



NEXTGEN

Terms and Conditions

Definitions

"NEXTGEN" means NEXTGEN DISTRIBUTION LIMITED (4543358) and its assignees.

"Cloud Services" means a Product that is provided primarily over the Internet.

"Cloud Agreement" means any agreement entered into between NEXTGEN and you in relation to the provision of Cloud Services.

"Customer" means the customer of the Partner.

"Order" means an offer by a Customer to purchase Products from NEXTGEN.

"Products" includes any goods, services and materials and any combination thereof.

"Due date" means, where goods are sold on credit, the date that payment for the Products (and all other amounts payable by the Customer) is due and payable within 30 days from date of invoice issued by NEXTGEN.

"End User" means the person or company using the Products, being either the Customer or the Partner as the case may be.

"Financing Statement" shall have the same meaning as assigned to this term under the PPSA.

"Intellectual Property Rights" means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade names, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

"Late Payment surcharge" means the charge on all amounts not paid by the Customer by the Due Date as described in clause 6.

"Partner" or **"you"** means the person or company placing the Order whether on its own behalf or on behalf of Customers.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"PPSR" means the Personal Property Securities Register established under the PPSA.

"Restocking Fee" means the charge as described in clause 14 to cover the costs of handling goods returned (not being goods that are defective or damaged or that do not comply with the order or quote).

"Security Interest" means a security interest that is subject to the PPSA.

"Subscription Product" means any Product involving a recurring payment to NEXTGEN.

"Suppliers" means the suppliers of products and software components to NEXTGEN or directly to you on behalf of NEXTGEN.

"Supplier Agreement" means any agreement between NEXTGEN and a Supplier.

"Terms and Conditions" means this agreement between you and NEXTGEN.

"Third-Party Products" means any products, software or services supplied by Suppliers to NEXTGEN or directly to you.

1. Acceptance of Order

NEXTGEN may accept any Order in whole or in part. Shipping by NEXTGEN of Products for delivery pursuant to an Order (whether by single or multiple delivery) shall be taken as acceptance to the extent shipped. Accepted Orders (which includes forward orders and back orders) may not be varied or cancelled by the Customer without written approval from NEXTGEN and, subject to the provisions set out in clause 12, there is no right of return.

2. Credit granting

NEXTGEN may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted or is withdrawn, payment for all Products supplied is required before delivery. Where credit has been approved, all invoices issued by NEXTGEN are due and payable by the Due date.

3. Price

The price of the Products shall be as agreed between the parties, as published, or otherwise such amount as indicated on invoices provided by NEXTGEN regarding Products ordered. Prior to acceptance of an Order, NEXTGEN may change its published prices at any time without notice.

Any Subscription Products supplied pursuant to these Terms and Conditions may be billed in various ways including subscription, consumption, and multi-year contract billings. These billing methods include, but are not limited to:

(a) Subscription billing: where invoicing for products and services delivered over an agreed period (including multiple years), is spread across one or more periods within a delivery period.

(b) Consumption billing: where invoicing for products and services delivered over an agreed period (including multiple years), is based on usage levels of products and services within an agreed billing frequency.

The above list is not exhaustive, and in no way limits the way in which NEXTGEN can determine the price for any Product or Subscription Product.

4. Freight and Handling charges

NEXTGEN may charge for freight and handling having regard to the mode of transport, distance and volume of Products supplied. The rates of charge are subject to change at any time without notice.

5. Late Payment surcharge

NEXTGEN may impose a Late Payment surcharge on any amounts not paid and undisputed by you or the Customer by the Due Date. The Late Payment surcharge is calculated at the rate of 1.5% of that amount per calendar month on any overdue amounts as from the Due Date and compounding monthly until paid.

6. GST

NEXTGEN reserves the right to recover from you any Goods and Services Tax (GST) payable in respect of supply of Products. Unless expressly included all amounts expressed or described in any agreement, price list or in invoices are GST exclusive.

You and NEXTGEN agree that section 8(4) of the New Zealand Goods and Services Tax Act 1985 will not apply to the supply of goods and services supplied under this Agreement and the goods and services are deemed to be supplied in New Zealand and will be subject to GST at the rate applicable at the time of supply. All of NEXTGEN's prices and charges are stated exclusive of GST, unless specifically stated otherwise. Despite anything else in these conditions to the contrary, to the extent that NEXTGEN is liable to pay GST in connection with any taxable supply pursuant to these conditions (the affected supplies):

(a) NEXTGEN may add to each of the amounts payable by you for the affected supplies, an allowance in respect of GST as reasonably calculated by NEXTGEN (for past, present or future GST liabilities) and you must pay NEXTGEN the higher amount which results.

(b) Any amount payable under these conditions, including an amount payable because of the previous provisions, remains payable whether or not there is disclosure of any amount included on account of GST.

(c) NEXTGEN must comply on demand with its obligations in relation to the issue of any relevant tax invoice to you.

7. Delivery

Delivery of Products may not be refused after an Order has been accepted by NEXTGEN. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by NEXTGEN. You shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that you are unable to accept delivery of the Products as arranged, then NEXTGEN shall be entitled to charge a reasonable fee for redelivery. Delivery of the Products to a third party nominated by you is deemed to be delivered to you for the purposes of these Terms and Conditions. The failure of NEXTGEN to deliver by a time specified by you shall not entitle you to treat that contract as breached or repudiated. NEXTGEN shall not be liable for any loss or damage or expense arising from failure by NEXTGEN to deliver the Products promptly or at all. Where only partial delivery of an Order is made the Customer shall accept such delivery and be liable for payment thereof notwithstanding that other parts of the Order may be related.

You acknowledge that delivery of the Products at a certain time and date cannot always be guaranteed by NEXTGEN. The reason for this is that NEXTGEN, from time to time, relies on Suppliers in respect of some of the Products provided by NEXTGEN. Accordingly, you will hold NEXTGEN harmless for any delay in the delivery of the Products caused by the Suppliers. In the event that any Third Party Products that are essential in order for NEXTGEN to provide the Products to you or the Customer are no longer available to NEXTGEN, NEXTGEN reserves the right to cancel some or all of the Orders made by you in which event a full or partial refund (if applicable and as the case may be) will become payable to you or the Customer. For the avoidance of doubt, if the Products are supplied directly to the Customer you are required to make the Customer aware of

NEXTGEN Distribution Ltd GST 104 505 104
Suite 16, Level 1, 125 The Strand, Parnell Auckland 1010, NZ
T +64 9 972 3128 F +64 9 972 2910 www.nextgen.group

these terms. If the Customer fails to comply with these terms, you will be liable under this clause as if the Products were delivered to you.

8. Guarantee

The Signatory/ies hereby binds himself/themselves jointly and severally as surety and co-principal debtor/s in with the Partner in NEXTGEN's favour of, its Order or assigns, for payment of any amount which is now or in the future becomes due or owing by the Partner to NEXTGEN.

9. Risk, Title and the Personal Property Securities Act

- (a) Products supplied by NEXTGEN to you or the Customer will be at your risk upon delivery to you or the Customer or into your or the Customer's custody (whichever is the sooner).
- (b) Ownership of each unit of the Products will remain with NEXTGEN until all amounts owing by you or the Customer to NEXTGEN (including without limitation the purchase price of the Products and other debts between you or the Customer and NEXTGEN) have been paid in full.
- (c) Until all amounts owing by you or the Customer have been paid in full you or the Customer may sell the Products in the ordinary course of business but only as trustee and agent of NEXTGEN. You and the Customer must not represent to any third party that it is acting for NEXTGEN, and NEXTGEN will not be bound by any contracts with third parties to which you or the Customer are a party.
- (d) You or the Customer must hold the proceeds it receives from any sale of the Products as trustee and agent for NEXTGEN. All proceeds from the sale of the Products must be placed in an ADI account separate from its own monies and you or the Customer must not allow any person to have control of, or grant a security interest over the proceeds or the accounts in which they are held. You or the Customer must make immediate payment to NEXTGEN from the accounts in which the proceeds are held of all amounts which may be owing by you or the Customer to NEXTGEN.
- (e) Until all amounts owing by you or the Customer have been paid in full, you or the Customer may, subject to 9(c), take possession of the Products and hold them as trustee and agent for NEXTGEN. You or the Customer must store the Products in such a manner that they are readily distinguishable from the other goods held by you or the Customer and so they clearly show that they are the property of NEXTGEN.
- (f) If you or the Customer becomes insolvent or does not comply with any of these Terms and Conditions in relation to the payment of any amount owing to NEXTGEN or otherwise, then:
 - (i) immediately on NEXTGEN's request, you or the Customer must return any Products acquired from NEXTGEN;
 - (ii) NEXTGEN may enter upon the premise (or where the Products are stored) and take possession of the Products; and
 - (iii) NEXTGEN may retain, sell or otherwise dispose of the Products.
- (g) If you or the Customer makes a payment to NEXTGEN at any time whether in connection with these Terms and Conditions or otherwise NEXTGEN may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the Order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the Order in which those obligations were incurred.
- (h) You acknowledge that under these Terms and Conditions you grant a Security Interest to NEXTGEN, that NEXTGEN may register the Security Interest on the PPSR if permitted to do so under the PPSA and you agree to provide all assistance reasonably required to facilitate this.
- (i) You waive the right to receive a notice of a verification statement in relation to any registration on the PPSR.
- (j) If Chapter 4 of the PPPSA would otherwise apply to the enforcement of the Security Interest arising in connection with these Terms and Conditions you agree the following provisions of the PPSA will not apply to the enforcement of these Terms and Conditions:
 - (i) section 95 (notice of removal of accession), to the extent that it requires NEXTGEN to give a notice to the Customer;
 - (ii) section 96 (when a person with an interest in the whole may retain an accession);
 - (iii) subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - (iv) section 125 (obligation to dispose of or retain collateral);
 - (v) section 130 (notice of disposal), to the extent that it requires NEXTGEN to give a notice to the Customer;
 - (vi) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (vii) subsection 132(4) (statement of account if no disposal);
 - (viii) section 135 (notice of retention);
 - (ix) section 142 (redemption of collateral); and
 - (x) section 143 (reinstatement of security agreement).
- (k) Notices or documents required or permitted to be given to NEXTGEN or you for the purposes of the PPSA must be given in accordance with the PPSA.
- (l) By providing the Products to the Customers you agree to enter into a contract for sale with the Customers on the terms set out in this clause 9 and associated clauses 15 and 16. In so far as permissible by law, you must ensure that any such contract between you and the Customers entitles NEXTGEN to register a Security Interest over the Customer in respect of the Products or any monies owing by you or the Customer to NEXTGEN in relation to the Products.
- (m) You shall indemnify NEXTGEN to the fullest extent permissible by law for any breach of clauses 9, 15 and 16 by you or the Customer.

10. Special Ordered Product

Direct costs may be added to any Product that has been specially ordered for you or a Customer (whether locally or from overseas) or which does not form part of the range in the current NEXTGEN published price list and shall not in any case be eligible for return.

11. Credit Card recovery of costs

A service fee may be charged to you or the Customer where payment is made by way of a credit card. The current service fee for Visa and MasterCard cards is 1.65% (including GST) but this rate may be varied by NEXTGEN without prior notice. No other cards are accepted. If the Customer makes direct payments to NEXTGEN, it is your obligation to inform the Customer about these charges.

12. Claims, Repairs and Returns

You shall inspect the Products on delivery and shall notify NEXTGEN in writing of any apparent defect, shortage in quantity, damage or failure to comply with the Order or quote. No claims for defective Products, shortage in quantity, damage or failure to comply with the Order or the quote will be accepted unless NEXTGEN is notified in writing within five (5) business days of delivery. For the avoidance of doubt, any claims made within the five (5) business day period referred to in the preceding sentence shall be subject to clause 18 of these Terms and Conditions.

You agree that you will not return any of the Products without first informing NEXTGEN and obtaining a Returns Authority Number (RAN) number issued by NEXTGEN. The issue of a RAN is not of itself any kind of admission or acceptance of a return.

No credit or replacement shall be given, or repair undertaken unless and until Products so returned have been verified as being defective or otherwise valid for repair or return by NEXTGEN.

You shall be liable for a Restocking Fee on all goods accepted for return. The Restocking Fee shall not apply to goods returned for being defective, damaged or for failing to comply with the Order or quote. The current Restocking Fee is 15% of the price of the Products returned.

All freight, handling and other charges in relation to returning goods (other than goods defective, damaged or not ordered) are your responsibility.

If the Products are supplied directly to the Customer, you are required to make the Customer aware of these terms. If the Customer fails to comply with these terms, you will be liable under this clause as if the Products were delivered to you.

13. Set Off

You shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to you by NEXTGEN.

14. Disputed Charges

If you object to any invoiced item, you may withhold payment of the disputed amount but only if, on or before payment or the Due date for payment (whichever first occurs), notice in writing of the dispute is given to NEXTGEN, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. NEXTGEN will investigate all disputes. If the amount is found to be payable (in whole or in part) then you must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date are deemed to be correctly charged. NEXTGEN will not accept any disputes directly from End Users unless you are the End User.

15. Credit Policy and Default

If you or the Customer defaults in payment of any invoice when due and payable, you shall indemnify NEXTGEN from and against all expenses, costs, and disbursements incurred by NEXTGEN in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees or commission charged to NEXTGEN by any mercantile agency. If you or the Customer fail to pay for the Products in accordance with invoices issued to you or the Customer, NEXTGEN may at its sole discretion do any one or more of the following:

- (a) cancel any provision of credit to you;
- (b) reverse any discounts allowed;
- (c) require cash pre-payment for any further Products ordered;
- (d) provide to a credit reporting agency details of the payment default;
- (e) commence legal proceedings against you (and any guarantors) for all outstanding amounts, interest and costs;
- (f) decline to supply Products to you or the Customer (even if the Order has been accepted and the goods are in transit);
- (g) terminate any other agreement with you; and
- (h) exercise any other rights at law.

For the avoidance of doubt, by entering into these Terms and Conditions you assume full liability for monies owed by the Customer to you, NEXTGEN or the Supplier. In the event a Customer does not pay NEXTGEN or the Supplier for any Products or Third Party Products (as the case may be), you acknowledge that NEXTGEN or the Supplier may recover any outstanding monies from you under this clause 15 and, in turn, you may recover any monies outstanding from the Customers.

16. Recovery

Notwithstanding any other provision to the contrary, but subject to the PPSA, if any amount is not paid by you or the Customer by the due date, NEXTGEN reserves the following rights in relation to the Products until all amounts owed by you or the Customer to NEXTGEN in respect of the Products and all other Products sold and other fees and charges are fully paid:

- (a) legal and equitable ownership of the Products;
- (b) to retake possession of the Products; and
- (c) to keep or resell any of the Products repossessed.

You hereby grants full leave and license without any liability to NEXTGEN and any person authorised by NEXTGEN on reasonable notice and

subject to safety and security policies, to enter during business hours any premises where the Products may for the time being be placed or stored for the purpose of retaking possession of Products for which payment is overdue (subject to clause 14), if no loss, harm or damage is caused to the to the Products or to any other thing or item at those Premises.

For the avoidance of doubt and, in accordance with clause 9, you must cause the Customers, by way of written agreement, to grant NEXTGEN the same benefits you have granted to NEXTGEN under this clause 16.

17. Returned cheques

An administration fee of \$55.00 (including GST) plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason.

18. Disclaimer and Limitation of Liability

- (a) You acknowledge that NEXTGEN acts as an agent in providing Third Party Products. Accordingly, NEXTGEN cannot and will not provide any guarantees with respect to the quality or availability of Third Party Products it provides via the engagement of Suppliers (which includes, but is not limited to Cloud Services) in the event that Third Party Products are no longer available or temporarily unavailable to NEXTGEN or there is a reduction in quality of the Third Party Products (whether temporarily or permanently) and therefore NEXTGEN can no longer provide all or part of the Third Party Products to you or the Customer, NEXTGEN will not assume any liability to you or the Customer for any losses incurred by you or the Customer as a result of the unavailability or reduced quality of the Third Party Products.
- (b) It is your responsibility to inform the Customer of the restrictions imposed by clauses 18(a) and 18(c) as part of your terms of sale to the Customer. In failing to do so, you will assume full liability of the Customer's losses under this clause in the event such Customer brings a claim against you or NEXTGEN or a Supplier.
- (c) To the extent permitted by law, NEXTGEN will not be liable to you or the Customer or any other person under any circumstances for loss of use, profit, revenue, interest, goodwill or data, or for any injury or death to any person .or for any indirect, incidental or consequential damages sustained or incurred by you or the Customer, whether such liability arises directly or indirectly as a result of:
 - (i) any negligent act or omission or wilful misconduct of NEXTGEN or its employees or agents;
 - (ii) the supply, performance or use of any Products; or
 - (iii) any breach by NEXTGEN of its obligations under these Terms or relevant Sales Contract.

19. Intellectual Property

- (a) Nothing in these Terms and Conditions gives you or the Customer any interest or right in the Intellectual Property Rights of NEXTGEN or any Supplier.
- (b) You and the Customer may only use the Products in way that will not infringe the Intellectual Property Rights of NEXTGEN or the Suppliers.
- (c) The Customer is hereby granted a non-exclusive license to use the Products BUT SUBJECT ALWAYS to clause 20 below and subject to any end user agreements imposed by the Suppliers in respect of the Third Party Products which you must cause the End Users to enter into.
- (d) NEXTGEN may give such directions, impose such limitations as it thinks fit and require such undertakings as it deems necessary or reasonable in order to protect its Intellectual Property Rights or the Property Rights of a Supplier and you must comply with all those directions, limitations and give such undertakings in respect of such use of the Products.

20. Third Party Providers & End Users

- (a) You hereby acknowledge that NEXTGEN engages Suppliers for the supply of Third-Party Products to enable NEXTGEN to provide the Products to you and the Customer. Accordingly, you acknowledge and agree that:
 - (i) The Third-Party Products are subject to certain rights of the Supplier, including but not limited to Intellectual Property Rights.
 - (ii) The Supplier will, at all times, retain ownership of any intellectual property licensed to the Customer or you (as the case may be) by way of clause 19 of these Terms and Conditions.
 - (iii) You will not infringe the Intellectual Property Rights or copyright of any Supplier and if required by a Supplier, you agree to and, where applicable, cause the Customer to enter into a licence agreement, end user agreement or accept any licensing terms or similar document from the Supplier in any form prescribed by such Supplier.
 - (iv) You must adhere to any terms provided by NEXTGEN or a Supplier as specified in any program documentation provided to you.
 - (v) You must not modify any program or hardware provided by NEXTGEN through a Supplier without the written consent of NEXTGEN or such Supplier.
 - (vi) If you believe that a Supplier's or NEXTGEN's Intellectual Property Rights or copyright have been infringed, you must notify NEXTGEN and the affected Supplier within 14 days of becoming aware of this infringement.
 - (vii) You must accept any replacement hardware or software if so required by NEXTGEN or a Supplier as a result if a copyright or Intellectual Property Infringement.
- (b) You acknowledge and agree that in the event that a Supplier:
 - (i) amends or terminates a Supplier Agreement; or

- (ii) exercises its rights under a Supplier Agreement in such a way that prevents the Supplier from meeting its obligations under these Terms and Conditions; then

NEXTGEN may amend or terminate these Terms and Conditions to the extent reasonably necessary to ensure that it is able to comply with its obligations under both the relevant Supplier Agreement and these Terms and Conditions.

- (c) You furthermore agree that you will cause your Customers to enter into a legally binding Agreement that:
 - (i) Includes a clause along the lines of the following:

"The customer agrees to use the software products only in accordance with the end user software licence supplied with the software product and agrees that the vendors will have the right to enforce the terms of such end user software licence directly, as licensor, against the customer despite not being a party to this contract for sale.

The term 'vendors' in this clause shall have the following meaning:

 - (A) *[insert name of supplier];*
 - (B) *[insert name of supplier]; and*
 - (C) *...."*
 - (ii) Under which the Customer agrees to and indemnifies NEXTGEN and the Supplier in respect of the matters referred to in these Terms and Conditions including, but not limited to clauses 19 and 20, to the fullest extent permissible by law.
- (d) In the event that a Supplier requests any information from NEXTGEN, you must make all reasonable efforts to assist NEXTGEN in complying with that request.
- (e) If a Supplier makes any claim against NEXTGEN as a result of a breach by you or the Customer of these Terms and Conditions or of any other agreement between you and the Supplier (including, but not limited to clause 19 and this clause 20) or in relation to any claim by any Customer, you indemnify NEXTGEN to the fullest extent permissible by law in respect of any claim brought against NEXTGEN by the Supplier.

21. Subscription Products / Cloud Services

- (a) If you wish to deal with NEXTGEN in relation to any Cloud Services, you must first enter into a Cloud Agreement with NEXTGEN on terms decided by NEXTGEN in their absolute and sole discretion.
- (b) If NEXTGEN accepts an Order for any Subscription Product, the following terms will apply in addition to those set out in these Terms and Conditions:
 - (i) The Partner must comply with their obligations under Clause 20 relating to Third-Party Products and Services.
 - (ii) The Partner must not misrepresent or misreport in any way, usage levels relating to the Subscription Product. This applies in relation to information disclosed pursuant to any Cloud Agreement or as the result of an audit.
 - (iii) In the event that you breach these Terms and Conditions, and without limiting any other rights NEXTGEN may have with respect to your default, you agree that:
 - (A) NEXTGEN may, in its discretion, cease supplying any Subscription Product to you, by either suspending your account or terminating these Terms and Conditions;
 - (B) If NEXTGEN ceases supplying any Subscription Product to you, NEXTGEN may serve you with a notice requiring that you assign all your rights and obligations under any or all End User Agreements that you have entered into. You must comply with any such notice as soon as you are reasonably able to do so;
 - (C) You indemnify NEXTGEN for any loss, expenses, costs, or harm suffered in relation to a breach of these Terms and Conditions by you.
- (c) You acknowledge that NEXTGEN may incur fees or charges from its Suppliers relating to the provision of any Subscription Product that were not included in the original Order. These fees or charges may include, but are not limited to:
 - (i) Fees relating to additional orders; and
 - (ii) Fees to vary the terms on which the Subscription Product is provided.
- (d) You indemnify NEXTGEN against any such fees and charges incurred by NEXTGEN, and agree that NEXTGEN may issue you with an invoice for any such fees and charges, payable in accordance with these Terms and Conditions.

22. Warranty

- (a) Product are covered by manufacturers' warranty. To the extent permitted by law, NEXTGEN's entire responsibility with respect to warranties for the Products is to pass on to you the benefit of any such warranties. Subject to clause (c), software Products are not warranted by NEXTGEN under these Terms. Such software Products are warranted in accordance with the relevant licence agreements governing their use.
- (b) To the extent permitted by law, the manufacturers' warranties referred to in clause (a) are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.
- (c) Certain legislation may imply warranties or conditions or impose obligations upon NEXTGEN which cannot be excluded, restricted or modified except to a limited extent. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which NEXTGEN is able to do so, its liability will be limited, at its option, to:

- (i) in the case of Products: the replacement of the Products or resupply of equivalent products; repair of the Products; payment of the cost of replacing the Products or acquiring equivalent products; or the payment of the cost of having the Products repaired; and
 - (ii) in the case of services: the supply of the services again; or the payment of the reasonable cost of having the services supplied again.
- (d) NEXTGEN does not warrant that repair facilities or parts will be available in respect of any of the Products.

23. Assignment

You may not assign its rights or its obligations under these Terms and Conditions nor subcontract any contract for the purchase of Products. However, in the event that you sell your business or for any reason cease to carry on business, you agree to assign your Customers that are currently End Users of NEXTGEN Products to NEXTGEN so that NEXTGEN may enter into supply agreements directly with such Customers.

24. Force Majeure

NEXTGEN will have no liability to you or the Customer in relation to any loss, damage or expense caused by NEXTGEN's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of NEXTGEN's suppliers to supply necessary materials or any other matter beyond NEXTGEN's control.

25. Privacy Information

NEXTGEN may give information about you or the Customer, its guarantors, directors or proprietors to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about you or the Customer, their guarantors, directors or proprietors.
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about you or the Customer, their guarantors, directors or proprietors; and
- (c) to obtain commercial credit information about you or the Customer, their guarantors, directors or proprietors from a credit reporting agency.

It is your responsibility to make the Customers aware of this clause in written form prior to supplying Products to them. In doing so, you must provide Customers with NEXTGEN's privacy policy and advise Customers that NEXTGEN may use and disclose their personal information to enable NEXTGEN provide the Products.

In any event, when dealing with NEXTGEN, Customers and Suppliers you agree to adhere, at all times, to the Australian Privacy Principles, the Privacy Act 1988 (Cth) and NEXTGEN's privacy policy which can be found here: <https://nextgen.group/privacy-policy>

26. Waiver of terms of agreement

The failure by either party to exercise, or delay in exercising, any right, power or privilege available to it under these Terms and Conditions will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

27. Proper Law

The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of the State of New South Wales. Notwithstanding the foregoing, you must:

- (a) Comply with the laws of Australia and New Zealand any international laws that may be applicable to the Products, including but not limited to laws relating to the Intellectual Property of the Suppliers; and
- (b) Use your reasonable commercial endeavours to ensure that the Customers or End Users comply with the laws of New Zealand, New South Wales, Australia and any international laws that may be applicable to the Products, including but not limited to laws relating to the Intellectual Property of the Suppliers.

28. Entire Agreement

This document represents the entire agreement between the parties and may not be amended except in writing signed by each of the parties and you acknowledge that in entering these Terms and Conditions it has not relied on any oral or written representation made by any person on behalf of NEXTGEN.

29. Your obligations in respect of Suppliers

- (a) For the avoidance of doubt, any indemnities provided under these Terms and Conditions by the Partners in favour of NEXTGEN shall extend to the benefit of the Suppliers.
- (b) You must use all reasonable commercial efforts to ensure that End Users comply with any end user agreements issued by the Suppliers.
- (c) Where required by a Supplier, you must incorporate any relevant policies into any agreements to be entered into with End Users.
- (d) You must provide NEXTGEN with copies of all end user agreements signed by Customers (where such agreements are in executable form) for provision by NEXTGEN to the relevant Suppliers.
- (e) You must comply with any trademark usage guidelines provided by us to you on behalf of any Suppliers.
- (f) You must advise Customers of any applicable warranty guidelines and technical support guidelines issued by the Suppliers to you or provided to you by us.
- (g) You must enter into and comply with any software licensing agreements issued by Suppliers to you or provided to you by us where required by the Suppliers.

30. Products generally

- (a) You must not make any representations or warranty claims to third parties or employees with respect to the Products or Third-Party Products.
- (b) You must not and, must ensure that the Customer does not, reverse engineer, decompile or disassemble any object code within the Products or the Third Party Products.
- (c) You must not and, must ensure that the Customer does not, use the Products or Third-Party Products on a time sharing basis; and
- (d) You must not and, must ensure that the Customer does not, sublicense or distribute the Products or Third-Party Products.

31. Marketing Material

Before you issue any marketing material or advertisements for the Products or part thereof, you must first provide such marketing material or advertisements to NEXTGEN for its written approval which NEXTGEN may withhold in its absolute discretion.

32. Records

You must maintain complete and accurate books and records:

- (a) sufficient to verify your compliance with any relevant obligations under these Terms and Conditions or any agreement you may have entered into with any Suppliers; or
- (b) concerning any payments made to another party in connection with your sale of any Products relating to these Terms and Conditions or any other agreement you may have with a Supplier.

NEXTGEN reserves the right for NEXTGEN or any relevant Supplier to inspect any such books and records, providing they give five (5) business days' prior notice.

Such books and records may only be disposed of with NEXTGEN's written consent, which is not to be withheld unreasonably. NEXTGEN may withhold such consent if any Supplier is entitled to inspect the relevant records under any Supplier Agreement.

This obligation will survive termination of these Terms and Conditions.

33. General

Each party may serve any notice or court document on the other party and on any guarantors by forwarding it by ordinary pre-paid post, in the case of the Partner, to the address of the Partner last known to NEXTGEN, in the case of NEXTGEN, to the address of NEXTGEN last known to the Partner and, in the case of any guarantor, to the address of the guarantor last known to NEXTGEN.

If any term of these Terms and Conditions shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

NEXTGEN may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the agreement or consent of the Partner or any guarantor.

Except as otherwise agreed in writing, these Terms and Conditions shall apply to all Orders made by the Partner to NEXTGEN whether as part of the Account Application form or otherwise in future or in the course of business. To the extent that these Terms and Conditions may be varied over time by NEXTGEN then the conditions current at the time of acceptance of any specific Order or part of an Order shall apply. For the avoidance of doubt, these Terms and Conditions shall be given priority over any terms contained within each particular Order unless otherwise agreed in writing between NEXTGEN and the Partner.

In the event that the Partner sells its business or any part thereof, the Partner shall be responsible to notify NEXTGEN in writing of such sale to enable the Partner's account to be closed.

To the extent that the Partner fails to so notify, or cannot so prove notification, then the Partner and any guarantors shall be jointly and severally liable to NEXTGEN for the payment of Products subsequently sold to a third party on the Partner's account as if the Partner had ordered the Products itself.