

# Summary of Nextgen Networks Standard Form of Agreement

## Important Customer Information: Your Rights and Obligations

### Outline

This is a summary of Nextgen's **business** standard form of agreement (SFoA). 'Nextgen', 'we', etc mean Nextgen Networks Pty Ltd ACN 094 147 403.

Our business SFoA does not apply a contract that is: subject to Part 2B of the *Fair Trading Act 1999* (Victoria) or a corresponding law of Australia or a State or Territory; with a 'consumer' within the meaning of clause 4.1 of ACIF Code C620:2005 *Consumer Contracts*; with a 'customer' within the meaning of clause 2.2 of ACIF Code C541:2006 *Credit Management*; with a 'consumer' within the meaning of ACIF Code C628:2007 *Telecommunications Consumer Protections* – as amended, updated or replaced from time to time, or with a customer for less than six telephone lines or customer equipment with less than six telephone lines.

In all other cases, our SFoA is the contract that applies when we supply you with:

- goods;
- data transmission services; or
- ancillary or additional services.

Under law, our SFoA is binding whether or not you read it or sign it. If we agree to different contract terms, our SFoA still applies, subject to those different terms.

This summary highlights the key points of the SFoA, and doesn't change or override anything in the SFoA. It is for information purposes only.

Many of the SFoA terms apply to all goods and services we provide (e.g. interest on late payment) while others apply to particular kinds of services (e.g. our acceptable use policies ('AUP') for internet access).

## Terms

We offer a variety of service plans, including plans with:

- Repeating fixed terms – these have a fixed contract term, which automatically repeats for the same term on expiry of the initial term (e.g. once a 12 month fixed term ends, it automatically repeats for another 12 months) unless you give 30 days' notice before the end of the current term that you do not want to repeat.
- Casual terms – these don't require you to contract for a minimum term, but you must still give 30 days' notice of termination.
- Minimum terms – these can only be terminated from the end of the minimum term. After the minimum term, they operate as a casual plan, and can be terminated on 30 days' notice.

Applicable terms are in our price list.

If you cancel a contract before the end of a minimum term or fixed term, you must pay:

- early termination charges – calculated by multiplying the monthly periodic / recurring charge by the number of months left in the minimum or fixed term, and
- where you purchased goods for use with the service – any unpaid balance of the price of those goods.

Some of our plans involve non-refundable payment for usage entitlements that are lost if not used within a certain time. Some charges are payable in advance e.g. setup, while other charges may be payable only after a service has been used e.g. excess data transfer charges.

## Charges

Our charges are as per our price list, or as we otherwise advise.

Each plan is different and charges vary, but commonly include a setup fee, a monthly access charge, usage-based charges, speed increase charges and

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time-based charges. The category and service terms, with our price list, indicate when charges are payable, and the types of charges that apply.

We may change our price list from time to time. Until the end of a minimum term or fixed term, changes to our price list do not affect you. Otherwise, any change applies 30 days after notice to you, unless we specify otherwise.

We charge GST in addition to our charges.

### **Billing**

We usually bill you at the end of every billing month, which is the last day of the month on which your contract started. Some plans have a different manner of billing e.g. web hosting may be billed annually in advance. We may bill you for some charges before we provide service, e.g. set up charges, charges for goods, and fees payable to third parties.

We may back bill up to 180 days after charges have been incurred.

We may deliver a bill in a number of different ways, but we usually use email or post. Our invoices are conclusive evidence of the amount payable, but we will act reasonably when considering a genuine billing dispute.

### **Discounts, credits or rebates**

If we offer a discounted rate it will be built into the rate in our price list, advertised on our website or offered by us in writing.

We only provide credits or rebates if we uphold your dispute of an invoice, or you are entitled under a service level agreement. This credit or rebate is worked out with reference to what the correct invoice amount should have been, and what the actual invoice amount was. In the case of a rebate under a service level agreement, the rebate is calculated in accordance with it.

### **Payments**

You may pay us by credit card, direct debit, cheque or cash, unless otherwise specified in a plan.

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If we ask for it, you must pay an advance deposit as security for future charges.

If you have a genuine dispute with our invoice, you must still pay the disputed amount, and then, you must notify us of the dispute within 14 days from the date of the invoice.

If you pay late, we can charge a late fee and / or daily interest.  
If your payment is dishonoured, we can charge an administrative fee and any fees the bank charges us.

### **Termination and suspension of customer contracts**

We can suspend a service in a number of circumstances, but you are still responsible for charges which accrue even though you are not using the service.

We can terminate your contract if e.g. (a) your minimum term has expired and we give you at least 30 days' notice, (b) you become insolvent, (c) you are subject to an application for winding up, (d) you are subject to any form of external administration or management, (e) you fail to pay us money within 14 days of it being due, (f) you breach your contract and fail to remedy the breach within seven days after receiving a notice requiring that it be remedied, (g) you die, (h) you have provided false or misleading information to us, (i) we are entitled to terminate any other contract we have with you.

You may terminate a contract:

- as at the end of a repeating fixed term – by 30 days notice before the end of the current term;
- after a minimum term – on 30 days notice;
- if we increase charges (except for charges imposed by law or recovery of increased wholesale or other input charges) AND the increase would have increased your bills if it had applied to your actual usage during the preceding 6 months AND you cancel in writing within 30 days after we increased the charges.

After a contract ends, all prepaid entitlements are expired, and we don't have to receive, forward or keep your email or any of your data on our servers.

## **Warranties**

If we supply goods, you will receive the benefit of any manufacturer's warranty that applies to them. You may also be entitled to further warranties under the Trade Practices Act 1974 (Cth) and / or under state law.

## **Indemnities and limitation of liability**

You indemnify us and our wholesalers against any loss or damage that arises from your use of our services. You release us from any liability for loss or damage that you may suffer, but that does not affect rights that you may have under the Trade Practices Act 1974 (Cth). Our SFoA cannot exclude those rights, but it does limit them as far as allowed by that Act.

## **Varying our SFoA**

We may vary our SFoA. A variation applies to you:

- if it could be reasonably expected to adversely affect you – after we have given you reasonable notice;
- otherwise – when we change the 'Official Copy' on our website.

## **Varying charges**

We may vary charges as stated above.

## **Varying any other part of your contract**

We may vary any other part of your contract. A variation applies to you:

- if it could be reasonably expected to adversely affect you – after we have given you reasonable notice;
- otherwise – when we notify you.

## Complaints and faults

If you have a complaint we encourage you to contact us immediately. At the first instance, both complaints and faults should be reported to our help desk staff. They will take action to have faults corrected. If they have not resolved a complaint within 7 days, you should ask that it be referred to a supervisor, who will address it or pass it on to our most appropriate staff member. If we ask for written details of your complaint, you must give them, and we will normally report the progress of the matter to you by email.

## Service standards

We will use reasonable endeavours to supply services to our stated performance targets but we do not guarantee fault free, continuous or optimal service. Some of our services are subject to a service level agreement (SLA), in which case the services will be provided subject to the terms of the SLA. We do not have peak and off peak times for our services.

## Your personal information

We do not normally obtain a credit report about our customers, but we reserve the right to do so. When allowed by law, we also reserve the right to give credit information about you to a credit reporting agency.

As the Privacy Act 1988 (Cth) applies to us, we collect, use and deal with your personal information in accordance with the Act and our privacy policy which is available on our website or upon request.

This document is available in the following languages: Arabic, Bosnian, Chinese, Croatian, Farsi, Greek, Italian, Russian, Serbian, Somali, Turkish or Vietnamese. You can obtain a copy by:

- visiting our website:  
<http://www.nextgengroup.com.au/site/standard-form-of-agreement/>
- calling: 1300 653 351
- writing to us: 6<sup>th</sup> floor, 333 Collins St, Melbourne VIC 3000