

Part A – Introduction

1. About This document

The document is the Standard Form of Agreement of Nextel, under section 479 of Telecommunication Act, called out 'Customer Terms'.

2. About us

Nextel Pty Ltd ABN 69 139 958 820, we are the resellers and other associated entities

Part B- Customer Agreements

3. Your Customer Agreement

We provide the Service under a Customer Agreement or Agreement that includes:

- This Part B,
- The General Terms in Part C, and
- Any Service Terms for the Service.

Service Terms for our main Services are in the Part D to Part F further down.

4. Plans

- Different Plans offer many services and the features, entitlements, contract period, Charges and special conditions are available.
- The terms of the plan are included in your Agreement.

5. Periodic Entitlements

- Plans may include the right to use a certain amount of a Service for a particular period.

e.g. An Internet Plan might let you download 100 gigabytes of data each month e.g. A local call Plan might let you make unlimited local calls each month at no extra cost.

We call these Periodic Entitlements.

- Unoccupied Periodic Entitlements do not carry forward and are not convertible for cash or other credit.
- On exceeding the Periodic Entitlement, as per the plan details the extra charges may apply or the services may be limited.

6. Prepaid Plans

For a Prepaid Plan:

- Advance payments are not redeemable for cash or other credit.
- The Plan specifies a period after which any prepaid entitlements which are unused expire without refund. Usually the Use-By Date is one year applies to all Prepaid plans, unless specified in the plans.
- On changing Plans no credit for unused prepaid entitlements is provided unless the Plan states. The Advance payments are not transferable between Plans.
- Minimum and Maximum Prepayments may be specified that you may make.
- The services can be ceased if your prepaid entitlements are expended.

7. Acceptable Use Policies

- An acceptable Use Policy for a Service or Plan we may publish.
- Any abusive, antisocial, illegal and/or grossly unreasonable use of a Service will be directed by an Acceptable Use Policy.
- You must obey with an applicable Acceptable Use Policy. For additional information about our Acceptable Use Policies, please visit www.nextel.com.au/policies, or on the other hand to obtain a copy of the applicable policy, write to our Customer Information and Compliance Officer at Unit 207/27 Mars Road, Lane Cove NSW 2066.

8. Legal Compliance Policies

- a. In order to ensure the use of Service complies with all Laws we may publish a policy.
- b. You must observe with such policies.

9. Operational Directions

- a. Operational Directions about a Service may be provided, acting rationally.
- b. We will be providing the Operational Directions will be directed to the safety, security, security or reliability of facilities, compliance with Laws or dealing with an emergency as and when reasonably.
- c. You must obey with an applicable Operational Direction.

10. Partner Requirements – General

- a. Telecommunications services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Partners.
- b. Partners often have their own Partner Requirements for the use of their Facilities and we may only be permitted to provide Service to you subject to such Partner Requirements.
- c. You must comply with applicable Partner Requirements we notify.
- d. ACL Consumers: If a new or amended Partner Requirement is materially detrimental to you, you may have Walk Away Rights under clause 50.

11. Fixed terms A Plan may specify a particular, fixed or minimum term. If it does:

- a. An Agreement for the Plan is a contract for at least that specified term.
- b. Either you or we can terminate the Agreement as at the end of that specified term, by giving one calendar month's termination notice.
- c. If neither of us gives a termination notice, it becomes month-to-month after that specified term. d. If you terminate the Agreement before the end of the fixed term period, you may be required to pay a cancellation fee as set out in the pricing schedule.

12. Month-to-month, casual or 'no contract' terms

If a Plan or Agreement is described as month-to-month, casual or no contract or similar, you or we may terminate it on one calendar months' notice without penalty (unless the Plan states otherwise).

13. Telecommunications Consumer Protections (TCP) Code

- a. The TCP Code applies to consumer and some business customers, called TCP Customers in our Customer Terms. Refer to the Dictionary for the detailed definition.
- b. A term or note in our Customer Terms headed 'TCP Customers' applies to you if you are a TCP Customer, but not otherwise.

14. Australian Consumer Law (ACL)

- a. Some provisions of the ACL apply to individuals who enter Consumer Contracts (as defined in the ACL). We call those persons ACL Consumers in our Customer Terms. Refer to the Dictionary for the detailed definition.
- b. A term or note in our Customer Terms headed 'ACL Consumers' applies to you if you are an ACL Consumer, but not otherwise.

15. ACL Consumers and Unfair Contract Terms

- a. Our Customer Terms apply to a wide variety of customers and circumstances, and must reasonably protect our interests across that wide variety.
- b. If you are an ACL Consumer, and a term of your Agreement would (except for this clause) be unfair (within the meaning of section 24 of the ACL) we will not apply or rely on that term without also taking steps to appropriately mitigate any unfairness.
- c. Those steps will be tailored to the particular situation, but may include e.g. offering you Walk Away Rights and a reasonable period to exercise them.

16. Consumer Guarantees

- a. Under the Australian Consumer Law, consumers (as defined in the ACL) have the benefit of certain Consumer Guarantees:
 - i. that cannot be excluded; and
 - ii. where the consumer's rights in case of breach cannot be limited by your Agreement, or can only be limited to a certain extent.
- b. Your Agreement never operates to exclude the Consumer Guarantees (where they apply) or to limit your remedies for breach of them (in a way not permitted by law).

17. Understanding and navigating our Customer Terms

- a. Expressions used in our Customer Terms are explained in the Dictionary in clause 104.
- b. Rules for interpreting other expressions in our Customer Terms are set out in clause 103.
- c. The Index is at the end.

Part C – General Terms

18. Application for Service

- a. You must comply with any application form or process we specify.
- b. All information you provide in connection with an application must be true, correct, complete and not misleading.

19. Processing an application

- a. We do not have to accept an application.
- b. Before we confirm that we can and will provide Service, if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.
- c. In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 60.

20. Relevant dates

- a. The date when you make an application is the Application Date.
- b. The date when we notify you that Service has been provisioned, ready for use is the Service Provisioning Date.
- c. The date when we confirm that we can and will provide Service is the Agreement Date.

21. Providing Service

- a. We will commence Service as soon as reasonably practicable after the Agreement Date, and we may commence billing you as soon as the service is provisioned.
- b. We may provide Service using Our Facilities and/or third party Partner Facilities, as we decide from time to time. Together, we call those Facilities our Network.

22. Use of Service by others

- a. Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward.
- b. A person who makes use of a Service with your consent or from your premises or using your equipment or log-in credentials is your End User.
- c. The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.
- d. You must ensure that your End Users do not do (or omit to do) anything that would breach your Customer Agreement if done (or not done) by you.

23. Using a Service

- a. When using a Service, you must comply with:
 - i. your Customer Agreement (including any applicable Acceptable Use Policy); and
 - ii. any applicable Laws.

You must not use a Service:

- i. in breach of any Law;
- ii. to breach the rights of any person;
- iii. to copy, download, supply to anyone else or communicate to the public copyright material without permission;
- iv. to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute;
- v. to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;
- vi. to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the Spam Act;
- vii. in a way that is misleading or deceptive, where that is contrary to Law;
- viii. in a way that results, or could result, in damage to property or injury to any person; or
- ix. in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or exposes us to liability.

24. Telephone numbers

- a. In connection with a Service, you may be allocated with telephone numbers.
- b. We must comply with the Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.
- c. We must also comply with the Smart number® Rules.
- d. You have no claim against us arising from anything we do in compliance with the Numbering Plan (including changing or withdrawing a previously allocated number) or the Smart Number Rules.
- e. You must not knowingly and deliberately:
 - i. do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it, or
 - ii. relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- f. You do not own any number allocated to you, and (except where Law, including the Smart number EROU Rules, permits you to transfer your telephone service and its number to another service provider) you have no guarantee that you will retain a particular number when your Agreement ends or when your services have been cancelled because you have not paid your account.
- g. We strongly recommend that you DO NOT advertise or publish the in dial/direct numbers that have been allocated to you for Live Answering services. These are our internal system numbers and are subject to change.

25. IP addresses, email addresses and domain names

- a. In connection with a Service, you may be allocated IP addresses, email addresses, domain names or Internet identifiers.
- b. These Internet identifiers are licensed, controlled and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.
- c. We are not responsible for anything done, or required to be done, by these authorities.
- d. You do not own any Internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an Internet identifier to another service provider) you have no right to retain them when your Agreement ends.

26. Dynamic IP addresses

- a. Unless your Internet Service specifies that we shall provide you with a static (i.e. non-changing) IP address, we may provide it using dynamic IP addresses (that change periodically).
- b. The periodic changing of dynamic IP addresses is normal network behaviour and not a fault.
- c. It may be difficult or impossible to operate an Internet server (e.g. a mail server or a web server) using an Internet Service with a dynamic IP address. If you intend to operate such a server, you should use an Internet Service with a static IP address.

27. Supplied Equipment

- a. This clause applies if we supply Equipment to you.
- b. You assume risk in Equipment upon delivery.
- c. We or our Partners retain title to Equipment:
 - i. for Equipment rented or loaned to you – at all times;
 - ii. for Bundled Equipment – until completion of the minimum term; and
 - iii. for any other Equipment – until full payment has been made.
- d. While we or our Partners retain title to Equipment, you hold it in a fiduciary capacity as Bailee for us.
- e. We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- f. If you use in connection with a Service, any Equipment we have not approved or provided:
 - i. it must comply with all applicable Laws, and technical standards and requirements including those set by its supplier or the manufacturer;
 - ii. you are responsible for ascertaining what those technical standards and requirements are, since we will not be familiar with the Equipment; and
 - iii. we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
 - A. our negligence, or
 - B. our breach of the Consumer Guarantees.

28. Substituted Equipment

- a. On occasions, stock of advertised Equipment may become unexpectedly unavailable. In that event we may supply substitute Equipment that is substantially equivalent to the advertised Equipment.
- b. On occasions, advertised Equipment may not be technically suitable for your situation. In that event we may supply substitute or modified Equipment that is more suitable.

29. Delivery of Equipment

- a. We will try to deliver Equipment to you on the delivery date (Delivery Date) and at the address (Site) indicated on your Application during normal business hours in that area.
- b. Variations at your request to Delivery Date or Site:
 - i. is at our discretion; and
 - ii. may be subject to conditions, including extra Charges.

30. Installation and connection of Equipment

- a. This clause only applies if we expressly agree to install or connect Equipment.
- b. We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- c. You must prepare the Site for the installation (in accordance with any directions or specifications we issue) at your own expense, including providing:
- d. appropriate electricity supply;
 - i. appropriate electrical and mechanical fittings;
 - ii. appropriate environmental conditions;
 - iii. a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
 - iv. all relevant facilities for the location of the Equipment;
 - v. access to all relevant personnel including your technical personnel;
 - vi. where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- e. You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
- f. You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis) in connection with such entry and installation, except to any extent that we cause or contribute to it by
 - i. our negligence, or
 - ii. our breach of the Consumer Guarantees
- g. You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- h. If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

31. Installation Charges

- a. We will charge you installation Charges as stated (or indicated by) in your Agreement.
- b. We will try to inform you in advance of any installation fees that may be charged by our Partners.
- c. If we find that installation will be costlier because of factors beyond our reasonable control, we may decline to proceed with installation unless you agree to revised Charges.

32. Additional Equipment services

- a. You may ask us to supply additional services in relation to Equipment including without limitation, e.g. repairs.
- b. If we agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time (which may include materials supplied by our Partners at rates they determine).

29. Delivery of Equipment

- a. We will try to deliver Equipment to you on the delivery date (Delivery Date) and at the address (Site) indicated on your Application during normal business hours in that area.
- b. Variations at your request to Delivery Date or Site:
 - i. is at our discretion; and
 - ii. may be subject to conditions, including extra Charges.

35. Lost, stolen and damaged Equipment

- a. You are responsible for any lost, stolen and damaged Equipment owned by us, except if it is caused by us or our personnel.
- b. You must pay for Equipment that is lost, stolen or damaged, except if that is caused by us or our personnel.

33. Return of Equipment

On the termination of your Agreement for any reason, you must return all our Equipment without delay. To the fullest extent allowed by law, any return of equipment for any reason is at the cost of the purchaser.

34. TCP Customers and Authorised Representatives

- a. If you are a TCP Customer, you can appoint an Authorised Representative to act on your behalf if you require.
- b. To be effective, we require that any such appointment:
 - i. is in writing;
 - ii. is signed by you (unless you are incapable of signing, in which case we shall work out a feasible and mutually acceptable alternative with you);
 - iii. is verified by you in person or by telephone, including reasonable evidence of your identity (unless you are incapable of communicating with us in person or by telephone, in which case we shall work out a feasible and mutually acceptable alternative with you);
 - iv. states any limitations on the authority of your Authorised Representative (e.g. time limit; limit on access to your account or personal information; limit on authority to incur expense on your behalf); and
 - v. where we reasonably require that the appointment contains particular information or is in a particular form—must contain that information and/or be in that form.
- c. If your appointment does not state any limitations, your Authorised Representative has the power to act on your behalf as if they are you.
- d. If your appointment states any limitations, your Authorised Representative has powers, including access to your information, in accordance with your appointment and those limitations.

36. TCP Customers and Advocates

- a. You can use an Advocate to communicate with us if you require.
- b. We presume that an Advocate is not authorised to establish or make changes to your account or Services, unless the Advocate is also your Authorised Representative under clause 37.
- c. A person acting as your Advocate has no power to act on your behalf and has no access to your information without you being present and agreeing to such action.

38. Rights and remedies for PDH goods and services

Important consumer information: Full details of the consumer rights and remedies referred to in clauses 39 and 40 can be obtained from the Australian Competition and Consumer Commission (ACCC) at www.accc.gov.au or from a local consumer protection agency.

- a. If we supply you with goods or services of a kind ordinarily acquired for personal, domestic or household (PDH) use or consumption you have important rights under the Australian Consumer Law (ACL) including consumer guarantees and remedies. Nothing in your Agreement limits those rights and remedies in any way.
- b. If we supply you with PDH Goods or Services, and you are told they come with a 'manufacturer's warranty' or 'one-year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

39. Rights and remedies for non-PDH goods costing no more than \$40,000

If we supply you with goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and cost no more than \$40,000 you have important rights under the ACL including consumer guarantees and remedies but:

- a. in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
 - i. replacing the goods or supplying equivalent ones;
 - ii. repairing the goods;
 - iii. paying the cost of replacing the goods or of acquiring equivalent ones; or
 - iv. paying the cost of having the goods repaired; and
- b. in relation to these services, our liability for failure to comply with a consumer guarantee is limited to:
 - i. supplying the services again; or
 - ii. paying the cost of having the services supplied again.
- c. If we supply you with non-PDH Goods or Services that cost no more than \$40,000, and you are told they come with a 'manufacturer's warranty' or 'one-year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

40. Personal injury or death

To the extent that our negligence causes personal injury or death, we accept liability on normal principles of law.

41. Service Level Agreements

If a Service or a Plan includes a Service Level Agreement (SLA):

- a. we are liable for any remedy or rebate specified by the SLA; and
- b. subject to clauses 39 to 41, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

42. Exclusion of implied terms and limitation of liability

Important consumer information: Nothing in this clause 43 limits the consumer rights and remedies referred to in clauses 39 and 40. Subject to clauses 39, 40, 41 and 42:

- a. Any representation, warranty, condition or undertaking that would be implied in your Agreement by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Agreement to the fullest extent permitted by law.
- b. We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- c. We are never liable to you for, and you release us from any Claim for, any Contract Loss.

43. Liability of our partners

You release our partners from any liability to you, whether in contract, tort (including negligence) or otherwise, in relation to any Service or any delay in providing or any failure to provide a Service to you.

44. Your liability to us – General

- a. You must pay us all Charges and other amounts due under your Agreement.
- b. You must pay us the fair value of any Equipment that you fail to return to us when required.
- c. You must pay us fair compensation for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- d. You must indemnify us for any loss or damage we suffer as a result of or in connection with:
 - i. your breach of your Agreement;
 - ii. your use of a Service or Equipment; or
 - iii. a claim against us by an End User in relation to a Service we supply to you. TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

e. You indemnify us for any loss or damage we suffer in connection with any claim made against us by a third party arising out of or in relation to your use of Services or Equipment.

f. Your obligations under this clause survive termination of your Agreement.

45. Your liability to us – legal requests, etc.

a. This clause applies where we reasonably incur expense as a result of or in connection with:

- i. a police request for information or evidence in relation to you or your use of a Service; or
 - ii. a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or
 - iii. a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- b. You must reimburse our expenses on request.

47. Your liability to us – (alleged) illegal use, etc.

a. This clause applies where:

- i. your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
- ii. we suffer loss or reasonably incur expense as a result.

b. You must make good our loss and reimburse our expenses on request.

48. Maintenance and faults

a. Maintenance from time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

b. Reporting faults

- i. You may report faults in relation to a Service or the Network by contacting our help line.
- ii. Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by equipment which is not part of the Network.
- iii. You must not report a fault directly to one of our Partners unless we ask you to do so.
- iv. If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

c. Repairing faults

- i. We will use reasonable efforts to repair faults in Our Facilities within a reasonable period.
- ii. We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.
- iii. You are responsible for maintaining and repairing your own equipment (except where we supplied it and you have warranty rights in relation to a fault).

d. Cost of repairs If you cause a fault or damage to the Network, we may charge you the reasonable cost of repairing it.

49. General power to vary your Agreement We may vary your Agreement from time to time but:

a. Variations do not have retrospective effect.

b. If a variation could be reasonably expected to adversely affect you, we shall give you reasonable notice, having regard to:

- i. the nature of the variation; and
- ii. the means by which notice is to be provided; and
- iii. the length of time remaining before the variation is to occur; and
- iv. any other matter that is reasonably relevant. ACL Consumers: We may both give you notice and offer you Walk Away Rights as explained in clause 50.

50. ACL Consumers and Agreement variations

This clause only applies to ACL Consumers.

- a. Reminder about ACL Consumers ACL Consumers means individuals who enter certain kinds of contracts. Refer to the Dictionary for the detailed definition.
- b. Beneficial or minor detrimental impact If an Agreement variation will have a beneficial, or only a minor detrimental, impact on you:
- we will not give you notice, and
 - we will not give you Walk Away Rights.
- c. Variations arising from general amendments of our Partner agreements if:
- a Partner supplies a service to us, and
 - we resupply that service to you (either as a separate service or as part of another service), and
 - the Partner insists on a variation to a term of our agreement with it (either during the term of the agreement, or on a renewal or extension or renegotiation), and
 - we believe in good faith and on reasonable grounds that the Partner has required or will require its wholesale customers or resellers generally to accept a term to the same or similar effect as the varied term, and
 - that variation gives rise to a variation of your Agreement – then:
 - we will give you notice of the variation, but
 - we will not give you Walk Away Rights.
- d. Other variations in any other case:
- We will give you notice of the variation.
 - We will also offer you the right to terminate your Agreement within 30 days of the date of the notice without incurring charges other than:
 - usage or network access charges to the date your Agreement ends; and
 - outstanding amounts for installation of Equipment; and
 - outstanding amounts for Equipment that is compatible with other suppliers' services.

51. When variations take effect Agreement variations take

- effect:**
- at the end of any applicable notice period; or
 - if no notice period applies, immediately.

52. Customer transfers

- a. Transfer to us
- If you wish to transfer from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.
 - By making an application for Service, you instruct and authorise us to arrange with your current supplier to transfer the Service to us, and authorise us to act on your behalf with your current supplier to transfer the Services to us.
 - You must promptly pay your current supplier all amounts you owe it. You also acknowledge that Nextel has no liability for payment of such amounts.
- b. Transfer from us
- If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
 - If you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply – see clause 75.
 - A port-away fee for each of the Inbound Number Services we provided to you may apply.

53. Charges & payment (1): kinds of Charge

We have various kinds of Charge, including:

- a. installation Charges e.g. for installing Equipment,
- b. set up Charges e.g. a one-off Charge when you start on an Internet Service,
- c. periodic Charges e.g. a fixed monthly Charge for an ADSL Service, 10 Nextel Standard Form of Agreement
- d. usage Charges e.g. a Charge per call made on a local call Service,
- e. prepaid Charges e.g. a Charge for call credit on a telephone service,
- f. call connection Charges e.g. a Charge incurred when a telephone call connects,
- g. miscellaneous Charges e.g. a Charge for providing a second copy of a bill, and any Charge that an applicable code, regulation, determination or law specifically allows us to make,
- h. third party Charges e.g. an amount we must pay to a Partner to install a second telephone line in your premises, i.
equipment Charges e.g. the price of a modem we sell to you,
- j. service change Charges e.g. a Charge for making changes to existing services including changing Inbound Number answer points or changing an IVR recording,
- k. cancellation/transfer Charges e.g. a Charge for early cancellation of a service or a port-away charge for an Inbound Number,
- l. service reconnection Charge e.g. a Charge for reconnecting a service after it was suspended or cancelled – and other Charges that we state as part of a Plan.

54. Charges & payment (2): Prices

- a. Subject to clause 56, our prices are as stated in your Plan.
- b. Our current prices at any time are referred to as our 'Price List'.

55. Charges & payment (3): spot priced Services

- a. We may designate a Service as a spot priced Service.
- b. Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third party charges can vary with little or no notice.
- c. International telephone calls and international roaming are spot priced Services.

56. Varying Charges

We may vary the Charges or add new Charges from time to time in accordance with clauses 49, 50 and 51.

57. Special Promotions

- a. We may offer Special Promotions to you, on particular terms.
- b. The particular terms of the Special Promotion will prevail to the extent of any inconsistency with other parts of your Agreement.

59. Credit management (1): Guarantees and security

- a. We can make supply of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction. TCP Customers: We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you are to acquire.
- b. If we become entitled to suspend or terminate Service, we may make the resumption of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction. TCP Customers: We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you are to acquire.

c. We may use a security payment to pay any billed Charge that is overdue, where you have not disputed the Charge. TCP Customers: Before we access a security payment, we will advise you that it will be accessed within 5 working days and provide you an opportunity to pay within that period.

60. Credit management (2): Credit reports

a. Acknowledgment and authority that credit information may be given to a credit reporting agency. You acknowledge that section 18E(8)(c) of the Privacy Act allows us to give a credit reporting agency certain personal information about you, and you authorise us to do so. The information which may be given to a credit reporting agency is listed by Section 18E(1) of the Privacy Act and includes:

- i. the fact that you have applied for credit, and the amount,
- ii. the fact that we are a credit provider to you,
- iii. payments which become overdue more than 30 days,
- iv. advice that payments are no longer overdue,
- v. in specified circumstances, that in our opinion, you have committed a serious credit infringement,
- vi. that the credit provided to you by us has been discharged.

b. Authority for us to obtain certain credit information. If you apply to us for personal or commercial credit, you authorise us:

- i. to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to personal credit provided by us,
- ii. to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us,
- iii. to obtain a report containing information about your commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by us,
- iv. to obtain a report from a credit reporting agency and other information in relation to your commercial credit activities.

c. Authority to exchange information with other credit providers In accordance with Section 18N(1)(b) of the Privacy Act, you authorise us to give to and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency, information about your credit arrangements. You acknowledge that this information can include any information about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. You acknowledge that the information may be used for the following purposes:

- i. to assess your application,
- ii. to assist you to avoid defaulting on your credit obligations,
- iii. to notify other credit providers of a default by you,
- iv. to assess your creditworthiness.

61. Credit management (3): Services you acquire for others

If you enter an Agreement where you will not be the main actual user of the Service (e.g. you arrange an Internet Service for your children):

a. You are responsible for all use of the Service and all Charges incurred under the Agreement.

b. If you give anyone else sufficient information about your Service (e.g. by giving them your user name, password or other credentials), they may be able:

- i. to uncap or unlimited any cap or other limits that apply to it,
- ii. to change Plans,
- iii. to disconnect Service, and
- iv. to do anything else that you could do. You should treat all information that allows control of your Service as secret.

c. Internet and telephone Services can be used to buy goods and services from third parties. You may be liable for debts incurred to these third parties.

62. When we can bill

- a. Your Billing Period is the period between bills. Our standard Billing Period is monthly, but we reserve the right to vary it.
- b. We can bill a part-period e.g. to align your Billing Period with the first day of each month.
- c. We may bill for Charges as follows:
- d. In any case, we may bill you for any Service we have already provided.

Type of Charge	Payable
i. Setup charge	Immediately
ii. Periodic Charge	One calendar month before the start of the period it relates to
iii. Usage Charge	At the end of each billing period
iv. Prepaid Charge	When you buy a prepaid service
v. Call connection charge	At the end of each billing period
vi. Miscellaneous charge	At the end of each billing period
vii. Third party charge	Immediately
viii. Equipment charge	When or before we dispatch the equipment
ix. Service change request charge	At the end of each billing period
x. Cancellation/transfer charge	Immediately
xi. Service reconnection (after suspension)	Immediately

63. Bills – General

- a. You agree that you can incur a Charge without us issuing any invoice, statement or Bill.
- b. You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.
- c. If we do provide an invoice, statement or bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.

64. Supplying a bill – TCP Customers

If you are a TCP Customer, we will supply a Bill to you for each current Billing Period, except where:

- a. you pay by Automatic Direct Debit and the Charges for that Billing Period are for the same fixed amount in each Billing Period – and in that case you and we agree that, although a Charge for that fixed amount will be payable by you, a Bill will not be issued unless the total amount payable in that Bill is more than 10% higher than that fixed amount; or
- b. your Service is Prepaid.

65. Extra Charges for bills and information We may charge you an extra Charge

- if:** i. you request non-standard information about your bill or Charges, or
- ii. you ask us to deliver a bill by a method that is not the standard method for a Plan, or
- iii. you request a paper bill when that is not the standard method for a Plan.

66. Billing information – TCP Customers

66.1. Requesting information

If you are a TCP Customer and request it, we will provide all Billing information related to your Service (including, if you request it, itemised details of Charges associated with the Service) relating to up to 72 months prior to your request, provided that:

- a. for information relating to the 24 months prior to your request:
- i. we shall provide it through at least one medium (of our choice) free of charge; and
 - ii. otherwise we may impose a Charge for providing the information, limited to the cost of the providing it;
- b. for information relating to a period between 24 and 72 months prior to your request, we may impose a Charge for providing the information, limited to the cost of the providing it; you may request provision of Billing information via other mediums and formats normally available from us and we may impose a Charge for providing the information in that way, limited to the cost of the providing it.

66.2. Electronic Billing data

If you are a TCP Customer and we make information from, or about, a Bill, available in an electronic form, we will offer at least one method of accessing that information that does not involve paying access Charges to us (but to avoid any doubt, this does not prevent us from making any Charge that is authorised by clause 66.1).

66.3. Itemised Billing

- a. We require notice in order to supply itemised billing details to you.
- b. Unless we advise you otherwise, the notice period is:
- i. 14 days where the information relates to Charges first billed within the last 12 months;
 - ii. 21 days where the information relates to Charges first billed within 12 to 24 months; and
 - iii. otherwise – 30 days.

67. Costs of telephone Billing Enquiries

If we provide access to our billing enquiry point by telephone, you agree that standard call rates apply (including timed charges for national and calls).

68. Out-of-pocket expenses

- a. We may notify you that, in order to supply a Service, we need to incur some out of pocket expense that is not included in other Charges. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.
- b. We notify you that a Partner may charge us if you report a fault and there was no such fault, or the fault lies with equipment for which the Partner is not responsible, or if you contact the Partner directly. You must pay or reimburse all such amounts.

69. GST

- a. In this clause, an expression within a pair of asterisks means the same thing as in the GST Act.
- b. Our prices are taken to be GST exclusive unless they are expressed to be 'GST inclusive', '+ GST' or similar.
- c. Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any *taxable supply* for which that amount is paid. Otherwise:

- i. The *consideration* payable by you represents the *value* of any *taxable supply* for which payment is to be made.
 - ii. If we make a *taxable supply* for a *consideration*, which represents its *value*, then you must pay immediately the amount of any GST payable in respect of the *taxable supply*.
- d. If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an *acquisition* of a *taxable supply* from a third party, the amount you must pay, reimburse or contribute will be the value of the *acquisition* by us less any *input tax credit* to which we are entitled plus, if our recovery from you is a *taxable supply*, any GST payable under this clause.
- e. We may recover any GST payable under this clause in the same manner as our Charges.

70. Late billing

- a. We may late bill.
TCP Customers: We shall only do so up to 160 days in arrears.
- b. Some Charges in a Bill may relate to a previous Billing Period.

71. When you must pay

- a. Where a Direct Debit or credit card arrangement applies, we may Extract payment for Charges:
 - i. after it is billed (if we issue a Bill for the Service); or
 - ii. after the end of the current Billing Period (if we do not issue a Bill for the Service). TCP Customers All Billing information will be accessible before we do so, but you agree that we may allow you less than 10 Working Days to check your bill (or, if no bill is required, all applicable charges) before an associated Direct Debit transaction occurs, varying the usual rule in clause 5.7(c) of the TCP code.
- b. If any Bill is overdue for payment, you must pay that Bill and any other Bill immediately.
- c. In any other case, you must pay a Bill within 7 days after its Bill Date.

72. How you can Pay

- a. If your Plan specifies 'Direct Debit only' (or similar) then:
 - i. Direct Debit payment is a precondition to supply of Service to you.
 - ii. We may suspend Service if Direct Debit arrangements are not maintained.
 - iii. You must not cause to be reversed any Direct Debit payment to us, unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction. TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.
- b. In any other case:
 - i. Direct Debit is our preferred payment method and incurs no surcharges.
 - ii. You may pay by MasterCard or Visa or any other card we notify you that we accept.
 - iii. Payments made using credit cards may be subject to a surcharge as notified at time of payment.
- c. If any payment you make is dishonoured we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.
- d. If your nominated bank account or credit card is closed, cancelled or expired, you must notify us within two business days and you must provide us with the details for an alternative bank account or credit card.

International Customers

72.2 Nextel has a strict payment policy for International customers that do not have an Australian bank account or an Australian address.

72.3 We will accept payment via a credit card direct debit, however International customers are required to pay a security deposit of \$250.00 Dollars (AUS) before their application is processed.

72.4 The Security deposit of \$250.00 is refundable in full should you wish to discontinue your service/s with Nextel.

72.5 The security deposit will only be withheld if there is failure to settle your final bill.

73. Unpaid Account

If a Bill is not paid on time:

- a. you are in breach of your Agreement, and
- b. we may also charge:
 - i. a reasonable Unpaid Account Administration fee, and/or a reasonable Dishonoured Direct Debit Administration Fee and a late payment fee;
 - ii. any collection fees and expenses that we incur. TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

74. Overdue Account – accounts over 30 days

If your payment is 30 days or more overdue or we otherwise consider it is reasonable to do so –

- a. we may refer it to an external collections agency;
- b. we notify you that our collection fees and expenses under clause 73(b)(iii) may:
 - i. includes the external agency's collection fee and/or
 - ii. include a reasonable Overdue Account Administration fee and a minimum recovery charge. TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

75. Early Termination Fees The amount of an Early Termination Fee that we are entitled to charge is:

- a. the amount specified in or calculated in accordance with the relevant Plan; or
- b. otherwise:
 - i. any amount we remain liable to pay to a third party (e.g. a wholesale supplier) for goods or services we cannot resell or resupply to other customers; and
 - ii. a reasonable estimate of our lost profit as a result of an early termination.

76. Minimum term for Inbound Numbers

- a. All Inbound Numbers are subject to no minimum term unless we expressly notify you of a set minimum term before you place an order.
- b. Where an Inbound Number is cancelled or transferred away from us within 12 months, we may make an extra charge.

77. Billing disputes

- a. Our records of what you owe us are deemed to be right unless you show them to be wrong. ACL Consumers: This does not apply to you.
- b. If you dispute a bill, you must pay it on time. We shall credit you if it is later determined by us that you are entitled to a credit. TCP Customers: We will not take Credit Management action in relation to a disputed amount that is the subject of an unresolved complaint if we are aware that the complaint has not been resolved to your satisfaction and is being investigated by the TIO or a relevant recognised third party, but:

- i. you must still pay all undisputed portions, and
 - ii. if it is determined that some or all of the disputed portion is payable, you must pay that amount within 3 days.
- c. You may not raise a billing dispute more than 6 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

78. Billing for unauthorised use of your account

You are responsible for, and must pay for, all use of your Service except for unauthorised use that results from our negligence or breach of Consumer Guarantees.

79. Billing agents

- a. We may bill you using a billing agent (which may be another company in our group).
- b. Payment to our billing agent constitutes payment to us.
- c. Failure to pay our billing agent constitutes failure to pay us.

80. Calls to Mobiles

- a. Unless otherwise expressly stated, our prices for usage of mobile phones (e.g. calls, messaging, data transfers) are always quoted on the basis that:
 - i. you are using the phone in Australia, and
 - ii. any phone you are calling or messaging is in Australia.
- b. We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

81. Payment for third party services

- a. Using a Service may depend on you having goods or services supplied by third parties. For instance:
 - i. In order to use a dial up internet Service, you must have a telephone line, and your modem will make calls using it.
 - ii. In order to use a local call Service, you must have a suitable handset.
- b. You are solely responsible for the costs of all third party goods and services you acquire.

82. Your cooperation

- a. You must give us all reasonable cooperation that we require in order to provide a Service to You, and fixing any problems that arise, and resolving any disputes that may arise or complaints that you may have.
- b. You acknowledge that, where a Service is a carriage service within the meaning of the Telecommunications Act, we or a Partner may be required:
 - i. to intercept communications over the Service, and
 - ii. monitor usage of the Service and communications over it.

83. Complaints – General (but see clause 84 if you are a TCP Customer)

- a. If you have any complaints in connection with the Service (including complaints about your invoice), you should contact us first to resolve the complaint via the contact details available on our website.
- b. We will handle your complaint in accordance with our complaints procedure. Information on our complaints procedure may be obtained by contacting us.
- c. You are also entitled to make a complaint to the Telecommunications Industry Ombudsman and possibly to the Consumer Affairs office (however described) in your state. We ask that you notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.
- d. We may bill you a reasonable complaint handling Charge.

84. TCP Customers and Complaints

If you are a TCP Customer:

- a. We will handle complaints in accordance with the Complaint Handling Procedure on our website, and the TCP Code.
- b. Our Complaint Handling Procedure will be free of charge other than for:
 - i. call costs at local rates or low cost when calling from our network;
 - ii. a costs recovery levy of providing access to information we hold about you that we collected more than 2 years earlier;
 - iii. a costs recovery levy of providing information that is not in the standard form generated by our customer records and billing systems or is equivalent to more than 50 A4 pages.

85. Termination & suspension by us (1): Early termination

We may terminate an Agreement, or suspend, cancel or restrict Service if, in relation to that or any other Agreement or Service:

- a. you fail to pay us any money that is due,
- b. you threaten not to pay us money that you owe us, or will owe us in the future,
- c. you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement),
- d. you are in material breach of your Agreement,
- e. you become insolvent,
- f. we reasonably believe that you have vacated your Premises without notice to us,
- g. we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm, h. it becomes technically infeasible for us to continue Service,
- i. you use a Service in a way that places unreasonable demands on our Network,
- j. we are unable to obtain access to your Premises as required to provide, maintain or repair the Service, k. there is an emergency that warrants it,
- l. you have told us that you no longer require the Service,
- m. if we reasonably suspect fraud or attempted fraud involving the Service,
- n. we become entitled to suspend the Service, and the suspension continues for more than a month,
- o. you are, or become, a carrier or carriage service provider under the Telecommunications Act (and we did not agree to provide you with Service despite that), or
- p. in any other circumstances stated elsewhere in our Customer Terms. We may charge a reconnection Charge following action under this clause unless it resulted from our mistake.

86. Termination & suspension by us (2): Other events

- a. We may terminate an Agreement or suspend performance of our obligations under the Agreement if you die or become bankrupt, insolvent or subject to a winding -up order or similar insolvency event, if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Agreement.
- b. We may suspend or restrict the supply Service if there are reasonable grounds for believing:
 - i. a serious threat or risk exists to the security or integrity of the Network, or
 - ii. the provision of the Service may cause death, personal injury or damage to property.

- c. We may suspend or restrict Service in cases of emergency, including for the provision of support to emergency and other essential services.
- d. We may terminate an Agreement or suspend or limit or vary performance of our obligations under it to comply with:
 - i. legislative or regulatory requirements, or
 - ii. the order of a court or lawful direction of a competent authority – to the extent the legislative or regulatory requirements or order or direction unavoidably requires us to do so.
- e. We may suspend, intercept or terminate a service in order to comply with a warrant or other court order, or as otherwise required or authorised by law.

87. TCP Customers – Disconnection, Suspension and

Restriction If you are a TCP Customer:

- a. We will not disconnect, suspend or restrict a Service for credit and/or debt management reasons, without first informing you unless:
 - i. we assess that you or the account status presents an unacceptably high credit risk to us; or
 - ii. we reasonably suspect fraud or attempted fraud; or
 - iii. you have nominated to us an agreed point at which Service will be limited and that point has been reached.
- b. Except where clause 87(a) applies, we will give you at least 5 working days' notice prior to disconnecting, suspending or restricting your Service, including an indication of the earliest date disconnection, suspension or restriction could occur and the date of issue of correspondence if you are informed in writing – and we shall otherwise comply with the rules in the TCP Code about disconnection, suspension or restriction of the Service.

88. Early termination by you

- a. You are not entitled to simply choose to terminate an Agreement during its fixed or minimum term, unless our Customer Terms or the law says otherwise.
- b. Our Plans are priced on the basis that you will complete your Agreement.
- c. Where you are entitled to terminate your Agreement early (e.g. because we have offered you that option following a variation to your Agreement), we may bill you for:
 - i. any outstanding amounts for installation costs or equipment that can be used in connection with services provided by other suppliers, and
 - ii. usage or network access charges incurred up to the date on which the Agreement ends.

we agree that you may terminate it early in any other circumstances, we will bill you:

- i. an Early Termination Fee,
 - ii. any applicable amounts under clause 88(e),
 - iii. a reasonable administration Charge,
 - iv. usage or network access charges incurred up to the date on which the Agreement ends, and
 - v. any other Charge (including an Early Termination Fee) that is specified in the applicable Plan or the Price List.
- e. Some of our Plans discount, defer or waive normal equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate an Agreement under such a Plan early (and if we agree that you may do so), we may also bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.

89. Termination by you

a. You may terminate your Agreement:

i. (except during a fixed or minimum term) at any time, on 90 days' written notice for complex services and 30 days written notice for standard services;

ii. If you fail to give the notice required under clause 89.a.i, at the expiration of Term and we have not terminated this Agreement, then the term of this Agreement will automatically renew for a further 90 days ("Extended Term").

90. Post-termination If an Agreement ends:

a. Our obligations to you under that Agreement are at an end.

b. We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Agreement.

c. We may charge a cancellation or transfer fee for any Inbound Number that you have held with Nextel for less than 12 months.

d. All bills are payable immediately.

e. You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit.

f. You must return to us, promptly, any of our equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)

g. Any cause of action that either of us had against the other predating the termination is not affected,

h. The limitations of our liability, and our rights of indemnity, under our Customer Terms continue,

i. No other Agreement is affected unless we also terminate it. Otherwise, that Agreement is at an end for all purposes.

91. Suspension of Service

We may suspend Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency or your death), if:

a. there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;

b. you fail to pay any amount owing to us in respect of the Service under your Customer Agreement (which is not the subject of a bona fide dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;

c. you breach your Customer Agreement, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach cannot be remedied;

d. you breach your Customer Agreement, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;

e. you are the subject of an Insolvency Event;

f. we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;

g. we reasonably believe that you may be a credit risk in relation to the Service;

h. you are a natural person (and not a company) and you die;

i. there is an emergency;

j. there is a threat or risk to the security of the Service or integrity of the Network;

- k. the Service may cause death, personal injury or damage to property;
- l. we are required to do so to comply with any law or direction of any Regulator; m. an Intervening Event occurs; or
- n. we are otherwise entitled to do so under your Customer Agreement.

92. Charges during a period of suspension if we suspend Service:

- a. because of your fault or breach of your Agreement – you remain liable for all Charges payable under your Agreement during the period of suspension;
- b. otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

93. Errors in our documents

- a. Clerical or computation errors and misprints in any document that we provide to you in connection with your Agreement, including any Plan terms, catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.
- b. You are not entitled to a reduction or variation in the price of the Services by reason of any such errors or misprints.

94. Carrier or Carriage Service Provider

- a. You promise that you are not a carrier or a Carriage Service Provider.
- b. If you do become a Carrier or a Carriage Service Provider, then we or our Partners may immediately cancel the Service and terminate your Agreement by notice to you.

95. Provision of Services by our Partners

- a. If we terminate an arrangement with a Partner through which we supply the Service to you, you acknowledge that our Partner may arrange to supply you with the Service directly.
- b. If our rights and obligations under your Agreement are assigned or novated to our Partner in order to supply the Service directly to you, you acknowledge that the rate plan and Charges applicable to the provision of the Service may be altered to the nearest applicable Partner rate plan.

96. Assignment

- a. We may assign or novate all or part of our rights and obligations under your Agreement without your consent.
- b. You cannot assign or novate all or part of your rights and obligations under your Agreement unless we agree in writing.

97. Notices

97.1. How we give notices

We may give notice to you in connection with, or as required by our Customer Terms:

- a. in person;
 - b. by fax;
 - c. by email;
 - d. by post;
 - e. by SMS; or
 - f. in any other way allowed by law –
- or by sending you (by one of the above means) notice of the address of a web page where the notice can be read.

97.2. Address or number for notices

We may direct a notice to:

- a. a number or address that we reasonably believe to be current;
- b. in any event, the most recent number or address that you have notified to us; and
- c. if you are a company, your registered office.

97.3. A notice is taken to have been received:

- a. if we deliver it to you in person – at the time of delivery;
- b. if we fax it during business hours in your locality – two hours later, subject to our fax machine receiving a successful transmission confirmation;
- c. if we fax it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to our fax machine receiving a successful transmission confirmation;
- d. if we email it during business hours in your locality – two hours later, subject to a 'delivery failure' message not being received;
- e. if we email it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to a 'delivery failure' message not being received;
- f. if we post it – at noon on the second Business Day after posting;
- g. if we SMS it – two hours later; h. if we send you notice of the address of a web page – two hours after that notice is taken to have been received; or
- i. if there is evidence that you received it at an earlier time – that earlier time.

98. Governing law

Your Agreement is governed by and must be construed in accordance with the laws of NSW. You and we submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.

ACL Consumers: Your Agreement is governed by and must be construed in accordance with the laws of your State or Territory of residence. You and we submit to the exclusive jurisdiction of the courts of that State or Territory and the Commonwealth of Australia.

99. No waiver

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Agreement (such as a right that we have due to your breach of your Agreement) does not operate as a waiver of the power or right.

100. Commission

We may pay a commission to any agent, employee, contractor or dealer in connection with the acquisition of the Services and your Customer Agreement.

101. Information about your rights

Information and advice about your rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission, or the relevant Department of Fair Trading or Department of Consumer Affairs in your State or Territory.

102. Complaints and assistance services

Our contact details are available on our website. You may contact us and make any complaint by contacting us or the following assistance services:

- a. Customer Service – **139 139**
- b. National Relay Service – **139 139**
- c. Translating and Interpreting Service – **139 139**
- d. On our website at www.nextel.com.au

103. Interpreting your Agreement

- a. If an expression is defined in the Dictionary in clause 104, that is what it means.
- b. If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint red', then 'coloured' means 'painted red'.)
- c. Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- d. Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- e. A schedule to a document is part of that document.
- f. A reference to the singular includes the plural and vice versa.
- g. Where one thing is said to include one or more other things, it is not limited to those other things.
- h. There is no significance in the use of gender-specific language.
- i. A 'person' includes any entity which can sue and be sued.
- j. A 'person' includes any legal successor to or representative of that person.
- k. A reference to a law includes any amendment or replacement of that law.
- l. Anything that is unenforceable must be read down, to the point of severance if necessary.
- m. Anything, we can do, we may do through an appropriately authorised representative.
- n. Any matter in our discretion is in our absolute and unfettered discretion.
- o. A reference to a document includes the document as modified from time to time and any document replacing it.
- p. If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- q. The word month means calendar month and the year means 12 months.
- r. The words in writing include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- s. A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.
- t. Money amounts are stated in Australian currency unless otherwise specified.
- u. A reference to a notice means a notice that can be read, unless stated otherwise.

104. Dictionary

The expression	Means
Account page	A web page or facilities we may provide that permits you to view and / or manage details of your account
Acceptable use policy	See clause 8
ACL	Australian Consumer Law, which is set out in Schedule 2 of the Competition and Consumer Act 2010
ACL Consumer	An individual who enters a Customer Agreement for good and / or services wholly or predominantly for personal, domestic or household use or consumption
ACMA	Same as Customer Agreement
Agreement Date	See clause 22(b)

Application Date	See clause 22(a)
Advocate	As in the TCP Code
Authorised Representative	As in the TCP Code
Automatic Direct Debit	A periodic payment that is automatically deducted by us from your nominated financial institution account
Bill	An invoice from us which advises you of the total of each Charge that is due for payment
Billing period	See clause 62(a)
Bundled equipment	See clause 14
Business day	Monday to Friday excluding statutory holiday between 8:30 a.m. and 6:00 p.m. EST
Carriage service	as in the Telecommunications Act
Carriage Service Provider	as in the Telecommunications Act
Carrier	as in the Telecommunications Act
Consumer Guarantee	as in the ACL
Contract Loss	<p>loss or damage suffered by a party and arising in connection with or out of your Agreement or any supply made under it (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which another party was or should have been aware), including but not limited to:</p> <ul style="list-style-type: none"> • economic loss; • business interruption; • loss of revenue, profits, actual or potential business opportunities or contracts; • anticipated savings; • loss of profits; • loss of data; • indirect or consequential loss; • an obligation to indemnify another person; • an obligation to contribute to the compensation of loss or damage suffered by another person
Credit Management	<p>the process by which we:</p> <ul style="list-style-type: none"> • help customers to manage their expenditure on Services; • manage any credit risk to us; and • collect outstanding debts from customers and former customers
Customer Agreement	see clause 3
Customer Terms	see clause 1
Delivery Date	see clause 31
Dictionary	this table of defined terms
Direct Debit	a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit
Early Termination Fee	see clause 75
EROU Rules (Extended Rights of Use)	the rights attaching to a Smart number, including the right to sell or lease the number
End User	see clause 24(b)
Equipment	a handset, modem, router or other hardware
Extract	deduct an amount by Direct Debit

Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
General Terms	the terms in Part C
GST	Goods and Services Tax
GST Act	A New Tax System (Goods and Services Tax) Act 1999
Inbound Number	a 1300, 13 or 1800 number or any other number that functions as a virtual telephone number that can be routed to flexible answer points
Insolvency Event	includes an event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay your debts when they are due, you are wound up or become bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction
Internet Service	a Service that provides access to the Internet
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Suppliers, any disruption to our or our Suppliers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster
Law	laws, Acts of Parliament, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator
Listed Carriage Service	as defined in the Telecommunications Act (but covers most public voice and data communications services)
Network	see clause 23
Numbering Plan	the Telecommunications Numbering Plan
Off-peak	see clause 5
Operational Directions	see clause 10
Our Facilities	Facilities we own and/or operate
Partner	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content that we resupply to you
Partner Facilities	Facilities that are managed or maintained by a Partner
Partner Requirements	see clause 11
PDH	personal, household or domestic
Peak	see clause 5
Periodic Entitlements	see clause 6
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
Post-Paid Plan	a Plan where you can use all or part of the Service before you pay for it
Price List	see clause 54
Privacy Act	Privacy Act 1988
Product	Goods and/or services

Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and any other relevant government or statutory body or authority and the Telecommunications Industry Ombudsman and Communications Compliance Limited
Service	a service (and includes Equipment) which we provide to you, including but not limited to (a) a Standard Telephone Service; or (b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); or (c) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001
Service Level Agreement	a written service quality assurance titled as such
Service Provisioning Date	see clause 22(b)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	see clause 31
SLA	a Service Level Agreement
Smart number Rules	the rules and requirements that govern Inbound Numbers and their use, and any binding directions of the ACMA under them
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Standard Telephone Service	as in section 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999
TCP Code	Industry Code C628:2012 Telecommunications Consumer Protections Code
TCP Customer	<p>a. a person who acquires a Telecommunications Product from us for the primary purpose of personal or domestic use and not for resale; or</p> <p>b. a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into a contract with us:</p> <ul style="list-style-type: none"> i. does not have a genuine and reasonable opportunity to negotiate the terms of the contract; and ii. has or will have an annual spend with us which is, or is estimated on reasonable grounds by us to be, no greater than \$20,000
Telecommunications Act	Telecommunications Act 1997
Telecommunications Goods	any goods we supply for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service
Telecommunications Product	<ul style="list-style-type: none"> • a Listed Carriage Service or any service we supply in connection with that service; and • a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) we provide in connection with the supply of a Listed Carriage Service
Unfair	in relation to a term in a Consumer Contract means the same thing as in section 24 of the ACL
Use-by Date	see clause 7(b)
Walk Away Rights	the right to cancel your Agreement (even during a minimum or fixed term) and pay only usage or network access charges to the date your Agreement ends, and outstanding amounts for installation of Equipment, and outstanding amounts for Equipment that is compatible with other suppliers' services
We, us, etc.	see clause 2
Wholesaler Suppliers	unless stated otherwise – Telstra and/or Vocus and/or AAPT

Part D – ADSL Internet Service Terms

105. Partner Requirements – ADSL Services Where we supply you with an ADSL Internet Service:

- a. The Service can only be provided over a copper wire pair approved by Telstra Corporation where Telstra Corporation or a reseller of Telstra Corporation supplies an operational standard telephone service over that copper wire pair.
- b. You warrant to us that you are the same end user to whom Telstra Corporation or a reseller or agent of Telstra Corporation supplies such a standard telephone service over that copper wire pair.
- c. You acknowledge that the ADSL Internet Service will only be supplied for so long as you continue to acquire such a standard telephone service over that copper wire pair.
- d. You acknowledge that the ADSL Internet Service may be terminated where you cease to acquire, or suspend or terminate, such a standard telephone service over that copper wire pair;
- e. You acknowledge that if an ADSL Internet Service has been terminated under clause 105(d):
 - i. our Wholesale Supplier may charge an early termination fee in respect of the ADSL Internet Service;
 - ii. we may recoup that early termination fee from you;
 - iii. if you want the ADSL Internet Service reconnected, our Wholesale Supplier may charge us a connection fee; and
 - iv. we may recoup that connection fee from you.
- f. You acknowledge that, in some instances such as where you are acquiring a monitoring service (meaning a service for the monitoring of your premises such as remote alarm services), additional equipment at your premises such as central splitters and network termination devices must be installed by you at your own cost before the ADSL Service can be provided. This additional equipment must be installed prior to ADSL Service activation.
- g. You acknowledge that the installation and operation of the ADSL Service may cause temporary disruption in the standard telephone services received by you or a monitoring service.
- h. You acknowledge that the installation and operation of a monitoring service may cause temporary disruption to the ADSL Service.
- i. You acknowledge that the installation and operation of the ADSL Service may mean that some incompatible products that might have been available from Telstra Corporation to you will not be supplied to you using that copper wire pair – a complete list of incompatible products is available upon request).
- j. You acknowledge and must ensure that any provider of a monitoring service used by you has been notified that:
 - i. installation and operation of an ADSL Service may cause temporary disruption in the standard telephone services or a monitoring service received by you; and
 - ii. installation of equipment at your premises such as central splitters and network termination devices may be required under clause 105(f).
- k. As far as the law allows, you release Nextel, our Wholesale Supplier and its third party supplier(s) from all liability to the you, and you indemnify them against all costs, expenses, liability, loss or damage incurred or suffered by them in conjunction with any claims, actions or proceedings against them (including third party claims or claims by you or Telstra Corporation) arising out of the following (to the extent that the liability is caused by the provision or cancellation of the ADSL Service):
 - i. disruption of your telephone service or monitoring service;
 - ii. cancellation of the ADSL Service;
 - iv. suspension of the provision of the ADSL Service or to a particular internet address(es);
 - v. iv. cancellation of, or refusals to provide, any incompatible products; and v. possible breaches of the Telecommunications (Customer Service Guarantee) Standard in respect of you.

106. Use of Your Internet Service

- a. You must comply at all times with this SFOA, our Acceptable Use Policy and all laws and obligations.
- b. You must not disclose the user names and passwords that we provide to you in relation to your Internet Service. You must immediately notify us of any unauthorised use of your user names or passwords as soon as you become aware of such use.
- c. You acknowledge that the Internet is not a secure and confidential method of communication and that your use of the Internet to send and receive data is at your own risk.
- d. You agree that you or another responsible adult will monitor any use of your Internet Service by anyone that is under the age of 18 years. We are not responsible for any content that may be accessed using the Internet Service

- e. You acknowledge that you do not acquire any Intellectual Property Rights in your Internet Service or any content provided as part of your Internet Service unless expressly licensed or authorised by the owner of that Intellectual Property.
- f. You agree that we may monitor your use of your Internet Service to ensure that you comply with our SFOA and our Acceptable Use Policy. We may investigate any misuse of your Internet Service, in conjunction with relevant law enforcement agencies if required.
- g. If your use of your Internet Service results in loss to other users or to Nextel, you may be liable to pay compensation.
- h. You acknowledge that the terms of your Internet Service Plan or Offer may contain limits on the use of your Internet Service, for example monthly download entitlements. You should refer to the Internet Service Plan or Offer to confirm such limits.
- i. From time to time, you may find that the actual throughput speeds achieved with the Internet Service may be lower than the speeds specified for your Internet Service Plan.

107. Liability

Your Internet Service, including content you transmit or receive, may be operated or supplied by third parties who are not controlled or authorised by us. You acknowledge that

- a. we do not warrant that your Internet Service will be uninterrupted or error-free;
- b. we cannot guarantee a timeframe for restoration of your Internet Service, should it fail; and
- c. we are not liable for any loss or damage you may suffer as a result of Internet outages or of using the Internet to send or receive data, which may contain viruses or other harmful software.

108. Connection and Installation

- a. We will determine whether
 - i. an Internet Service is commercially available in your area;
 - ii. an ADSL connection necessary for the provision of an Internet Service is available at your local telephone exchange; and
 - iii. your telephone service is technically able to make an ADSL connection necessary for the provision of the Internet Service.
- b. If we are able to provide you with the Internet Service, we will arrange for activation at your local telephone exchange of the ADSL connection to your Premises, through your telephone company.
- c. You will install the Service at your Premises. We will provide you with detailed written instructions, backed up by telephone and online support, to enable You to complete the installation and configuration of your Internet Service.
- d. You are responsible for supplying your own modem, router or other hardware, and all security and firewall software required to use the Internet Service.
- e. You are responsible for the cost of any third-party services that may be required in connection with the installation of the Service to the Premises (e.g. electrician or licensed cable).
- f. To receive the Internet Service, all equipment connected to your telephone service (which may include security alarm monitoring equipment) must be isolated from ADSL interference by installing one or more ADSL in-line filters and/or splitters. This will be at your own cost.
- g. We may modify your Internet Service from time to time, as we consider necessary to improve and enhance it.
- h. We will not be able to provide your Internet Service while your telephone service has been disconnected for whatever reason.

109. Changes to Telephone Service

- a. Interruptions or changes to your telephone system will cause any ADSL2+ and ADSL Internet Service on that line to be automatically disconnected. Such interruptions or changes include, but are not limited to,
 - i. cancellation/suspension of your telephone account
 - ii. change of service address (even if you keep the same telephone number)
 - iii. change of telephone number (even if your address does not change)
 - iv. change of telephone service lessee details
 - v. installation of an ADSL/ADSL2+ incompatible product on the telephone line

- b. If your Internet Service is automatically disconnected, you need to inform Nextel so that we can either reconnect or cancel your service:
- i. If you choose to reconnect your service, you are responsible for paying all reconnection/relocation fees.
 - ii. If you choose not to reconnect your service, the usual cancellation conditions apply, including your obligation to pay any early contract termination fees.
- c. If you change your location to an area where Nextel ADSL2+ services are not available, you can choose to either
- i. changes your service to an ADSL off-net plan
 - ii. cancel your ADSL2+ service and pay any early contract termination fees that apply
- d. If you apply to relocate/reconnect your Internet Service while you are still under contract, and if Nextel is unable to provide an ADSL2+ or ADSL service at your new location/phone number, you are responsible for paying any early contract termination fees that apply.

Part E – Telephone Service Terms

110. Partner Requirements – Telephone Services

Where we supply you with a Telephone Service:

- a. If arrangements between our Wholesale Supplier and us are terminated, our Wholesale Supplier may arrange to supply you directly. You acknowledge that the rate plan applicable to the provision of Telephone Services to you may be altered to the nearest applicable rate plan of our Wholesale Supplier in the event that our rights and obligations under your Agreement are assigned or novated to our Wholesale Supplier so that our Wholesale Supplier provides the Telephone Services directly to you.
- b. You may not resell or resupply the Telephone Services provided by us.
- c. We shall have the right to assign or novate all or part of its rights and obligations under your Agreement to our Wholesale Supplier without your consent. You cannot assign or novate all or part of your rights and obligations under your Agreement other than in accordance with this clause
- 110(c).** For the purposes of novation, you agree to novate your Agreement to our Wholesale Supplier on receipt of a notice from either us or our Wholesale Supplier, such novation to be on terms no less favourable than the terms of your Agreement in existence immediately prior to the novation.
- d. You consent to allow us to disclose to our Wholesale Supplier or its Related Bodies Corporate) your details including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to you. You consent to allow our Wholesale Supplier (its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to you by us, our Wholesale Supplier. Without the express permission of us, our Wholesale Supplier (or its Related Bodies Corporate) may not directly contact you with offers and information via electronic messaging (such as SMS) for marketing purposes.
- e. Our Wholesale Supplier are not liable to you (in contract, tort (including negligence) or otherwise) in relation to any Fixed line, internet and VoIP Telephone Services resupplied to you by us, any delay or any failure to provide Telephone Services.
- f. You promise that you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).
- g. If you become a Carrier or Carriage Service Provider, then we, our Wholesale Supplier may immediately cancel the Telephone Service by notice to you. If we, our Wholesale Supplier does so, that party will negotiate in good faith with you to enter into an agreement governing supply of the Telephone Service, on terms to be agreed.

Part F – VoIP Service Terms

111. General Terms: VoIP Services

VoIP Services include Business VoIP, hosted (PBX) Phone Systems, SIP Trunk, Local Connect and Local Connect Plus.

- a. Every change and additional service you request after the first enquiry incurs a fee (note that no fee applies for changes you make through Nextel's self-management portal).
- b. We are entitled to charge a cancellation, reconnection or reactivation fee for services that you cancel.
- c. Calls will be charged each month on top of the plan cost, with the amount charged varying depending on the call type and plan.

- d. We reserve the right to vary our rates and charges in providing the Service at any time, and such changes will apply to you forthwith.
- e. You acknowledge and understand that for the use of this Service, you must acquire at your cost your own hardware, along with a suitable broadband Internet connection if applicable.

112. Liability and Service Delivery

- a. While being committed to maintaining a reliable, high-speed network, we do not warrant that all Services are free from faults, delays or interruptions, which can be caused by factors such as network congestion, maintenance, technical capabilities, geographic factors, obstructions or interference and may cause disruptions to your Service at certain times.
- b. We do not warrant that the service will be free of interruption, delays or faults, and we are not liable for any loss or loss of data or other commercial damage, including but not limited to special, incidental, consequential or other damages.
- c. By using the Service, you agree that you shall defend, indemnify, save and hold us harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against us, our agents, our customers and employees that may arise or result from any service provided or performed or agreed to be performed or any product sold by you or your agents or employees.
- d. We are not responsible for rectifying any fault or malfunction in the Service where the fault arises in or is caused by your Internet service provider/telephone landline phone carrier.
- e. You acknowledge that you have relied on your own judgment to evaluate the suitability of the Service for the purpose for which you require the Service.

113. Contact Details

Under the Telecommunications Act of Australia, it is a legal requirement that the physical location of a fixed line phone service is correctly entered and maintained in the government's emergency location database (IPND). This enables emergency services to be able to trace the physical location of the caller in an emergency situation. We also strongly recommend that you provide this information for any VoIP numbers that terminate at answer points.

- a. It is your responsibility and of critical importance that you supply and maintain your correct details with us.
- b. This information is maintained by you via Nextel's self-management web portal or alternatively by informing us of any change of locations to any VoIP service. c. You can find full details about contact detail legal requirements at www.acma.gov.au.

114. Call Recording

- a. It is a legal requirement that you inform callers before they are recorded that you will be recording the phone call so that the caller has the opportunity to either end the call or else ask to be transferred to another line where recording does not take place. The caller must be given sufficient opportunity to do so; otherwise the call must not proceed.
- b. You can notify callers that their call is being recorded either by playing a pre-recorded audio file announcement or by your Operator informing the caller before recording starts. Failure to do so is a breach of Law and of your Agreement.
- c. You shall indemnify us and our Partners from and against all actions, claims, damages, liabilities or costs (including legal costs) arising from, or directly or indirectly related to, your compliance with the foregoing call recording requirements, all associated conduct, acts or omissions, or any claim that the call recording service has infringed any rights at law or otherwise.
- d. When using call recording, you accept full responsibility and liability for ensuring that all callers are notified at the beginning of the telephone conversation that the call will be recorded, and that callers are given sufficient opportunity to provide their consent; otherwise the call must not proceed. You must ensure that no confidential information is subject to unauthorised use and disclosure.

115. Nextel's Self-Management Portal Use

- a. Your call recordings are stored for a minimum of 7 days, after which time we reserve the right to remove these messages without notice.
- b. You acknowledge and understand that if any action you take on the Nextel Portal breaks, pauses, interrupts or sets up a wrong action or creates a problem in the final service delivery, it is your sole responsibility. We reserve the right to Charge for any problems you cause that we need to rectify.

116. VoIP and Emergency Services

Nextel strongly recommends that you do NOT use VoIP services as your only telephone service, and strongly advise that you keep another form of telephony nearby for calling emergency services.

- a. Due to the nature of VoIP and the Internet, VoIP service providers cannot provide faultless emergency call services. Calls to emergency services may not work at all times due to factors such as the Internet being unavailable, power outage, account suspension, power failure.
- b. VoIP allows for your service to be nomadic in design, as such, an emergency services operator may not be able to automatically determine your physical address. It is important that if you are using a VoIP service and need to call emergency services, that you inform the operator of the address you are calling from.

Part G – Partner Requirements – specific

117. We Notify You of the following Partner Requirements

- a. If our Wholesale Supplier has not been paid for a Service we have provided to you, and if you have not paid us for it, you must pay the amount you owe us to the wholesale supplier on demand.
- b. You consent to us and our Wholesale Supplier exchanging your details and information about or in connection with your personal credit, commercial activities or commercial creditworthiness.
- c. Our Wholesale Supplier may provide a Service that we resupply to you by means of a different carrier from time to time and as it sees fit.

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