframe.

2.2. Because of the nature of telecommunications:

(a) it is impossible to provide a fault-free service and the quality and coverage of the Telecommunication Service depends partly on the Customer's Equipment, partly on the Network and partly on the Telco and other telecommunications networks to which the Network is connected;

(b) the Telecommunication Service can be adversely affected by radio interference, atmospheric conditions, geographic factors, network congestion, maintenance, outages on other networks and provider sites, the configuration or limitations of the Customer's intended recipient's equipment, or other operational or technical difficulties, which mean that the Customer may not receive some or all of the Telecommunication Service in certain areas or at certain times;

(c) The Telecommunication Service can also change with network expansion or reconfiguration.

2.3. The Customer will:

(a) follow Next Telecom's instructions regarding the use of the Telecommunication Service; and

(b) only use the Telecommunication Service for the purpose for which it is provided.

2.4. The Customer will:

(a) not use or permit the Telecommunication Service to be used in any way which is illegal, in any way abusive or which constitutes harassment or which causes harm or damage of any sort or contravenes any Acceptable Use Policy or other terms of use relating to the Telecommunication Service, as notified by Next Telecom to the Customer from time to time;

(b) not use or permit the Telecommunication Service to be used so that it could interfere with or damage the Network or that of any other operator, and will indemnify Next Telecom against any liability Next Telecom incurs as a result of the Customer breaching its obligations under this clause 2.4.

2.5. Next Telecom may require the Customer to provide a Personal Identification Number (*PIN*) to Next Telecom to enable Next Telecom to verify the identity of those authorised to access the Customer's account details and make changes to the Customer's account with Next Telecom. The Customer is responsible for maintaining the security of its PIN. Next Telecom may rely on the provision of the Customer's PIN, as evidence of authority to access the Customer's account details and make changes to them.

2.6. The Customer is responsible for its and its End Users' use of the Telecommunication Service, whether authorised by the Customer or not.

2.7. The Customer will obtain any third party authorisation, licence or consent required in connection with the Customer's use of the Telecommunication Service.

2.8. Where applicable, Next Telecom may charge for the Telecommunication Service in arrears depending on when charges are received from the Telco and Network Operators.

2.9. No Network Operator will liable to the Customer or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Telecommunication Service or the Network Operator's networks. This clause is intended to be for the benefit of, and enforceable by, each Network Operator under the Contract and Commercial Law Act 2017.

## **3. TELECOMMUNICATION EQUIPMENT**

3.1. Where applicable, the Customer will give Next Telecom and the Telco access to its premises at all reasonable times and on reasonable notice to install, inspect, remove, replace and maintain any Telecommunication Equipment.

3.2. Ownership of any Telecommunication Equipment remains with Next Telecom or the Telco.

3.3. The Customer will:

(a) not damage or interfere with the Telecommunication Equipment;

(b) provide a safe and secure operating environment for the Telecommunication Equipment;

(c) take reasonable precautions to protect the Telecommunication Equipment from theft, loss or damage;

(d) follow Next Telecom's and the Telco's directions when using the Telecommunication Equipment;

(e) take reasonable precautions to protect the Telecommunication Equipment from electromagnetic interference, electrical interference or power fluctuations;

(f) pay Next Telecom's and the Telco's charges for repairing or replacing any Telecommunication Equipment that is lost or damaged while located on the Customer's premises.

3.4. The Customer authorises Next Telecom or the Telco to Disconnect any equipment connected by other Telcos and to reconfigure existing equipment to enable the Telecommunication Service to be provided. The Customer will follow any instructions regarding modifications needed to enable the Customer's Equipment to use the Telecommunication Service.

3.5. The Customer will ensure that the Customer's Equipment is Tele permitted and is installed in accordance with Next Telecom's and the Telco's specifications.

3.6. The Customer acknowledges that Next Telecom is not responsible for Equipment not provided by Next Telecom or pre approved by Next Telecom in writing.

3.7. If the Customer's Equipment causes a fault in the operation of the Telecommunication Service, the Customer will if requested pay Next Telecom the reasonable costs of restoring the Telecommunication Service.

3.8. Neither Next Telecom nor the Telco will be responsible for any harm the Customer suffers from a virus or other manipulating program which infiltrates the Customer's Equipment, whether it was transmitted via the Telecommunication Service or otherwise.

3.9. Next Telecom and the Telco may remove the Telecommunication Equipment from the Customer's Premises on termination of the Agreement or earlier if the Telecommunication Equipment is no longer required for the Telecommunication Service or if the Customer damages or interferes with it.

## **4. PHONE NUMBERS, IP ADDRESSES AND NUMBER PORTABILITY**

4.1. Next Telecom or the Telco may allocate Phone Numbers and IP addresses to the Customer for use with

the Telecommunication Service. Allocation of Phone Numbers and IP addresses does not confer ownership and the Customer may not transfer them to anyone else.

4.2. Next Telecom or the Telco may change or any Phone Number or IP address allocated to the Customer but will give the Customer as much notice as is possible of its intention to do so.

4.3. If the Customer wishes to Port the Phone Number to another telecommunication service provider, the Customer will be responsible for completing the Porting requirements of that telecommunication service provider. Next Telecom will meet its obligations under the "Terms for Local and Mobile Number Portability" in Porting the Phone Numbers to the other telecommunication service provider. The Customer will be responsible for all costs associated with Porting the Phone Numbers (including any applicable early termination charges owed to Next Telecom).

4.4. If the Customer is Disconnected and has not Ported its Phone Numbers prior to Disconnection, Next Telecom may reallocate the Phone Numbers to other customers.

## 5. DIRECTORY LISTING AND TOLLS

5.1. Where applicable, Next Telecom may arrange for the Telco to include the Customer's personal information in any directory service subject to any objection or preference the Customer may indicate. If the Customer wishes to be listed in the white/yellow pages and/or for directory assistance, the Customer's name, Phone Numbers and address details will be given to the directory service provider for listing at the Customer's cost.

5.2. Any arrangement the Customer makes to be listed will be a matter between the Customer and that directory listing provider only.

5.3. The provision of any toll service may depend on other Network Operators' fixed lines network and related infrastructure. Neither Next Telecom nor the Telco will be liable to the Customer for any failure on the part of any Network Operator.

5.4. Any toll service provided by Next Telecom or the Telco may not allow certain functions or facilities to be used, or the use of such functions or facilities may be impaired. Next Telecom will endeavour to inform the Customer of any limitations by publishing the same on Next Telecom website or by some other means. Next Telecom will not be obliged to rectify such limitations or find a workaround solution and will not be liable to the Customer in relation to such limitations.

## 6. SUSPENSION

6.1. Next Telecom may suspend the Telecommunication Service if the Customer breaches the Agreement.

6.2. Where the Telecommunication Service is suspended, Next Telecom will use reasonable efforts to ensure that the Telco notifies the Customer as soon as possible and that the suspension occurs outside normal business hours. In an emergency or an event beyond Next Telecom or the Telco's control, prior notice may not be possible but Next Telecom will endeavour to ensure that the Customer is informed as soon as possible.

6.3. Next Telecom may require the Customer to pay a reconnection charge as a condition of lifting any suspension.

6.4. When the Agreement is terminated, the Customer will be Disconnected.

## SECTION D: NEXT TELECOM CLOUD SERVICE TERMS

### 1. CLOUD SERVICES

This Section D records the terms (*Service Terms*) on which Next Telecom will provide the services set out in the Schedule (*Cloud Services*) to the Customer.

## 2. DEFINITIONS

2.1 In this Section D:

*Agreement* means the document to which these Service Terms are attached;

*Business Hours* means 8:30am to 5:30pm on a working day;

*Charges* means Next Telecom's charges (excluding GST) for the Cloud Services;

*Connected* refers to connection to a Network;

*Disconnected* refers to disconnection from a Networks;

*Equipment* has the meaning in Section A: General Terms;

*Initial Term* means the initial term set out in the Customer proposal;

*Network* means any telecommunications network operated by Next Telecom and connected to by Next Telecom.

## 3. PROVISION OF SERVICES

3.1 Next Telecom will deploy the Cloud Services and carry out installation during normal business hours. Installations completed outside normal business hours will attract additional fee's.

3.2 Next Telecom will provide the Cloud Services to the Customer within the timeframes agreed with the Customer or, if no timeframes are agreed, within a reasonable time.

3.3 The Cloud Services may not be continuous or fault-free.

3.4 Next Telecom may suspend a Cloud Service to carry out maintenance and development work. Next Telecom will give the Customer as much notice as possible in respect of a suspension and will try to ensure that the suspension occurs outside Business Hours.

3.5 If a Cloud Service for which a fixed Charge is payable is unavailable for more than 24 consecutive hours Next Telecom will, at the Customer's request, credit an amount equal to the fixed Charge that would have been payable over the period of unavailability.

## 4. CUSTOMER'S OBLIGATIONS

4.1 The Customer will:

- (a) follow Next Telecom's instructions regarding the use of the Cloud Services, including instructions regarding modifications that the Customer may need to make to its equipment in connection with the Cloud Services; and
- (b) only use the Cloud Service for the purpose for which they are provided.

4.2 The Customer will:

- (a) not use or permit the Cloud Services to be used in any way which is illegal, in any way abusive or which constitutes harassment or which causes harm or damage of any sort or contravenes any terms of use relating to the Cloud Services, as notified by Next Telecom to the Customer from time to time;
- (b) not use or permit the Cloud Services to be used so that they could interfere with or damage the Network or that of any other operator or user of Next Telecom's services, and will indemnify Next Telecom against any liability Next Telecom incurs as a result of the Customer breaching its obligations under this clause 4.2.

4.3 The Customer will ensure that all information provided to Next Telecom is complete, timely and accurate.

4.4 The Customer will obtain any third party consent required in connection with the provision of the Cloud Services.

4.5 If the Customer causes a fault in the operation of a Cloud Service, it will pay Next Telecom the costs of restoring that Cloud Service.

## 5. INVOICING AND PAYMENT

- 5.1. The Customer will pay Next Telecom's Charges for the Cloud Services with effect from the date the Customer is Connected.
- 5.2. Fixed Charges will be payable in advance. Other Charges will be payable in arrears.
- 5.3. The Customer will, if requested, pay the Charges by automatic payment or direct debit into an account designated by Next Telecom, to be made by the 20th of each month.

## 6. PHONE NUMBERS, ADDRESSES & CODES

- 6.1. Next Telecom may allocate phone numbers, electronic addresses and other codes to the Customer. The Customer will not own those numbers, addresses or codes and may not transfer them to any other person.
- 6.2. Next Telecom may, on giving the Customer written notice, change any phone number, electronic address or code allocated to the Customer.

## 7. SUSPENSION AND TERMINATION

- 7.1. Next Telecom may suspend any Cloud Service if the Customer breaches the Agreement. The Customer will pay Next Telecom a reconnection charge as a condition of lifting the suspension.
- 7.2. Either party may discontinue any Cloud Service or terminate these Service Terms after the expiry of the Initial Term on giving the other party 60 days' written notice.

## 8. CONSEQUENCES OF TERMINATION

- 8.1. If these Service Terms are terminated the Customer will be Disconnected, each party will immediately return to the other any information, equipment or any other item in its possession that belongs to the other party; and
- 8.2. Next Telecom may access the Customer's premises to remove Equipment. If Next Telecom cannot gain access, the Customer will pay Next Telecom the replacement cost of the Equipment.
- 8.3. If the Customer asks Next Telecom to cease providing any Cloud Service or if the Agreement is terminated before the end of the Initial Term, the Customer will (without prejudice to Next Telecom's other remedies) pay:
  - (a) an amount equal to the fixed Charges that would have been payable from the termination date to the end of the Initial Term; and
  - (b) if Next Telecom has waived a set-up charge, the amount equal to the set-up charge multiplied by the number of months remaining in the Initial Term at the termination date divided by the total number of months in the Initial Term; and
  - (c) if Next Telecom has given a discount to the Customer's usage charges, the value of the discount received by the Customer multiplied by the number of months remaining in the Initial Term at the termination date divided by the total number of months in the Initial Term; and
  - (d) the payments referred to in this clause 8.3 are a good faith pre-estimate of the loss which Next Telecom may suffer as a consequence of the Customer's termination of these Service Terms and constitute liquidated damages in respect of the termination.

## SCHEDULE: CLOUD SERVICES

Next Telecom will provide the Customer with the following services in relation to the NextVoice software hosted by Next Telecom (NextVoice), phones and other Voice over IP devices supplied by Next Telecom (Devices) and other software supplied by Next Telecom.

All requests for service will be given a ticket (case) number. Creating a new case incurs a help desk fee which includes the help desk support and up to 15 minutes of engineering time to investigate and troubleshoot the issue. For customers with SLA agreements the help desk fee is waived.

- Upgrading and providing security patches to NextVoice as and when required, within a reasonable time, up to six times per annum;
- Monitoring the NextVoice connection to the Next Telecom VPN aggregator;
- Regular Backup of Phone system configuration;
- Responding to critical system failures within 2 business hours and non-critical failures or change requests within 4 business days (although the Services do not include troubleshooting related to the Customer's computer network or third-party telecommunications network);
- Maintaining the service history and waiving any help desk fees;
- Providing services of moving, adding to and changing the configuration of the Server and the Devices at a reduced hourly rate on time and materials basis. Such moves, additions and changes to be actioned within 4 business days of request.
- After hours support will be provided on a best-effort basis and will attract extra fees, unless different terms are negotiated and agreed in writing.
- Monthly Cost is cost per licence per month as per the Customer proposal.
- Service Charges reduce to:
  - Help Desk Fee (includes 15 min Engineering time) \$0.00 per ticket.
  - Business Hourly Engineering Rate \$125.00 per hour.
  - After hours Support:
    - Call Fee \$180.00
    - Plus After Hours Hourly Rate \$180.00 per hour