

Supplementary Terms and Conditions for the Mytel TLAN Service

Mytel's Standard form of Agreement (SFOA) describes the general terms and conditions under which Mytel offer you, the customer, goods and services. The definitions supplied in the SFOA apply to this document.

The Mytel TLAN Service is offered to you in accordance with the SFOA and the supplementary terms and conditions as stated in this document. Your request of the Mytel TLAN Service constitutes acceptance of both the SFOA and supplementary terms and conditions in this document and other supplementary terms and conditions where applicable.

This document covers terms and conditions relating to the Mytel TLAN Service. Customers who are requesting a VLAN Service should refer to a different document for terms and conditions that relate to that service. This document does not apply to VLAN Services provided by Mytel Voice and Data.

The following Terms and Conditions form an Addendum to the SFOA and are specific to the Mytel TLAN Service.

This Agreement commences upon signing for the Services in the Application Form and as listed in the attachment.

1. DEFINITIONS

"Acceptable Use Policy" means our policy as to acceptable use of the Mytel TLAN Service, the current version of which is attached to these Terms and Conditions.

"Agreement" means the Agreement between the Customer and us which comprises the Application Form, these Terms and Conditions and the Acceptable Use Policy.

"Application Form" means the application form completed and signed by the Customer.

"Cooling-Off Period" means a cooling-off period required by any applicable State or Territory door-to-door sales legislation.

"Customer" refers to all other persons, companies, or other entities identified on the Application.

"Customer's Premises" means the building in and to which Mytel TLAN Provided Equipment and Mytel TLAN Services will be provided and the land on which that building sits.

"Customer Provided Equipment" is that provided by the Customer to facilitate the Mytel TLAN Service as advised by us. Such equipment might include a personal computer, set top box, data or network terminating equipment.

"GST" means the tax imposed or to be imposed by the A New Tax System (Goods and Services Tax) Act 1999 (C'th) and the related imposition Acts of the Commonwealth.

"Installation" means the provision of the modem and connection to the Mytel TLAN Service network at the Customer premises.

"Maintenance" means the ongoing support and operation of the Mytel TLAN Service during the course of the Term.

"Minimum Term" commences on the day that we first provide the Mytel TLAN Service to the Customer and continues thereafter for 12 months or any longer term specified in the service application form

"Monthly Fee" means the monthly fee for the Mytel TLAN Service as set out in the Pricing Schedule.

"Network Equipment and Facilities" is that infrastructure provided by a third party such as the Telstra twisted pair lines, Telstra switched data network, NEC switching network, interfaces to third party content and any other equipment or facilities provided but not included in this Agreement.

"Mytel TLAN Provided Equipment" comprising the modem and ancillary equipment to be provided by us to the Customer.

"Service" includes the provision of a modem and connection of broadband Services (including the internet) provided by us, which may be subject to modification from time to time by us.

"Service Provider" means a person who provides or is considering providing products or Services in connection with the Mytel TLAN network or in conjunction with us or any related entity, but does not include us or any related entity.

"Software" refers to any of the type referred to in Clause 3.

"Term" means the Minimum term as extended by each month the Customer continues to use the Mytel TLAN Service after the ending of the Minimum Term.

"we" and **"us"** means **Mytel Voice and Data Pty Ltd** ABN 29 113 424 552, being a collaboration between NEC Australia Pty Ltd ACN 004 830 490, ABN 14 004 830 490 plus xDSL Ltd ACN 089 230 875, ABN 56 089 230 875 and its employees, agents, sub-agents

and employees of its agents and sub-agents plus Mytel, ABN 29 113 424 552. NEXTEP Broadband is a business owned by NEC Australia Pty Ltd and xDSL Limited. Mytel is a reseller of the NEXTEP Broadband Service.

2. THE MYTEL TLAN SERVICE

- 2.1** In order to receive the Mytel TLAN Service, the Customer must:
- (a) meet the system requirements as notified by us; and
 - (b) install or arrange for installation of the Customer Provided Equipment.
- 2.2** Subject to this Agreement, we will use reasonable skill and care in providing the Customer with the Mytel TLAN Service. The Customer acknowledges that the Mytel TLAN Service is provided without warranty that it is continuous or fault-free. Subject to law, we are not liable for any loss or disappointment the Customer may suffer as a result of any faults or interruptions in the Mytel TLAN Service other than as specified in these Terms and Conditions.
- 2.3** In the utilisation of the Mytel TLAN Services, the Customer must comply with the Acceptable Use Policy and the Customer acknowledges and agrees that we may exercise any of the rights specified in the Acceptable Use Policy.
- 2.4** The Customer must do the following in relation to the Customer's Mytel TLAN Service:
- (a) adopt appropriate measures to ensure the security of the Customer's account information, password and the Customer's data; and
 - (b) advise us in a timely manner if the Customer has reason to suspect that the Service is being used contrary to the applicable Terms and Conditions or the Acceptable Use Policy.
- 2.5** In the case of the Mytel TLAN Service:
- (a) the Customer acknowledges that due to the carrying out of engineering work, there may be a minor disruption to the Customer's standard telephone Service during Service provisioning
 - (b) the Customer acknowledges that certain incompatible products may not be available to the Customer.
- 2.6** We are not liable to provide the Mytel TLAN Service or Mytel TLAN Provided Equipment if the necessary equipment and facilities are not available for the Customer's Premise.

3. OTHER SERVICES

- 3.1** If the Customer acquires other services from us or a Service Provider for use in conjunction with the Mytel TLAN Service, the Customer agrees to comply with the terms of such services including of any relevant software licences supplied or granted in connection with those services.

4. PAYMENT OF ACCOUNTS AND CHARGES

- 4.1** The Customer must pay the Monthly Fee during the Term and other fees set out in our Pricing from the date on which we commence supplying the Mytel TLAN Service to the Customer. The Monthly Fee will be debited in advance from the credit card specified in the Application Form, or by other means of payment that we notify you is acceptable to us. The Customer must pay us any other applicable charges as set out in the Application Form or Pricing Schedule upon our request including the Installation Charge and charges for changing the Customer's Services where those changes are requested by the Customer and any costs of labour or parts in maintaining the Mytel TLAN Provided Equipment after the expiry of the Minimum Term.
- 4.2** Subject to clause 12.5, the Customer may change the Customer's nominated Service associated with the Customer's contract, as set out in the Application Form, by contacting or calling us. The change will become effective as soon as practicable.
- 4.3** Migrating to another Mytel TLAN Service does not shorten the Term or terminate the Agreement. The Agreement continues to apply for the remainder of the Term.
- 4.4** Service changes that require a change of platform or a change from 2 wire to 4 wire are configured as a new service, and attract charges that are the same as for a new service. The new service will be delivered to you in addition to the original service. In cases where the service is still in contract, the existing contract will be cancelled without penalty, on receipt of a cancellation order, providing the service replacing it has been activated. Mytel will only cancel the original service upon receipt of a cancellation request from You.
- 4.6** All service configuration changes require a new 12-month contract, except where the remainder of existing service contract period is longer than 12 months, in that case the new contract will be the same as the remaining period.
- 4.7** If the Customer varies the number of connected Services, the new services will be contracted for a new Minimum Term.
- 4.8** We will be taken to have commenced supplying the Mytel TLAN Service to the Customer from the date of activation of the Mytel TLAN Service.
- 4.9** The charges in the Pricing may not include all taxes. The Customer must pay us when we ask the Customer for it all stamp and other duties, fees, taxes (including any Goods and Services Tax) and charges payable on:
- (a) the Customer's purchase of any hardware in relation to the Mytel TLAN Service; and
 - (b) this Agreement or the performance of this Agreement; and

(c) any payment, receipt or other transaction arising out of this Agreement.

- 4.10** Without limiting clause 4.6, if GST is imposed on any supply made by us pursuant to this Agreement, the Customer must pay to us, in addition to any consideration payable, or to be provided, by the Customer under this Agreement for such supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable, or to be provided, (without any deduction or set-off) by the Customer under any other clause in this Agreement. Any amount payable by the Customer under this clause is payable on demand us whether such demand is by means of an invoice or otherwise.
- 4.11** We may terminate, by giving 7 days notice, the Customer's Mytel TLAN Service and the Customer's Software Licences if any charges remain outstanding for 21 days.

5. EQUIPMENT

- 5.1** We will agree with the Customer the date on which we will install the Mytel TLAN Provided Equipment at the Customer's Premises. Where we specify a date to the Customer for installation, we will try to keep to the specified date, but we cannot be liable for any loss the Customer may suffer if we fail to do so.
- 5.2** We will install the Mytel TLAN Provided Equipment in the Customer's Premises and will maintain that equipment while we are supplying the Mytel TLAN Service to the Customer free of charge and warrant it to be free of defects during the Minimum Term.
- 5.3** We will try to install the Mytel TLAN Provided Equipment to the Customer's premises in the way the Customer would like, but for technical and commercial reasons, we have the final decision on installation, for example, the position of any connection point or cables. We cannot guarantee that the Mytel TLAN Provided Equipment will be fault-free.
- 5.4** The Customer must provide us with safe access to the Customer's premises to install, maintain or remove the Mytel TLAN Provided Equipment. The Customer represents to us that the Customer is either the owner or occupier of the Customer's premises and that the Customer has obtained any necessary permissions to allow us to perform this Agreement.
- 5.5** The Customer must indemnify us against any liability we may incur to any person with an interest in the Customer's premises in connection with the Installation, Maintenance or removal of the Mytel TLAN Service or Mytel TLAN Provided Equipment.
- 5.6** If it is necessary in providing the Mytel TLAN Service, to disconnect the Customer from a third party operated network, we will seek the Customer's approval prior to disconnection.
- 5.7** We reserve the right to quote and charge the Customer if the Customer requires us to remove any part of the broadband transmission facilities. We will not be obliged to repair any damage to the Customer's Premises or property caused by the removal of the Mytel TLAN Service or Mytel TLAN Provided Equipment.

6. SUPPLY OF MODEMS

If you are sold or supplied with a Modem by us or by Mytel TLAN on our behalf, you acknowledge and agree that:

- 6.1** The sale or lease (as applicable) of the Modem is on the terms and condition of this agreement;
- 6.2** We will arrange for the Modem to be delivered, installed and configured at the premises specified in the Application Form;
- 6.3** If you rent a Modem from us then:
- (a) your possession and use of the Modem is subject to our title and other rights and our supplier and you have no legal or other interest in the Modem other than under this agreement;
 - (b) you grant us and our nominees an irrevocable license to access the premises where the Modem is situated to inspect, repair, modify and/or remove the Modem during the term of this agreement and to disconnect and remove the Modem on the expiration or termination of this agreement, or on default by us under any agreement between us and Mytel TLAN or on the expiration or termination of any agreement necessary for us to provide the Service or the Modem, whether or not we are a party to that agreement;
 - (c) you will not remove the Modem from your premises without our prior written consent;
 - (d) you will not remove any nameplate identifying the Modem as the property of any third party or make any alterations or additions to the Modem;
 - (e) you will not sublet, part with possession, assign, sell, transfer, deposit, pledge, lend bail or otherwise dispose of the Modem without our prior written consent. If any person seizes or attempts to seize the Modem, you will notify us and you will notify that person of the title and other rights belonging to us concerning the Modem.
 - (f) if the Modem is no longer able to be used, is not operating or is lost, destroyed or damaged while on your premises, you will notify us. We may require you to reimburse us for the reasonable cost of replacement or repair. If The Modem is not in your possession, you will do everything you can to assist us to locate the Modem, and
 - (g) you must immediately return the Modem to us upon the expiry or termination of this agreement for any reason.
- 6.4** If you purchase the Modem from us:

- (a) the charges for the Modem will be included as part of the fees applicable to the Service and will be subject to the payment terms that apply to you;
- (b) title in the Modem remains with us until we have been paid in full the charges for the Modem;
- (c) risk in the Modem passes to you upon delivery at your premises; and
- (d) if the Modem is no longer able to be used, is not operating or is lost, destroyed or damaged while on your premises, you will notify us.

6.5 You will ensure that the Modem is operated and housed in an environment which meets the manufacturer's requirements and will not affix the Modem to any real property;

6.6 You will use the Modem for ordinary business purposes only. You will not use the Modem for any illegal or unlawful purpose which may result in its confiscation or seizure or to supply the Service or similar services to third parties:

7. NETWORK CONFIGURATION ADVICE

7.1 Network configuration advice may be supplied by Mytel Voice and Data Pty Ltd to the Customer, upon request. This advisory service is charged at Mytel's standard consulting rates and is charged in addition to other TLAN related charges.

7.2 If you choose to obtain network configuration advice or other technical advice from Mytel, you will be provided with an estimate of charges prior to work commencing. These charges are payable to Mytel regardless of the status of any other product or service ordered by or supplied to you.

8. MONITORING AND REPORTING

8.1 The TLAN monitoring and usage reporting is only provided to the Customer upon request. It is not a standard feature that is provided as part of the Mytel TLAN Service.

8.2 If you elect to use the TLAN monitoring and usage reporting service, additional charges may apply.

9. CUSTOMER SERVICE

9.1 If the Customer experiences a problem with the Mytel TLAN Provided Equipment or Services, the Customer should report by phoning 1300 36 00 89, or by emailing support@mytel.net.au

9.2 We will use reasonable efforts to rectify the problem as soon as possible.

9.3 If the Customer reports a fault and we find there is no fault or the fault was not caused by us, we may charge for any work we have done to try to find the fault or repair it.

10. INDEMNITY AND LIMITATION OF LIABILITY

10.1 The Customer must indemnify us against any loss, damage, liability, expense, cost or charge arising from or incurred in connection with:

- (a) any fault in the Mytel TLAN Service, the Mytel TLAN Provided Equipment or the Software due to the Customer's negligence or wilful misuse, or any unauthorised use of any of them; and
- (b) any breach by the Customer of the Acceptable Use Policy.

10.2 Subject to clause 5.2, we accept liability for the supply of the Mytel TLAN Service but only to the extent provided in this clause 8.

10.3 We accept liability where:

- (a) the Mytel TLAN Service is not supplied with due care and skill;
- (b) any materials supplied in connection with the Mytel TLAN Service (including the Mytel TLAN Provided Equipment) are not reasonably fit for the purpose for which they are supplied; and
- (c) it is otherwise required to do so by the Trade Practices Act.

10.4 To the extent (if any) that the Mytel TLAN Service is not of a kind ordinarily acquired for personal, domestic or household use, our liability under clause 8.3 is limited to, at our option, resupplying or paying for the resupply of the Service.

10.5 Except as stated above, we are not liable in tort (including negligence), contract or otherwise for any damages, including loss of profits, business or anticipated savings or any other indirect or consequential damage.

10.6 The Customer indemnifies Mytel TLAN in respect of any loss, liability or expense arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by the Customer, using the Service.

11. PERSONAL INFORMATION

- 11.1 Information concerning the Customer will be held in a database. The database will contain the Customer's name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the Mytel TLAN Service, and information provided by the Customer in connection with this Agreement or the Mytel TLAN Service.
- 11.2 This information (other than bank account and credit card details) may be used to:
- (a) to enable us to perform our obligations to the Customer under this Agreement, including to provide the Mytel TLAN Service;
 - (b) to enable us to ensure that the Customer perform their obligations under this Agreement;
 - (c) by any entity related to us and any Service Provider, for planning, research and the promotion and marketing (whether targeted, direct or indirect) of ours or their products and Services, or if required by any law (including without limitation the Corporation Act), or if required by the rules of any stock exchange.
- 11.3 In addition to our other rights under this clause 9, we may give Credit Information about the Customer to a credit reporting agency to:
- (a) obtain a consumer credit report about the Customer; or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 11.4 In addition to our other rights under this clause 9, we may (in accordance with the Privacy Act 1988):
- (a) obtain and use information concerning the Customer's commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess the Customer's application for the Mytel TLAN Service (if the application is for consumer credit) or collect overdue payments;
 - (b) obtain or use a consumer credit report about the Customer from a credit reporting agency to assess the Customer's application for the Mytel TLAN Service (if it is for commercial credit) or collect overdue payments; and
 - (c) disclose information about the Customer to other credit providers or obtain and use information from other credit providers for the purposes of assessing the Customer's application for the Mytel TLAN Service, the Customer's ongoing credit worthiness or the status of any account held by the Customer with us or with any other credit provider.
- 11.5 The Customer consents to the collection, use and disclosure of information as set out in this clause 9. If the Customer does not want the information to be used for direct marketing, or as set out in clause 9.3 or 9.4, please notify us in writing and we will ensure that the information is not used for these purposes.
- 11.6 "Credit Information" in the above cases means:
- (a) identity particulars (name, address, and date of birth);
 - (b) the Customer's application for credit or commercial credit, including the amount applied for;
 - (c) the fact we are a current credit provider to the Customer;
 - (d) payments which are overdue by more than 60 days and for which debt collection has commenced;
 - (e) advice that payments are no longer overdue in respect of a default which has been listed;
 - (f) information that, in the opinion of us, the Customer have committed a serious credit infringement; and
 - (g) cheques drawn by the Customer for more than \$100 and which have been dishonoured more than once.

12. CHANGING THIS AGREEMENT

- 12.1 If the Customer asks us to change the place at which the Mytel TLAN Service is provided (for example, the Customer has moved to a new address), we cannot guarantee that we will be able to provide the Mytel TLAN Service at the new address. If we can provide it, the Customer will have to pay any charges for installing the Mytel TLAN Service at the new address.
- 12.2 If the Customer wants us to provide the Mytel TLAN Service at another place in addition to the Customer's premises, the Customer will have to sign a separate application form with us for the Service provided at that place. The additional Service site will be subject to the terms and conditions outlined in this Agreement.
- 12.3 We can change this Agreement, the Acceptable Use Policy or the Pricing at any time provided that we notify the Customer of any change within at least 30 days. The Customer must notify us of the Customer's consent to the change within 14 days of our notice, otherwise we may exercise our right to terminate the Agreement under clause 12.3. The Customer's continued use of the Mytel TLAN Service beyond the date of the change will be deemed acceptance of it.
- 12.4 We can offer new or additional features that do not affect any of the Customer's existing Services, including the price for them, at any time.

- 12.5** It will be sufficient, for the purposes of clause 10.3, that we may notify the Customer only of the fact that this Agreement, the Acceptable Use Policy or the Pricing Schedule has been changed and that we post a revised copy of Terms and Conditions, the Acceptable Use Policy or the Pricing Schedule.

13. TRANSFERRING THE SERVICE

The Customer may not transfer or novate, nor try to transfer or novate the right to receive the Mytel TLAN Service or any other right under this Agreement to anyone else without our consent. We may transfer or novate any of our rights or obligations under this Agreement without the Customer's consent by sending the Customer a notice.

14. SERVICE SUSPENSION, CANCELLATION OR AMENDMENT

- 14.1** Subject to clause 12.4, The Customer can terminate the Mytel TLAN Service by giving 30 days notice to us.
- 14.2** If we suspect that the Customer has breached any material term of the Terms and Conditions of this Agreement including engaging in conduct that is contrary to the Acceptable Use Policy, we can without affecting any other rights we may have, immediately terminate or suspend the Customer's Service. The Customer will still be liable to pay Monthly Fees during the period of suspension if we terminate this Agreement and the Customer has not paid the cancellation fee in clause 12.4, the customer must return to us all Mytel TLAN Provided Equipment.
- 14.3** We are otherwise entitled to terminate this Agreement by giving the Customer 30 days notice.
- 14.4** If the Customer decides to terminate the Mytel TLAN Service after the end of the Cooling Off Period, if applicable, and before the end of the Minimum Term, the Customer must pay to us a cancellation fee which is made up of the following cancellation charges:
- (a) Balance of Minimum Term monthly fees
 - (b) Balance of Modem cost OR return of the modem (if applicable)
 - (c) Disconnection fee (if applicable)

Cancellation charges payable for cancellation before Minimum Term expires are – (a), (b) and (c).

Cancellation charges listed above do not apply for cancellations after the Minimum Term expires.

- 14.5** If we terminate or suspend the Mytel TLAN Service for any reason covered by clause 12.2 and later at the Customer's request we agree to reinstate the Mytel TLAN Service, the Customer must pay a reconnection fee and any other applicable fees.

14. RESALE OF SERVICE

The Customer agrees that the Service is for the Customer's use and agrees that the Service is not for resale.

15. GENERAL TERMS

- 15.1** If we do not exercise or delay in exercising our rights under this Agreement, we will not be taken to have waived our rights.
- 15.2** This Agreement will be governed by and interpreted in accordance with the laws of the State or Territory in which the Customer signed this Agreement.
- 15.3** The Acceptable Use Policy and any terms set out in the Pricing Schedule are expressly incorporated herein.
- 15.4** Clauses 5, 6, 8 and 9 survive termination of this Agreement.
- 15.5** Notices can be provided under this Agreement by email, post or facsimile.
- 15.6** A reference in this Agreement to the singular includes the plural.

NEXTEP Broadband ACCEPTABLE USE POLICY

Federal law allows the ABA to direct NEXTEP to remove certain prohibited Internet content from our servers or prevent users from accessing certain Internet content. NEXTEP may take any steps necessary to ensure that the NEXTEP Service complies with any relevant industry code of practice or notification or direction from the ABA, including removing any content (including part or all of a website) from NEXTEP's servers, terminating or suspending the NEXTEP Service, filtering the Internet content available to you and restricting your access to particular Internet content or websites. NEXTEP may take these actions at any time without notice to you.

When using the NEXTEP Service, you must not contravene any laws or any relevant industry codes of practice or infringe the rights of any person. You must at all times comply with the Acceptable Use Policy published by NEXTEP and any instructions NEXTEP may give to you from time to time without limiting this, you must not use the NEXTEP Service to:

- a) publish, distribute, transmit or otherwise make available any material that is offensive, abusive, discriminatory, illegal, indecent, pornographic, obscene or menacing;
- b) defame, harass or abuse anyone or violate their privacy;
- c) infringe the intellectual property rights or disclose the confidential information of any person without their authority (such as the use, copying or distribution of any data or software without the owner's authority);
- d) interfere with or disrupt the NEXTEP Service, or any other computer system (including by overloading NEXTEP's systems or by distributing harmful viruses);
- e) access, monitor, hack into, or use any data, systems or networks without the authority to do so; and
- f) send any bulk e-mails (ie spamming) over the Internet.

Children and minors must be supervised by a parent, teacher or other responsible adult at all times while using a Service. NEXTEP will not be responsible for content that may be viewed by children and minors without proper adult supervision.

Internet Use Risks

The Internet contains content you may find unsuitable, offensive or adult in nature and which may breach Australian laws. NEXTEP does not endorse or control such content and disclaims any and all liability in respect of such content. You have the right to make complaints to the ABA about Internet content which is or could be rated R, X or Refused Classification (RC).

You must take all reasonable measures to prevent unauthorised access to the NEXTEP Service. You acknowledge that if you run certain applications (such as File Transfer Protocol or Hyper Text Transfer Protocol), other users may gain access to your computer.

If you buy goods or services on the Internet NEXTEP will not be responsible or liable for those goods and services and you will be responsible for any fees or charges you incur. If you send confidential information such as your credit card details over the Internet, you bear all risks and losses arising from such transmissions.

NEXTEP may monitor your use of the NEXTEP Service to ensure that you are complying with these Terms, but NEXTEP is not obliged to do so. NEXTEP may investigate any misuse or suspected misuse of the NEXTEP Service and may involve the police or other law enforcement agencies in doing so. NEXTEP may recover the cost of such investigation if it is established that you have misused the NEXTEP Service. If your use of the NEXTEP Service causes any loss or damage to third parties, you must compensate them for such loss or damage.