

NEXTDC AXON Terms and Conditions

1. Operation of these terms and conditions

1.1 Supply and acquisition of Services

These terms and conditions, including any schedule and any Service Order submitted by the Customer, forms the entire agreement between NEXTDC and the Customer in relation to the Services ordered ("**Customer Contract**").

1.2 Ordering of Services

- (a) By submitting a Service Order to NEXTDC, the Customer
 - (i) warrants that the information set out in that Service Order is true and correct;
 - (ii) is making a binding offer to acquire the Services from NEXTDC.
- (b) The Customer Contract will commence on the date NEXTDC advises the Customer that its Service Order has been accepted (**Customer Contract Commencement Date**).

2. Connection to AXON

- (a) NEXTDC will provide the Services on the Customer Connection Date or such other later date as may be agreed between the Parties and grants the Customer, a non-exclusive right to use the Services.
- (b) The Customer is solely responsible (at its cost) for:
 - (i) ensuring that the Customer's Equipment is compatible with the NEXTDC Equipment;
 - (ii) ensuring that all cabling (including cross connects) at the Facility between the NEXTDC Equipment and the Customer's Equipment is established and maintained.
- (c) The Customer must:
 - (i) follow all instructions and directions given or published by NEXTDC or any NEXTDC Personnel in connection with the Services or the NEXTDC Equipment;
 - (ii) comply with all applicable laws and regulations;
 - (iii) comply with the rules or requirements of the Facility;
 - (iv) comply with all reasonable directions by NEXTDC in connection with the Services; and
 - (v) not take any action which may damage any NEXTDC Equipment.
- (d) The Customer is responsible for all data accessed or transmitted using the Services, including any requirements in relation to intellectual property rights in relation to such data.
- (e) The Customer releases and indemnifies NEXTDC and NEXTDC Personnel from and against, all loss or damage (including legal costs) incurred or suffered by NEXTDC or NEXTDC Personnel due to:
 - (i) a breach of the Customer Contract by the Customer;
 - (ii) any claim, allegation or cost arising in connection with the exercise of the rights contemplated by clause 3(g);
 - (iii) the personal injury or death of any person (including any of the Customer's Agents) in connection with the Customer's Equipment, use of the Services, use of the NEXTDC Equipment or any act or omission of the Customer or the Customer's Agent;
 - (iv) damage to any property of the Customer (including the Customer's Equipment), the Facility and the NEXTDC Equipment, or any third party property in connection with any act or omission of the Customer or the Customer's Agent;
 - (v) any claim or allegation by a third party to whom the Customer resells the Services under clause 7 or who is an end user of the Services; and
 - (vi) any claim or allegation by a third party, relating to Intellectual Property Rights or privacy obligations, in connection with any act or omission of the Customer or the Customer's Agent.

3. Term and Termination

- (a) The initial term of the Customer Contract will be set out in the relevant Service Order (the "**Initial Term**").
- (b) Unless the Customer Contract is validly terminated, it will be automatically extended, after its Initial Term, for successive one month terms (each a "**Renewed Term**").
- (c) Either party may terminate the Customer Contract immediately by written notice to the other party if:
 - (i) the other party commits a material breach of the Customer Contract which is incapable of remedy;
 - (ii) the other party commits a material breach of the Customer Contract which is capable of remedy and they fail to remedy the breach within 30 days of receiving a notice from the terminating party;
 - (iii) the other party suffers an Insolvency Event; or
 - (iv) a Force Majeure Event prevents the terminating party from performing all or substantially all of its obligations under the Customer Contract for a period exceeding 60 days.
- (d) NEXTDC may immediately terminate the Customer Contract if:
 - (i) NEXTDC ceases to have the right to operate the NEXTDC Equipment at the Facility;
 - (ii) the Customer fails to pay any undisputed amount payable under the Customer Contract within 30 days of its due date; or
 - (iii) the Customer fails to pay any amount payable under the Customer Contract on or before its due date on more than 3 occasions in any rolling 12 month period.
- (e) A party may terminate the Customer Contract with 30 days written notice to the other party.

- (f) Termination of the Customer Contract does not affect any accrued rights or remedies of a party.
- (g) If the Customer terminates Customer Contract pursuant to clause 2(e), the Customer must pay all the remaining unpaid Fees under the Customer Contract.
- (h) On the Exit Date, the Customer must ensure that any Customer Equipment, cabling or connection to NEXTDC Equipment is removed.
- (i) In the event that the Customer does not fulfil its obligations under clause 3(h), NEXTDC may do so, at the Customer's cost, such costs must be paid by the Customer within 30 days of the invoice date.

4. Fees and Payment

- (a) All Fees:
 - (i) will be specified in the relevant Service Order or otherwise notified to the Customer in writing;
 - (ii) are not refundable; and
 - (iii) must be paid by the Customer to NEXTDC without set-off, counterclaim, withholding or deduction.
- (b) Unless specified otherwise in writing:
 - (i) any Establishment Fee will be invoiced on the earlier of the Customer Connection Date or 14 days from the Customer Contract Commencement Date;
 - (ii) any AXON Port Fee will be invoiced monthly in advance, from the earlier of the Customer Connection Date or 14 days from the Customer Contract Commencement Date;
 - (iii) any NEXTDC usage Fee will be invoiced monthly in arrears; and
 - (iv) any other Fee will be invoiced monthly in advance or as otherwise notified by NEXTDC to the Customer.
- (c) Invoices will be issued electronically to the email address specified by the Customer in the NEXTDC application form.
- (d) Each invoice must be paid within 30 days of its date.
- (e) NEXTDC is not responsible for the payment of fees and charges for services provided by third parties contracted by the Customer, including carriers or the operator of the Facility or any other data centre.
- (f) NEXTDC may charge interest on any amount payable that is not paid on or before its due date from the due date until it is paid in full, such interest to be calculated on daily balances at the rate of 2% above the per annum business overdraft rate charged by Westpac Banking Corporation Ltd as at the last day of each month and capitalised on the last day of each month if unpaid.
- (g) NEXTDC may suspend the provision of the Services to the Customer if an undisputed amount payable under the Customer Contract is not paid within 14 days of its due date and the Customer fails to pay the amount within 14 days of receiving a Service Suspension Notice from NEXTDC.
- (h) Fees are exclusive of GST. NEXTDC will issue a tax invoice to the Customer which will include GST. The Customer must pay NEXTDC an amount equal to any GST payable on the supply of a Service at the same time that the charges for that Service are payable.

5. Intellectual Property and Marketing

- (a) Each party's intellectual property remains the property of that party and nothing in the Customer Contract grants the other party any Intellectual Property Rights in that material.
- (b) Only to the extent reasonably required to allow the Customer to access and use and for NEXTDC to facilitate the Services, the parties grant to each other a non-exclusive, revocable, global licence to exercise the Intellectual Property Rights in any material referred to in clause 5(a).
- (c) NEXTDC may refer to the Customer's trade name, trade mark and any other identifying logo and briefly describe the Customer's business in NEXTDC's marketing materials (including its online presence) and in its statutory reports.

6. Liability

- (a) NEXTDC does not warrant that the Services will be continuous, error-free or secure.
- (b) To the extent permitted by law
 - (i) NEXTDC excludes all statutory or implied conditions or warranties.
 - (ii) To the extent permitted by law, NEXTDC's liability for non-excludable conditions and warranties is limited to:
 - 1) resupply of the Services; or
 - 2) providing the cost of having the Services resupplied.
- (c) To the extent permitted by law, the aggregate liability of NEXTDC for any loss or damage, however caused (including by the negligence of NEXTDC), suffered by the Customer in connection with the Customer Contract is limited to:
 - (i) where the Customer suffers loss or damage as a result of a failure by NEXTDC to meet any Service Level, the relevant Service Credit specified in the SLA; or
 - (ii) in every other case, an amount equal to the Services Fees paid by the Customer to NEXTDC under the Customer Contract in the 12 months prior to the Customer first suffering loss or damage in connection with the Customer Contract.
- (d) NEXTDC is not liable for any indirect or consequential loss (including but not limited to any loss or corruption of any data, interruption to business, loss of revenue, loss of sale, loss of profits, loss of business or any other economic loss or any loss of goodwill) however caused (including by the

negligence of NEXTDC), suffered or incurred by the Customer in connection with the Customer Contract.

7. Assignment

NEXTDC may assign its rights, in whole or in part, or novate its rights and obligations under the Customer Contract.

8. Resale

If the Customer resells Services, the Customer remains fully liable and responsible for all its obligations under the Customer Contract, including its obligation to pay all Fees under the Customer Contract; and indemnifies AXON from any claim of whatever nature by the Customer's end user.

9. Notices

A notice required or permitted to be given by one party to another under the Customer Contract must be in writing and sent as detailed below (or as amended in writing by a party):

- (a) in the case of notices to NEXTDC, must be addressed to NEXTDC and be delivered to Level 6, 100 Creek Street, Brisbane QLD 4000; or be sent by mail to GPO Box 3219, Brisbane QLD 4001; or be sent by email to notices@nextdc.com;
- (b) in the case of notices to the Customer, must be addressed to the Customer and be delivered to the Customer's address or email address as provided by the Customer in Customer application form on online AXON portal.

10. General

- (a) The laws of Queensland, Australia govern the Customer Contract.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- (c) To the extent of any inconsistency between these terms and conditions and the Service Order, the Service Order shall have precedence.
- (d) Each provision of the Customer Contract will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason, that provision will be severed and the remainder of the provision will be read and construed as if the severable provision had never existed.
- (e) A right under the Customer Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- (f) All terms of the Customer Contract which by their nature should survive expiry or termination shall survive expiry or termination (as the case may be).
- (g) Each party represents and warrants that execution of any Service Order has been properly authorised, and that it is entitled to enter into and perform its obligations under these terms and conditions.

11. Definitions and interpretation

AXON Port means the interface that allows the Customer to interconnect with the Customer's own or other users' AXON Ports in the same or other AXON enabled data centres over high-speed Ethernet to access network and services offered under the terms and conditions of those providers and described in the Service Order.

AXON Port Fee means the fee described as the "AXON Port Fee" in the Service Order.

Control has the meaning given to it in the Corporations Act.

Corporations Act means *Corporations Act 2001* (Cth).

Customer means the customer specified in the relevant Service Order.

Customer Agent means employees of the Customer, agents, contractors or anyone the Customer is responsible for.

Customer Connection Date means the date on which the Customer successfully becomes connected to the AXON Port, EXC or other such Services being provided to the Customer by NEXTDC and is advised by NEXTDC that such connection is available for use.

Customer Equipment means any equipment in the possession or control of the Customer that is used to access the Services.

Establishment Fees means any set-up fees specified in the Service Order.

EXC (Elastic Cross Connect) means an Ethernet virtual circuit between two or more AXON Ports within a single metropolitan area, elastic cross connect offered by NEXTDC as part of the Services and described in the Service Order.

Exit Date means, for the purposes of clause 3(h) if the Customer Contract:

- (a) expires – the date of expiry; or
- (b) is terminated under clause 3 the date of termination.

Facility means, in respect of a Customer Contract, the data centre facility specified in the Service Order.

Fees means the Establishment Fees, the Services Fee, and any other fees as agreed between the parties.

Force Majeure Event means any occurrence or omission outside a party's control and an Emergency, a physical natural disaster including fire, flood, lightning or earthquake, war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law, epidemic or quarantine restriction, ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel, confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency, and strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors, but excluding a flood that is determined to be less than a 1 in 100 year flood event.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, including, without limitation, any copyright, trade or service marks, patents, registered and unregistered trademarks, registered designs, trade secrets, knowhow, moral rights, rights in relation to semiconductors and circuit layouts, formulations, components, concentrations, protocols, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights.

Insolvency Event in the context of a person means (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person (b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under Part X *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX *Bankruptcy Act 1966* (Cth) (c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act (d) the person ceases to, or threatens to cease to, carry on business; or (e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

Laws means, including but not limited to, any statute, law, rule, regulation, proclamation, order in council, ordinance, by-law or statutory instrument (including but not limited to: orders, directions, guidelines or standards with legislative force).

NEXTDC means NEXTDC Pty Ltd ACN 35 143 582 521 and all of its subsidiaries, affiliates and Related Bodies Corporate.

NEXTDC Equipment means the AXON Port, any software, site, network or other equipment used by NEXTDC to provide the Services.

NEXTDC Personnel means NEXTDC employees, officers, consultants, agents, contractors, invitees and licensees, or any of them.

Recurring Fee means the monthly Fees relating to a Service, excluding Establishment Fees.

Scheduled Outage, is an outage window scheduled by NEXTDC in accordance with clause 3(c)(vi) of the SLA, in order to perform maintenance on the Services.

Services means the Services provided by NEXTDC to the Customer, as defined in the relevant Service Order.

Services Fees means each fee (other than any Establishment Fee) specified in the Service Order.

Service Levels has the meaning given to it in the SLA.

SLA means the Service Levels set out in Schedule 1.

Suspension Notice means a notice given by NEXTDC for the purposes of clause 4(g) and headed 'Service Suspension Notice'.

**SCHEDULE 1
SERVICE LEVEL AGREEMENT (SLA)**

This SLA does not apply to any feature of the Services not specifically identified in this SLA. This SLA covers the following elements of the AXON Port and AXON Cross Connect Services. The calculation of service availability in this SLA does not include times when the service is unavailable due to factors beyond NEXTDC's reasonable control, including:

- Customer or Customer Agent acts or omissions;
- the acts or omissions of a third party or a fault on any third party's network;
- any error in the configuration, a failure or incompatibility in relation to Customer Equipment or cabling; or
- if NEXTDC suspends the Services in accordance with the terms and conditions of the Customer Contract.

1. AXON Port and Elastic Cross Connect Service Levels

NEXTDC will achieve the service levels set out in the table below (each a "Service Level"). If NEXTDC fails to achieve a Service Level (a Failure), NEXTDC will provide the Customer with the corresponding Service Credit (each a "Service Credit") set out in the table below, subject to the terms and conditions of this SLA.

The AXON Port has a Service Availability Target of 99.95%.

Service availability = $[(Tm - Tpo) - To] / (Tm - Tpo) \times 100$

Where: Tm = Time in the month (in minutes)

Tpo = planned outage time in the month, including outages beyond our control (in minutes)

To = outage time for the relevant service in the month (in minutes)

The EXC has a Packet Loss Ratio ("PLR") Service Level target of <0.1%. An EXC will be considered available when it meets or exceeds the PLR target for three consecutive five-minute intervals, in which case the time of availability will start from the first of these intervals ("Available"). An EXC will continue to be considered Available until it fails to meet the service target for three consecutive five-minute intervals, in which case the time of unavailability will start from the first of these intervals ("Unavailable"). An EXC will continue to be considered Unavailable until it is Available again.

The EXC has a Service Availability Target of 99.95%.

Service availability = $[(Tm - Tpo) - To] / (Tm - Tpo) \times 100$

Where: Tm = Time in the measurement period (in minutes, for the time the EXC was in continuous use* in the billing period)

Tpo = planned outage time in the period, including outages beyond our control (in minutes)

To = outage time for the relevant period (in minutes)

*For clarity, continuous use means that at no time the service was stopped by the Customer during the period.

Service Rebates

If NEXTDC fails to meet the Service Availability Target in the relevant calendar month then the Customer may be eligible to claim a Service Rebate to be paid to the Customer in the form of a credit as shown in the table below:

Severity	Service Availability Target	Claimable Rebate
Medium	< 99.95% and ≥ 99.5%	25% of the Recurring Fee for the month during which the Service is affected
High	< 99.5%	50% of the Recurring Fee for the month during which the Service is affected

Notes: The PLR target does not apply to a service where a five-minute average traffic load of more than 70% of the available bandwidth is measured for either incoming or outgoing traffic.

A traffic rate limiting feature may be provided to you by AXON for your convenience. The PLR target therefore does not apply where packet loss is due to rate limiting.

2. Service credit requirements

(a) NEXTDC is not required to provide a Service Credit unless the Customer:

- (i) gives NEXTDC notice of the Failure immediately upon becoming aware of the Failure; and
- (ii) requests the Service Credit in respect of the Failure within 30 Business Days of its occurrence.

(b) Any such notice or request must be made in the manner, and include the information, advised by NEXTDC from time to time.

3. Service credit limitations

(a) The maximum of all Service Credits required to be provided by NEXTDC in respect of any calendar month is 100% of the Service Fees payable in respect of that part of the Services affected by a Failure for that calendar month.

(b) Service Credits will apply only to future Services provided under the Customer Contract under which the Service Credits arise. NEXTDC is not required to apply Service Credits against any future Services provided under any other Customer Contract (including any Customer Contract with the same Customer) or to provide refunds under the Customer Contract. If upon termination of a Customer Contract there are outstanding Service Credits, such Service Credits are forfeited.

(c) Notwithstanding any provision to the contrary in this SLA, the following do not constitute Failures:

- (i) failures that occur while any undisputed amount is due and payable outside of any contractual payment terms remains unpaid;
- (ii) failures caused by the acts or omissions of the Customer, Customer Agent or the Customer Equipment;
- (iii) failures caused by property of a third party (including any owner or operator of the Facility, any other datacentre or any network) or the acts or omissions of any third party, including NEXTDC' sub-contractors, unless NEXTDC sub-contractors are acting under the direction or instruction of NEXTDC;
- (iv) failures caused by NEXTDC exercise of its rights pursuant to clause 4 of the terms and conditions;
- (v) failures that, in the reasonable opinion of NEXTDC, are attributable to a defect in or failure of a monitoring or reporting device;
- (vi) failures occurring during a Scheduled Outage; and
- (vii) failures caused by Force Majeure Events.

(d) Notwithstanding any provision to the contrary in this SLA, and in addition to the items listed in clause 3(c) of this SLA, failures due to scheduled maintenance notified by NEXTDC to the Customer do not constitute Failures in respect of any Service Level.

4. Rectification of failures

(a) The Customer must immediately notify NEXTDC of the Failure.

(b) On becoming aware of a Failure (including following notification in accordance with clause 2(a)(i) of this SLA), NEXTDC shall:

- (i) where possible, specify to the Customer an estimated time scale for rectification of the Failure or the cause of the Failure and update the Customer as required until the Failure or the cause of the Failure is remedied; and
- (ii) use its reasonable endeavours to remedy the Failure or the cause of the Failure as soon as practicable.

5. Service Restoration Target

All AXON Ports are monitored and alarmed to ensure all failures are detected and restored promptly. The AXON service restoration capability is staffed 24 hours per day, 365 days per year. Our service restoration target from failure detection and/or alarm to restoration is 4 hours.