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# Our Customer Terms

## Proximity section

21 Special meanings

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### Recent changes

Date of change	Service/Feature	What has changed?	See
18 December 2019	Exit date	Notice of discontinuation of all services for existing customers.	Clause 1.
30 June 2017	Cease sale to new customers	Cease of sales to new customers from 30 June 2017.	Clause 1.
7 July 2016	Bring your own components	Customers can bring their own components to the Proximity solution.	Throughout the section.

Certain words are used with the specific meanings set out on page 19 and in [the General Terms of Our Customer Terms](#) (“**General Terms**”).

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## 1 About this section

**Proximity is not available for purchase by new customers from 30 June 2017. Customers with existing Proximity services may continue to receive these services until the earlier of the end of their current contract or 30 June 2020, at which time these services will be discontinued and will cease to function. All existing customers who have purchased Proximity are currently being notified of the end of their service.**

### **Our Customer Terms**

- 1.1 This is the Proximity section of Our Customer Terms. The General Terms also apply unless you have a separate agreement with us, which excludes the General Terms.

### **Inconsistencies**

- 1.2 This section applies to the extent of any inconsistency with the General Terms.
- 1.3 If this section lets us suspend or terminate your service, that’s in addition to our rights to suspend or terminate your service under the General Terms.

### **No assignment or resupply**

- 1.4 The Proximity solution isn’t available to Telstra wholesale customers or for resale. You mustn’t assign or resupply the Proximity solution to anyone.

### **We have to approve your requests**

- 1.5 In this section, where you can apply, request, ask, choose, are eligible (or any other similar wording) for a service, feature, functionality, or any other item (“**Request**”), we can accept or reject that Request at our choice. For example, we may reject your Request if the Proximity solution isn’t available in your area, or your equipment isn’t compatible.

### **We work during Business Hours**

- 1.6 Unless otherwise stated, we work as part of the Proximity solution (including installation, configuration, site audits and feasibility studies) during Business Hours. Additional charges apply outside Business Hours. We can confirm these charges on request.

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## **2 What is the Proximity solution?**

- 2.1 The Proximity solution is a digital media delivery service. It consists of managed and cloud hosted digital signage, Wi-Fi engagement and analytics reporting.
- 2.2 You can use the Proximity solution to show to your customers and users, targeted content on display screens located at your Sites. This content could include advertising, marketing, corporate messages or other business communications.
- 2.3 At each Site, a media player will receive content via a compatible mobile or Internet service that we've approved. The media player (or a router) can also act as a Wi-Fi hotspot, enabling customers to access a Wi-Fi App.
- 2.4 The Proximity solution can comprise of some or all of the following features:
- (a) display screens;
  - (b) at least one media player at each Site. The media player pushes content to the display screen;
  - (c) routers, which provide a Wi-Fi hotspot and an Internet connection to the display screen;
  - (d) an Ethernet switch, which is a hub that connects the router to media players via Ethernet cables;
  - (e) a wireless access point, which extends the router's Internet connection to the Wi-Fi App's server and end users' compatible smart devices.
  - (f) media application software;
  - (g) compatible mobile or Internet service;
  - (h) access to a hosted content management system and content creation services, as described in clause 5;
  - (i) Wi-Fi App;
  - (j) planning, design and implementation services; and
  - (k) support and maintenance services.
- 2.5 The agreed features of your Proximity solution are set out in your Application Form or are otherwise agreed between you and us.

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### 3 Obtaining a compatible mobile broadband service

- 3.1 We'll provide you with a compatible mobile broadband service for the term of each Proximity service except where we agree to allow you to supply an alternative service under clause 4.1.
- 3.2 The Telstra mobile broadband service lets you use a Telstra mobile network card to access data over Telstra's mobile network, which is used to enable the Proximity solution. You must not remove or tamper with this card or use it for any purpose other than to enable the Proximity solution. If you do so, we may immediately suspend or terminate your Proximity solution.
- 3.3 Your use of the Proximity solution depends on the coverage of the mobile or Internet network at the Site. If there's insufficient coverage with our mobile network, we can provide additional antennae for an extra charge. We'll confirm that charge at the time. You acknowledge that sometimes we can't provide the Proximity solution at a Site due to insufficient mobile or Internet network coverage.
- 3.4 The terms for the Telstra mobile broadband service component of your Proximity solution are set out in Our Customer Terms.
- 3.5 The standard usage charges for your Telstra mobile broadband service (and the associated data plan) are included in your Proximity charges where we supply you with that mobile broadband service as part of your Proximity service. Once you exceed this data plan limit, excess data usage charges apply, which we can confirm on request.

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### 4 Bring your own Proximity solution components

- 4.1 If we agree in written advance, you may supply your own components to supplement, or be used with, Our Proximity Solution ("**Your Components**"). Below are some examples of Your Components.
- 4.2 You acknowledge and agree that if Your Components are used with Our Proximity Solution, not all features of the Proximity Solution will be available or will function fully.
- 4.3 You must at all times ensure that Your Components:
- (a) comply with our requirements advised to you from time to time, including the requirements set out in this section; and
  - (b) are fully compatible with the Proximity solution.

If you don't do this, and we perform any related work to provision, run or fix your Proximity solution, you must promptly pay our costs at our then current time and material rates.

#### **Bring your own display screen**

- 4.4 You must at all times ensure that any display screens you supply as part of Your Components complies with each of the following:

- (a) display resolution of at least 1920P x 1080P;
- (b) functioning HDMI port, RS232C serial port and Ethernet Port;
- (c) the media player can be mounted within 1.5 metres of the HDMI port of your display screen;
- (d) the HDMI ports are accessible so that the HDMI cable from the media player can be connected without having to remove the display screen; and
- (e) where your display screens form a “video wall”, you must pay us an audit fee (which we can confirm on request) so we can test if the video wall is compatible with the Proximity solution.

### **Bring your own Wi-Fi service**

4.5 You must at all times ensure that any Wi-Fi service you supply as part of Your Components complies with each of the following:

- (a) supports and is fully compatible with access points that we advise from time to time;
- (b) can send and receive ICMP echo requests; and
- (c) supports the virtual LAN standard.

### **Bring your own Internet service**

4.6 You must at all times ensure that any Internet service you supply as part of Your Components complies with each of the following:

- (a) firewall port access to ports 70, 80, 443, 5500, and 40000-40010;
- (b) minimum bandwidth of 1.5 mbps;
- (c) access to IP addresses and URLs through the firewall that we specify; and
- (d) that Internet service is fully functioning for the term of each Proximity service.

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## **5 Your content for use with the Proximity solution**

### **Hosted content management system**

5.1 The Proximity solution lets you distribute digital media content via an IP network from a hosted content management system to the applicable Sites.

5.2 The hosted content management system:

- (a) stores and manages content;
- (b) allows scheduling and timing of content to the display screens; and

- (c) provides content and business rules distribution and an audit trail of events for content displayed on the display screens.
- 5.3 Content pieces agreed with us, can be uploaded to the hosted content management system. You must contact us to upload this content for you.
- 5.4 There are limits on how much content we'll upload or change for you. These limits depend on which content management package you choose. We can confirm the details of these packages on request.
- 5.5 You grant us a non-exclusive licence to use, copy and communicate your content so we can perform our obligations under this section (including to upload that content for you).
- 5.6 You must ensure that each content piece you ask us to upload for you is of a size, length and format we require from time to time.

### **Content creation and management**

- 5.7 As an alternative to you giving us your content pieces, we can assist you with content creation.
- 5.8 Our content creation services take your existing brand, campaign and marketing material to create digital content for your Proximity solution.
- 5.9 Our content creation services are available in several packages with varying fees. We can confirm the details of these packages and fees on request.

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## **6 The Wi-Fi App**

- 6.1 For an additional cost, you can ask us to work with you on the design, implementation and testing of one Wi-Fi application for use on compatible smart devices when connected to the relevant Wi-Fi hotspot available at your Sites ("**Wi-Fi App**").
- 6.2 The Wi-Fi App is not installed or downloaded on a device. Instead, it displays like a mobile web application by using Internet browsing technology. The Wi-Fi App lets end users access content through their compatible smart devices when connected to your Wi-Fi hotspot at your Site.
- 6.3 If we agree to your request under clause 6.1, we'll work with you to agree the functionality of the Wi-Fi App, which may include the following:
  - (a) gives your end users personalised content, such as product and service offers and vouchers;
  - (b) lets you present offers, downloadable features, surveys, questionnaires, and provide access to your online store; and
  - (c) collection of analytics information on your end users' use of the Wi-Fi App. This analytics information could include number of connections to your Wi-Fi hotspot; time spent connected; Wi-Fi App views; session time, dwell time, click throughs, average users per day, and top venues per month. We'll email the relevant analytics report to you.

- 6.4 Once your Wi-Fi App is ready for use, you can ask us to make changes to it. If we agree to your request, additional charges apply, which we can confirm on request.

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## 7 What are the charges for the Proximity solution?

- 7.1 You have the following payment options for your Proximity solution:
- (a) **monthly charge** – no upfront Equipment or software licensing costs and instead, you pay us a monthly charge; or
  - (b) **upfront and monthly charge** – there’s an upfront charge for the Equipment and installation. There’s also an ongoing monthly charge that covers management, support, software licensing and if applicable, the standard Telstra mobile network charges.
- 7.2 The payment option that you choose is set out the Application Form.
- 7.3 Each of your Proximity charges are GST exclusive, unless otherwise stated.

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## 8 The delivery schedule

- 8.1 If we accept your Application Form, you must work with us in good faith to agree a delivery schedule.
- 8.2 The delivery schedule will outline the target time frames for the installation and implementation of your Proximity solution.
- 8.3 You acknowledge and agree that:
- (a) the delivery schedule is indicative only doesn’t bind us; and
  - (b) there will be times where we can’t carry out the delivery schedule (“**Delivery Schedule Delay**”) and we’ll let you know if this happens. For example, the Delivery Schedule Delay could be because your chosen display screen is too big or too heavy for your Site, or there’s insufficient mobile coverage at the Site.
- 8.4 If a Delivery Schedule Delay occurs, you must promptly:
- (a) work with us in good faith to update the delivery schedule; and
  - (b) pay us for the work we and our Personnel have done in trying to carry out the delivery schedule (at our then current time and material rates), except where our negligence was the sole reason for the Delivery Schedule Delay.
- 8.5 If the parties can’t agree the delivery schedule within 120 days from the date you signed your Application Form, or we determine that your network or Sites can’t support the Proximity solution, we may terminate the Proximity solution immediately by telling you. If this happens:
- (a) the early termination charges under clause 20.3 don’t apply; and

- (b) you must promptly pay us for the planning, design and other work we and our Personnel have done up to the date of termination and we'll tell you what these fees are.
- 8.6 If the Proximity service isn't installed and implemented at a Site within 180 days of the date you signed your Application Form and our negligence wasn't the sole reason for the delay:
- (a) we may terminate that Proximity service by telling you, in which case, clauses 8.5(a) and 8.5(b) apply; or
  - (b) on our request, you must start paying us the charges for that Proximity service.
- 8.7 Until the delivery schedule is agreed, we're not obliged to provide you with the Proximity solution (other than the work required to prepare the delivery schedule).
- 8.8 Once the delivery schedule is agreed, the parties can agree to update it from time to time.
- 8.9 If you order new Proximity services or request changes to your current Proximity solution after your first delivery schedule is finalised, we'll:
- (a) update your delivery schedule under clause 8.8; and
  - (b) charge you for the new or altered component of your Proximity solution according to our then current price list, which we can provide on request.

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## 9 Getting your Site ready

- 9.1 At least 2 weeks before delivery of the Equipment to a Site, you must ensure that your Site contact gives us a completed Site preparation checklist that confirms the Site is ready for installation and Your Components are ready for use with Our Proximity Solution. We'll confirm with you the matters that the checklist must cover. Alternatively, we can complete the Site preparation checklist (including site preparation) for you for an additional charge, which we can confirm on request.
- 9.2 Once you give us a properly completed Site preparation checklist, we then develop an implementation-ready design for the Proximity solution.
- 9.3 You must promptly prepare each Site and Your Components (at your own cost) and ensure it's ready to receive the Proximity solution. This preparation includes ensuring at all times:
- (a) any room remediation and building services are completed, where they may be required prior to us installing and commissioning the Equipment;
  - (b) there's a clean, dry and unobstructed area for the Equipment or Your Components within 1.5 metres of at least two active 240VAC general purpose double power outlets per screen. That power outlet must be located in the ceiling directly above the ceiling / pole mounted screen, or on the wall and directly behind the wall, floor stand or pedestal mounted screen;

- (c) the wall and ceiling is flat and can hold the display screen's weight, without further structural support required, at a height of no more than 2 metres from the top edge of the screen. If the screen is ceiling mounted on poles, you must ensure that there are wooden noggins within the ceiling cavity for attaching the poles, sufficient to support the weight of the screen. You agree that to the full extent the law allows, we don't guarantee and are not liable in connection with any wall, floor stand, pedestal, pole, ceiling or other mount deployment (including that the relevant structure has sufficient load bearing for the required Equipment or Your Components);
  - (d) the media player can be located within 1.5 metres of the display screen;
  - (e) photos are given to us of the location at each Site for the install, with the specific area for install marked with 4 clear markers on the wall that form a rectangle for the display screen. If the screen is to be pole-mounted, the exact position on the ceiling must be marked on a diagram or photo; and
  - (f) you meet any reasonable Site or other requirements we tell you of from time to time.
- 9.4 If the Site isn't available or ready for install of the Equipment or Your Components at the agreed time, or doesn't comply with clause 9.3, you must pay us additional charges, which we can confirm on request.
- 9.5 After we accept your Application Form, you must work with us promptly and in good faith to ensure the following occurs:
- (a) you give us your Site details, including Site name, address, contact details and any other information, documents and content we need from time to time in a format we require; and
  - (b) you must promptly complete and give us the site preparation checklist under clause 9.1 and tell us in writing that you've complied with clause 9.3.

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## 10 Title, risk and equipment return

- 10.1 Risk of loss or damage to the Equipment passes to you on delivery.
- 10.2 Title to the Equipment Hardware passes to you once you pay us in full for the Equipment. Until then, you hold the Equipment on our behalf and must promptly return the Equipment if we ask you to.
- 10.3 Without limiting our rights under this section or at law, if you don't pay us the relevant charges on time, at our request, you must promptly return the Equipment to us at your cost.
- 10.4 If you don't return the Equipment as required, then you:
- (a) irrevocably authorise us to enter any premises or Site to recover the Equipment; and

- (b) must pay our reasonable expenses in recovering or trying to recover the Equipment.

10.5 You're responsible for "making good" the Sites where the Equipment was installed.

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## 11 You must look after the equipment

11.1 In relation to the Equipment, you must at all times and at your own cost:

- (a) take reasonable and proper care of it;
- (b) ensure it's not damaged, destroyed, lost or stolen, or modified (except by us);
- (c) ensure it's kept safe and secure to our reasonable satisfaction, including protecting it from electrostatic interference and power surges;
- (d) ensure that any labels or identification markings affixed to the Equipment aren't removed, covered, altered or otherwise tampered with;
- (e) not sell, dispose of or encumber the Equipment in any way;
- (f) not remove it from the Site and specific location where it's installed except if needed to keep the Equipment safe, secure and free of encumbrances or third party ownership claims; and
- (g) allow or enable us (or our Personnel) to inspect the Equipment or Your Components on reasonable notice.

11.2 You must pay our costs of repairing, modifying or altering Equipment where we need to do so because of your equipment or anything you, any other a party (other than us) or any other factor, has done.

11.3 You must only use equipment (including any replacement equipment we provide) that forms part of, or is used with, your Proximity solution:

- (a) in connection with the Proximity solution at your Sites;
- (b) for the purpose for which it was designed;
- (c) in a manner contemplated by the manufacturer and in accordance with the manufacturer's manuals and recommendations;
- (d) in compliance with all relevant laws, including all privacy laws;
- (e) in accordance with our reasonable directions;
- (f) in a suitable environment for the correct operation of the equipment; and
- (g) with a suitable network service we provide and you must not attach or enable connection with any other equipment or service.

- 11.4 You must immediately tell us if any equipment under clause 11.3 is lost, stolen, damaged, destroyed or otherwise unfit or unavailable for use. You're liable for any loss or damage to that equipment, except for fair wear and tear to our Equipment.
- 11.5 If a Proximity service expires or is terminated and you haven't paid us in full for the Equipment, we may collect that Equipment. On our request, you must cooperate and ensure that we have prompt access to any site for this collection. If we cannot recover the Equipment for any reason (e.g. no site access), you must promptly pay us the cost of that Equipment, as we notify to you. You indemnify us from all claims, losses, damages, costs and expenses (including legal expenses) we may incur, suffer or are liable for arising out of or in connection with anything done by us (or on our behalf) in connection with the removal and repossession of the Equipment.
- 11.6 If the termination is for any reason other than our material breach, you must promptly pay us our reasonable costs in connection with collecting the Equipment.

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## 12 Equipment warranty

- 12.1 If the Equipment Hardware is faulty and under warranty, we'll liaise with the manufacturer on your behalf with the aim of you receiving the benefit of any applicable warranty.
- 12.2 If goods you send to us for repair can retain user-generated data (e.g. content on a media player), some or all of your stored data may be lost during the repair process. You must save this data elsewhere before sending the good to us for repair.

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## 13 What support and maintenance do you receive?

- 13.1 If you're a consumer as defined in the Australian Consumer Law, our goods come with guarantees that can't be excluded under that law. You're entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You're also entitled to have the goods repaired or replaced if they're not of acceptable quality and the failure is not a major failure.
- 13.2 The remainder of this clause 13 and clauses 12 and 14 are in addition to the rights and remedies you may have under the Australian Consumer Law or other laws. You're responsible for the costs associated with claiming under those clauses.

### Helpdesk

- 13.3 For parts of your Proximity solution that we supplied ("**Our Proximity Solution**"), you can access support or report faults through our helpdesk ("**Helpdesk**"). You must only use the Helpdesk for Our Proximity Solution and not for Your Components.
- 13.4 You can contact the Helpdesk on a telephone number or email that we notify to you from time to time.
- 13.5 We aim to make the Helpdesk available to you between 8am to 6pm AEST on Mondays to Fridays, excluding public holidays ("**Support Hours**").

### Levels of support and maintenance

- 13.6 If the Helpdesk determines that a fault with Our Proximity Solution can't be resolved remotely, and we think it's appropriate, we'll initiate on-site maintenance, in which case we (or our Personnel) will:
- (a) attend the Site to try and diagnose the fault with the Equipment; and
  - (b) try to resolve the fault with the Equipment or tell you the appropriate course of action we think may resolve the fault.
- 13.7 If we provide replacement Equipment, any Equipment removed becomes our property. The replacement Equipment may be reconditioned or second hand.
- 13.8 If we decide there's no fault with the Proximity solution, or we decide the fault is caused or contributed to by:
- (a) you, a third party or an event beyond our reasonable control;
  - (b) failure to follow our operational directions or other reasonable instructions;
  - (c) any equipment we didn't provide or anything else not part of Our Proximity Solution (including Your Components);
  - (d) Equipment or any part of the Proximity solution that has:
    - (i) been Modified by a person other than us;
    - (ii) been installed or operated contrary to the manufacturer's or our recommendations (or recommended usage) from time to time (other than where the fault is solely due to our installation of the Equipment);
    - (iii) been used with unauthorised or non-compliant hardware or software; or
    - (iv) been subject to misuse, negligence or accident, or abnormal physical or electrical stress;
    - (v) not been operated in a suitable environment in accordance with its specifications; or
  - (e) unauthorised use of the Equipment to access third party carriage or other services,

you must pay us for the time spent in identifying, examining and if we agree, rectifying any faults at our then current time and material rates. We're not obliged to attend or fix the matters described in clauses 13.8 or 13.9.

### What's not covered by support and maintenance?

- 13.9 Our support and maintenance services exclude:
- (a) the matters described in clauses 13.8;

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- (b) power or electrical work external to the Equipment or Your Components;
- (c) repair or replacement of Equipment due to causes external to the Equipment including disaster, fire, accident, neglect, misuse, vandalism, water, lightning or the installation, overload, power surges or use of the Equipment contrary to the manufacturer’s specifications (other than where the damage or defect is solely caused by our installation of the Equipment);
- (d) furnishing supplies or accessories, joinery work, or painting or refinishing the Equipment;
- (e) services in connection with the relocation of the Equipment, or the addition or removal of items of equipment we didn’t provide;
- (f) services in connection with malicious programs (e.g. viruses, worms or trojans etc) or conflicts on software we didn’t install;
- (g) issues or defects in your systems, network, equipment, software or Internet connection, including in any of Your Components; and
- (h) content backup, which is your responsibility.

### Notification of Software updates

13.10 From time to time, we may email you regarding software updates, security issues and product information. We’ll use the email address that you gave us. You consent to receiving these emails.

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## 14 Support and maintenance, planned outages and reporting

14.1 We aim to respond to and restore or provide workaround for faults with Our Proximity Solution that you tell us about, as follows:

Priority level	Response target	Restore / workaround target		
		Metro	Regional	Remote
<b>1:</b> Complete loss of your Proximity service at a Site or at more than 30% (which must equal at least 10 Sites) of all your Sites, resulting in major and critical impact to your business and damage to your brand.	30 minutes	4 hours	1 Business Day	2 Business Days
<b>2:</b> A significant loss of your Proximity service at a Site or at more than 10% but less than 30% (which must equal at least 10 Sites) of all your Sites, resulting in significant impact to your business and damage to your brand.	60 minutes	1 Business Day	2 Business Days	3 Business Days
<b>3:</b> A loss of your Proximity service at a Site or at more than 1% but less than 10% of all your Sites, resulting in minimal business impact.	2 hours	1 Business Day	2 Business Days	4 Business Days
<b>4:</b> A fault with your Proximity service with manageable business impact, such as performance degradation or reduced functionality. General enquiry or call for information.	1 Business Day	5 Business Days	5 Business Days	10 Business Days

- 14.2 For clarity, our obligations under clause 14.1 don't apply to the matters described in clauses 13.8 or 13.9.
- 14.3 We'll tell you if your Site is in a metro, regional or remote location on request and from time to time. We'll also assign the priority level and act reasonably in doing so.
- 14.4 If you report a fault after 2pm during Support Hours or otherwise outside of Support Hours, the fault is deemed reported at the start of the next Support Hour period. Other faults are deemed reported when we log them.
- 14.5 All restore time targets are subject to the underlying network availability and Site access. The restore times above don't include time to restore network faults or time taken to access your Sites.
- 14.6 Where reasonably practical, we'll give you advance notice of planned outages, where we think the outage will cause significant interruption to your Proximity solution.
- 14.7 If we reasonably think that an urgent outage is needed (including to fix critical problems), we will try to notify you of the outage as soon as reasonably practicable.
- 14.8 On your request, we'll agree with you the types of service assurance reports that we'll provide to you. These reports may include:
- (a) requester location/ name;
  - (b) incident source (alarm or phone call);
  - (c) resolution notes;
  - (d) request status;
  - (e) create time;
  - (f) close time; and
  - (g) fault category.

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## 15 Third party suppliers

- 15.1 We purchase components of your Proximity solution from third party suppliers. If one of these suppliers suspends, cancels or terminates a service that we need to provide you with the Proximity solution, we may suspend, cancel or terminate your Proximity solution or the affected part of it. We'll give you as much notice as we can in the circumstances.
- 15.2 We may use agents or subcontractors to perform any of our obligations in relation to your Proximity solution. If we do this, we remain primarily liable to you for the performance of those obligations.

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## 16 Your obligations

- 16.1 You must at all times and at your own cost:
- (a) provide the name of at least one appropriately skilled and qualified staff member as a point of contact for liaison on the Sites with us and our authorised Personnel on all matters relating to the performance of the Proximity solution, including installation and delivery of the Equipment;
  - (b) ensure our Personnel are in a safe and secure working environment when on your premises and at the Sites, which includes providing:
    - (i) sufficient working space and facilities without interruption or interference from your Personnel or visitors; and
    - (ii) a stable, supported, appropriate and safe raised platform when working at heights;
  - (c) provide us (and our Personnel) with all reasonable assistance and access to information, materials, your network and systems, Your Components and the Sites as we request from time to time in connection with us performing the Proximity solution, including providing an appropriate induction at each of your Sites;
  - (d) where applicable, obtain all third party consents (including from landlords, building owners and managers, and local councils) necessary for us to access and use the Sites and any materials requested by us and for us to perform the Proximity solution;
  - (e) notify us in advance of any site conditions that may impact our performance of our obligations. For example, conditions regarding drilling during certain hours, special site induction requirements, and any special entry requirements; and
  - (f) ensure that your Proximity solution is only used in Australia.
- 16.2 You're responsible for any content used with the Proximity solution. You must back up and get the necessary licences and third party consents (including from collecting societies) in each copyright work or subject matter for that content. You warrant that any content used with the Proximity solution will not breach any law or infringe the rights (including the Intellectual Property Rights or moral rights) of any person.
- 16.3 We or our Personnel may take-down or disable access to any content used with the Proximity solution (or require you to do so) if we believe you're breaching clause 16.2.
- 16.4 You indemnify us from all claims, losses, damages, costs and expenses (including legal expenses) we may incur, suffer or are liable for arising out of or in connection with any content used with your Proximity solution or for your breach of clauses 16.2 or 17.

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## 17 Acceptable use policy

- 17.1 You must at all times, not use the Proximity solution or allow it to be used in any way:

- (a) which results in you or us breaching any applicable law, regulation, standard or code;
- (b) which results, or could result in damage to property or injury to any person;
- (c) to engage in any form of harassment or discrimination;
- (d) to send, display or be otherwise involved in material which is obscene or defamatory or which would be considered by a reasonable person to be offensive or abusive;
- (e) which infringes our or any other person's intellectual property or other rights;
- (f) to misuse our or any other person's confidential information;
- (g) that interferes with our, or any other person's, network or equipment;
- (h) which introduces malicious programs (e.g. viruses, worms or trojans etc) into our, or any other person's, network or equipment;
- (i) to send unsolicited mass mailings outside your company or organisation; or
- (j) not expressly allowed under this section.

### 17.2 You must at all times:

- (a) comply with all applicable laws and regulations, including in relation to privacy, particularly as it relates to the collection of any personal information from your end users and other third parties;
- (b) not engage in any activity or conduct that would cause us to breach or be taken to breach of any laws, including any privacy laws;
- (c) not reverse engineer, decompile or otherwise discover the application programming interface or any other component of the Proximity solution; or
- (d) not resell or resupply the Proximity solution, unless we otherwise agree in writing.

17.3 We may immediately suspend or terminate your Proximity solution at any time without notice to you if we reasonably believe you have breached this clause 17.

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## 18 Software and licence terms

### What are the licence conditions and Documentation?

18.1 The licence for each unit of Software starts on the date the Software is provided to you and continues until expiry or termination of the relevant Proximity service.

18.2 We may from time to time, give you revised or supplementary Documentation, relating to changes to the way you use or interface with the Software. You must comply with that Documentation at all times.

18.3 Subject to clause 18.1 and the remainder of this clause 18, we grant you a non-exclusive licence to use at your Sites, the Software on the Equipment Hardware and the Documentation solely in relation to your Proximity solution.

18.4 You must not (and must not allow any third party to):

- (a) copy, alter, modify, tamper with, decompile, disassemble, reverse engineer or attempt to reverse engineer the Software or otherwise attempt to derive the Software's source code from the object code except to the extent the law allows;
- (b) sell, rent, lease, assign or otherwise transfer the Software or any of the Documentation, or sub-license any rights in relation to the Software or Documentation; or
- (c) remove, alter or tamper with any notices that appear on the Software or Documentation.

### **What happens when the licence expires?**

18.5 On expiry, cancellation or termination of a unit of the Software (or expiry of the Defect Warranty Period in relation to the Equipment Hardware on which that unit of Software is installed):

- (a) you must immediately cease using that unit of Software;
- (b) we no longer provide any services in respect of that unit of Software; and
- (c) we may switch off your access to the Software.

18.6 Termination, cancellation, suspension or expiry of a licence at a Site doesn't affect the licences at other Sites, this section's continuation, or your obligation to pay the charges for you Proximity solution.

### **Modifications to the Software**

18.7 From time to time, we may offer you Modifications which relate to the maintenance of the Software.

18.8 You don't have to accept a Modification, but if you do accept:

- (a) during its Defect Warranty Period, the licence fee for the relevant Proximity service won't increase; and
- (b) this section applies in all respects to the Modification.

18.9 If you don't accept a Modification, we:

- (a) aren't liable for any matter in connection with the Software, where such liability wouldn't arise or would've been reduced or mitigated, had you accepted the Modification; and

- (b) may charge you, on a time and material basis at our then standard rates, for any support we provide to remedy or support any defect in the Software that the Modification has fixed.

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## 19 Security of user accounts

- 19.1 You're responsible for ensuring the confidentiality of any user accounts or authentication details issued to you as part of the Proximity solution.
- 19.2 We're not liable for any loss or damage that you or any other person suffer as a result of your use of the Proximity solution or from you disclosing your user account or authentication details.

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## 20 Term and termination

- 20.1 Each Proximity service has its own individual term. This term:
  - (a) begins on the date your Proximity service is installed, implemented and running at a Site, which we can confirm on request; and
  - (b) continues for the minimum term specified in your Application Form, unless terminated or renewed.
- 20.2 On expiry of the minimum term, each Proximity service's term automatically extends on a month-to-month basis on the existing terms (including price), unless a party notifies the other (at least 30 days before any automatic extension) that it does not wish the term to extend automatically.

### Early termination charges

- 20.3 If during the minimum term, a Proximity service is cancelled for any reason other than our material breach, we may charge you any waived charges and an amount calculated as follows:

$$A \times B \times 80\%$$

"A" = the average service charges paid or payable each month by you for the relevant Proximity service, up to the date of cancellation.

"B" = the number of months (or part of a month) remaining in the minimum term for the relevant Proximity service.

- 20.4 You agree the amounts in clause 20.3 are a genuine pre-estimate of the loss we're likely to suffer.

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## 21 Special meanings

- 21.1 The following words have the following special meanings:

**Application Form** means the Telstra application form used to order the Proximity solution, as we update from time to time.

**Business Day** means Monday to Friday (excluding public holidays).

**Business Hours** are 8am to 5pm (AEST) on Monday to Friday (excluding public holidays).

**Defect Warranty Period** begins on the date we first provide the Proximity service to you and continues until the expiry or termination of your relevant Proximity service.

**Delivery Schedule Delay** has the meaning given in clause 8.3(b).

**Documentation** means handbooks, information, drawings or other documents or material form (whether in written or electronic form) which we may give you to facilitate your use, operation and maintenance of the Proximity solution.

**Equipment** means the Equipment Hardware and Software.

**Equipment Hardware** means the standard hardware included in your Proximity solution and any additional hardware we agree to provide you as part of the Proximity solution, as set out in your Application Form.

**Helpdesk** has the meaning given in clause 13.3.

**Modification** includes an alteration, enhancement, development, maintenance or repair. Modify and Modified have corresponding meanings.

**Our Proximity Solution** has the meaning given in clause 13.3.

**Proximity** is described in clause 2. A Proximity service means individual Proximity services at a Site and the Proximity solution means all of the Proximity services at all Sites.

**Personnel** means a person's officers, employees, agents, contractors and sub-contractors and in our case includes our Related Bodies Corporate.

**Related Body Corporate** has the meaning given to it by the Corporations Act 2001 (Cth).

**Sites** means each agreed site in Australia, as set out in your accepted Application Form, at which Equipment is installed or to which a Proximity service is provided.

**Software** means the standard software included in your Proximity solution and any additional software (including the Wi-Fi App) we agree to provide you as part of the Proximity solution.

**Support Hours** has the meaning given in clause 13.5.

**Wi-Fi App** has the meaning given in clause 6.1.

**Your Components** has the meaning given in clause 4.1.