

## NEXTDC Remote Hands Terms and Conditions

- 1) This agreement, in addition to the terms on the above notice, is legally binding and governs your use of Remote Hands services at the Facility.
- 2) If the User enters this Agreement on behalf of a company or other legal entity, then the User represents that it has the authority to bind such entity to these terms and conditions.
- 3) For the purposes of this Agreement, Remote Hands services mean minor technical services that the User/Customer requests NEXTDC to provide as set out on NEXTDC's website as amended from time to time. It does not include services or work that requires a greater level of skill than the services listed above or which the NEXTDC team is prepared to provide. Should the User/Customer request NEXTDC to perform any system critical work or any works which otherwise fall outside the definition of Remote Hands Services, usual scope and/or NEXTDC's current practice, NEXTDC will require the Customer to complete such checklist and provide further details/information as NEXTDC considers fit to perform such works (if agreed).
- 4) NEXTDC shall use reasonable efforts to perform Remote Hands services requested and agreed to be provided. NEXTDC otherwise reserves its right to decline and/or terminate any request for Remote Hands services as it sees fit, in its absolute and sole discretion.
- 5) The provision of Remote Hands services is subject to availability of a site technician at the Facility in NEXTDC's sole discretion.
- 6) NEXTDC does not provide any warranty or guarantee in relation to any services provided or not provided under this Agreement, or that performance will occur within a specific timeframe (unless stipulated otherwise). The Customer further agrees and acknowledges that NEXTDC's action or inaction may not cause the requested result, and, depending on the circumstances, may have adverse consequences.
- 7) NEXTDC may require the Customer to raise any security restrictions to the degree necessary to gain access to the Data Centre Space and perform the Remote Hands Services. Any security access the User/Customer provides NEXTDC will remain at the Customer's sole risk. The Customer indemnifies NEXTDC in this regard in accordance with clause 12 of this Agreement.
- 8) Notwithstanding any terms to the contrary in agreements preceding this agreement. Remote Hands services requested to be provided shall be exclusively dealt with pursuant to these terms and the above notice.
- 9) NEXTDC shall not be liable for any loss or inconvenience suffered, or liability (including any loss of data, business interruption, loss of opportunity or any consequential, indirect or other loss, whether reasonably foreseeable or not), suffered or incurred by the User/Customer or any third party (including, without limitation, any end-user of the Customer) as a result of carrying out Remote Hands services or for any steps reasonably taken by NEXTDC to implement the Customer/User's instructions. In any other case, the aggregate liability of NEXTDC (for all claims whenever and however made) for any loss or damage, however caused (including, without limitation, as a result of the negligence of NEXTDC), is limited to the greater of:
  - (i) The cost charged by NEXTDC for providing the Remote Hands service that was the result of such a claim; or
  - (ii) \$100.00 (AUD).If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to Remote Hands services and NEXTDC's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clause 9 does not apply to that liability and instead NEXTDC's liability for such failure is limited to (at NEXTDC's election):
  - (i) in the case of a supply of goods, NEXTDC replacing the goods, NEXTDC replacing the goods or supplying equivalent goods or repairing the goods; or
  - (ii) in the case of a supply of services, NEXTDC supplying the services again or paying the cost of having the services supplied again.
- 10) Without limiting the effect of clause 9, the Customer's right to terminate a request for Remote Hands services shall be the Customer's sole and exclusive remedy and NEXTDC's sole and exclusive obligation in the event that NEXTDC is unable to provide Remote Hands assistance, any failure to fulfil the Remote Hands request as requested by the Customer, or any related acts or omissions.
- 11) To the extent that any exclusion or limitation of direct or consequential loss/damages is not allowed within the jurisdiction, only that portion of such limitation or exclusion may not apply.
- 12) The Customer agrees to indemnify and keep NEXTDC indemnified and hold it harmless from and against any action, claim, proceeding or allegation by or on behalf of the Customer or any third party relating to or connected with the Remote Hands Services ("**Claim**"), including but not limited to:
  - (i) any direct or indirect loss of any kind or alleged by such parties; or
  - (ii) any loss, corruption, interception, destruction or interruption of any data or material of any kind whatsoever transmitted or caused by Remote Hands services or any breach of security to it or a third parties systems; or
  - (iii) any legal fees costs or disbursements incurred by NEXTDC in defending or answering any such Claim on a client-solicitor basis.
- 13) Each indemnity under this Agreement is a continuing obligation, notwithstanding any settlement of account, or the occurrence of any other thing and it is not necessary for NEXTDC to incur expense or make payment before enforcing or making a claim under this indemnity.
- 14) By submitting the Customer's Remote Hands Services request/instructions ("**Request**"), Customer/User warrants and agrees that:
  - (i) the Request is complete, correct and current as at the date of the Request and for the target date the work is to be carried out, and sufficiently clear to enable performance of the services.
  - (ii) it is authorised to issue the Request and the Request is not in breach of any regulatory or contractual obligation.
  - (iii) it has notified all affected third parties and has obtained and continues to hold (where necessary) their valid written consent (and NEXTDC shall be entitled to request evidence of such consent).
  - (iv) it hereby indemnifies NEXTDC in accordance with clause 12 for any failure under this clause 14.
  - (v) NEXTDC may subcontract the performance of any Remote Hands services, in whole or in part, to any person provided that it remains fully liable for all its obligations under this Agreement. By submitting a Remote Hands services request, the Customer consents to such subcontracting, at NEXTDC's sole discretion; and
  - (vi) These terms superseded the terms of any Customer Contract or the Master Services Agreement agreed between the parties in relation to the provisions of Remote Hands Services.