

PRODUCT SCHEDULE

NEC UNIVERGE BLUE® SHARE

This NEC UNIVERGE BLUE® SHARE Product Schedule (this “**Schedule**”) between NEC Australia Pty Ltd. or the reseller of Services from which the applicable Service has been purchased (“**Company**”) and customer (“**You**”) is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement (the “**MSA**”) by and between Company and You. The terms and conditions of this Schedule are applicable to the SHARE service only, and “**Service**” as used in this Schedule refers only to the SHARE service.

1. **CUSTOMER PRICING.** Details of Service-specific pricing as negotiated between You and Company can be accessed via the administrator access point (i.e., the administrative control panel) or other web portal that may be provided or made available by Company.
2. **GENERAL TERMS.** All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless otherwise defined herein. In the event of an express conflict between the terms of the MSA and the terms of this Schedule, this Schedule shall govern.
3. **UPDATES TO THE SERVICE.** Company reserves the right, in its sole discretion, to make unscheduled deployments of changes, updates or enhancements to the Service at any time. Company, in its sole discretion, may add or remove functionalities or features of the Service, and Company may suspend or stop the Service altogether.
4. **USE OF THE SERVICE.** By downloading or using the Client Software (as defined in Section 6.1) or accessing or using the Service, You:
 - 4.1 Agree that the Client Software and Service are licensed (not sold) to You, and that Company reserves all rights not expressly granted to You in this Schedule or in the MSA;
 - 4.2 Consent to the collection, use, sharing and transfer of Your Data, as outlined in the Company’s Privacy Policy (available at <https://www.univerge.blue/legal>) as updated from time to time, which is hereby incorporated by reference;
 - 4.3 Agree to the policies governing Your use of the Service, including without limitation the Company’s Acceptable Use Policy and DMCA (Digital Millennium Copyright Act) Policy (each of which is available at <https://univerge.blue/legal>), as such policies may be updated from time to time;
 - 4.4 Agree that when you establish a shared folder on the Service or when files are otherwise shared with You by third parties (such as Your collaborators), the shared files may contain offensive, inappropriate or harmful content, and You understand and agree that Company does not have an obligation to review the content of files and will not in any way be responsible for the content of files;
 - 4.5 Agree that Your license to use the Client Software and the Service may be automatically terminated by Company if You violate this Schedule, the MSA or any of Company’s applicable policies;
 - 4.6 Agree not to reverse engineer, decompile, or otherwise attempt to discover the source code of the Service or any part thereof (including Client Software), except and only to the extent that applicable law expressly requires that such activity be permitted, notwithstanding this limitation; and
 - 4.7 Agree that third-party terms and fees may apply to the use and operation of Your mobile device in connection with Your use of the Client Software or the Service, such as Your carrier’s terms of services, fees for phone service, Data access, or messaging capabilities, and that You are solely responsible for payment of any and all such fees.

5. DATA.

5.1 Ownership. Company does not claim ownership of any Data (including any files or folders) that You upload, transmit, or store using Your account(s) on the Service. Company does not control, verify, or endorse the Data that You and others make available on the Service.

5.2 License to Company. By posting, publishing, transmitting or storing Your Data using the Service, You grant Company a worldwide, non-exclusive, royalty-free right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify, and distribute Your Data, in whole or in part, in any media formats and through any media channels (now known or hereafter developed) for the purpose of providing You the Service.

5.3 License to Third Parties. By posting and sharing Your Data with another person using the functionality of the Service, You hereby grant that person a non-exclusive license to access and use such Data as permitted by the functionality of the Service.

5.4 Confidentiality. Notwithstanding anything to the contrary in the MSA, the Data that You upload, transmit, or store using Your account(s) on the Service, will not be considered Confidential Information as defined in the MSA. Company's collection, use, storage, and disclosure of such Data will be governed by Company's Privacy Policy.

5.5 Data Representations and Warranties; Liability for Data; Unauthorized Access. You represent and warrant to Company that: (a) You have all the rights in the Data necessary for You to use the Service and to grant the rights in this Section 5; and (b) the storage, use and/or transmission of the Data in connection with the Service does not and will not violate any law, regulation or this Schedule. You will: (i) be solely responsible for the nature, quality and accuracy of the Data; (ii) ensure that the Data (including the storage, use and/or transmission thereof) complies with this Schedule and any and all applicable laws and regulations; (iii) promptly handle and resolve any notices and claims relating to the Data, including any notices sent to You by any person claiming that any Data violates any person's rights, such as take-down notices pursuant to the Digital Millennium Copyright Act and any other notices; and (iv) maintain appropriate security, protection and backup copies of the Data, which may include Your use of additional encryption technology to protect the Data from unauthorized access. Company will have no liability of any kind as a result of the deletion of, correction of, destruction of, damage to, loss of or failure to store or encrypt any Data. You must immediately notify Company in writing of any unauthorized use of any Data, Account or the Service that comes to Your attention. In the event of any such unauthorized use by any third party that obtained access through You, You will take all steps necessary to terminate such unauthorized use. You will provide Company with such cooperation and assistance related to any such unauthorized use as Company may reasonably request.

5.6 Obligations. Company is under no obligation to edit or control Data that you or other Users post or publish, and Company will not be in any way responsible or liable for such Data. Company may, however, at any time and without prior notice, screen, remove, edit, or block any Data that in Company's sole judgment violates this Schedule, the MSA, or is otherwise objectionable. You understand that when using the Service you will be exposed to Data from a variety of sources and acknowledge that Data may be inaccurate, offensive, indecent or objectionable. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Company with respect to Data. Company expressly disclaims any and all liability in connection with Data. If notified by a user or content owner that Data allegedly does not conform to the MSA, Company may investigate the allegation and determine in its sole discretion whether to remove the Data, which Company reserves the right to do at any time and without notice. For clarity, Company does not permit copyright-infringing activities on the Service.

6. SHARE CLIENT SOFTWARE.

6.1 Definition. For purposes of this Schedule, the following definition applies:

6.1.1 “Client Software” means all downloadable or installed software that allows a computer or mobile device to access or use the Service, including applications for iOS, Android or Blackberry and clients/plugins for Windows OS, Mac OS, Microsoft Office, and Microsoft Outlook.

6.2 Use of Client Software. The use of Client Software is governed by the terms and conditions of the MSA, including this Schedule, and may also be governed by additional license terms that You (or a User) must accept in order to use the Client Software (such license terms, an “**End User License Agreement**”). To the extent there is an express conflict between these terms and any End User License Agreement, the terms of the applicable End User License Agreement will govern. You may use the Client Software only in accordance with the MSA and any applicable End User License Agreement, and only in connection with the Service.

6.3 Updates to Client Software. Company may automatically check Your version of the Client Software. Company may also automatically download to Your computer or device new versions of the Client Software, and automatically upgrade old versions of Client Software with new versions of Client Software.

6.4 Export Restrictions. The Client Software is of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Client Software, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and foreign governments.

7. SERVICE RESTRICTIONS AND DISCLOSURES. The Service is subject to the following additional restrictions and disclosures:

7.1 Restrictions on “Unlimited” Package. Company’s “Unlimited” package of the Service is subject to the following limitations:

- a. There is a five-user minimum per account when purchasing the Unlimited storage package of the Service; and
- b. There is a 1TB/user limit when using “File Server Sync” in conjunction with the Unlimited storage package of the Service. When such accounts reach the 1 TB/user limit, Company’s standard Additional Storage pricing for the Service will immediately apply.

7.2 Potential Administrator Access to Users’ Personal Data. The Service is configured to back up the Data stored on identified devices. If any such identified device contains a User’s personal Data (such as a device (e.g., laptop or mobile phone) on which a User stores both business and personal Data), a copy of such personal Data will be stored in the backups created for such device and will therefore potentially be visible to Account administrators. The Administrator File Management feature of the Service is not enabled by default; however, if the Account owner enables such feature, the Account administrators will have the ability to view any Data stored in the backups, including without limitation any Users’ personal Data contained therein.

7.3 Retention and Deletion of Data.

- a. Retention Policy for File Versions and Deleted Items. The Service provides Account administrators the ability to limit the retention period for previous file versions and Share “Deleted Items.” If such retention period is changed by an Account administrator, then previous file versions and “Deleted Items” will be automatically and permanently deleted based on the retention period established by the Account administrator. Company is not responsible for any Data loss that You suffer due to the aforementioned changes in the retention period or policy settings for Your Account

(including, without limitation, the permanent destruction of Your Data as a result).

- b. Permanent Deletion of Deleted Items. The Service provides Account administrators the ability to either (i) prevent Users from permanently deleting Deleted Items or (ii) allow Users to permanently delete Deleted Items. Company is not responsible for any damages (including without limitation Data loss or unintended retention of Data) that You suffer due to the deletion settings on Your Account, regardless of whether Your account uses the default settings or such settings are changed by an administrator.
- 8. COPYRIGHT, TRADEMARK AND PATENT NOTICES.** You must not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Client Software. You have no right to use any Company logos in any manner whatsoever. You must not undertake any action that will interfere with or diminish Company's right, title and/or interest in the trademark(s) or trade name(s).
- 9. NO RENTAL OR SUBLICENSING.** You may not sublicense, rent, lease, lend, pledge, or directly or indirectly transfer or distribute Client Software to any third party, and You may not permit any third party to have access to and/or use the Client Software or Service, except for Your Users and third parties with whom You share Your files, as permitted by the Service.
- 10. SUSPENSION AND TERMINATION OF CUSTOMER'S USE OF THE SERVICE.** Company reserves the right, in Company's sole discretion, to temporarily suspend or terminate Your access to the Service at any time, with or without cause, and with or without notice, without incurring liability of any kind. For example, Company may suspend or terminate Your access to or use of the Service for: (a) an actual or suspected violation of the MSA; (b) the use of the Services in a manner that may cause Company to have legal liability or disrupt others' use of the Services; (c) the suspicion or detection of any malicious code, virus or other harmful code by You or in Your account; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity or bandwidth; or (f) unplanned technical problems and outages. If, in Company's determination, the suspension might be indefinite and/or Company has elected to terminate Your access to the Service, Company will use commercially reasonable efforts to notify You through the Service. You acknowledge that if Your access to the Service is suspended or terminated, You may no longer have access to the Data that is stored with the Service. In the event of termination or cancellation, You must (i) stop using and/or accessing the Client Software and the Service and (ii) destroy all copies of the Client Software and all of their component parts.

11. WARRANTY ON SERVICES

In this clause 11.1:

"Consumer" means a consumer as defined by section 3 of the Australian Consumer Law;

"Consumer Contract" means a contract for the acquisition of goods or services as a 'consumer' as that term is defined in section 3 of the Australian Consumer Law;

11.1.1 Where the Customer acquires Services as a Consumer, then NEC warrants that:

- a) The Services will be provided with due care and skill;
- b) The Services will be fit for any represented purpose made known by the Customer; and
- c) The Services will be completed within a reasonable time.

11.1.2 NEC further warrants that the Services come with guarantees that cannot be excluded under the Australian Consumer Law.

(i) For major failures with the service, the Customer is entitled:

- to cancel the service contract with NEC; and
- to a refund for the unused portion, or to compensation for its reduced value

- The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage.

(ii) If the failure does not amount to a major failure, the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the contract and obtain a refund for the unused portion of the contract.

(ii) The remedies in clauses 11.1.2 will not be available to the Customer where NEC fails to meet one of the consumer guarantees due to the acts of a third party or acts beyond the reasonable control of NEC after the services were supplied.

11.1.3 Except where the Services are acquired under a Consumer Contract, NEC does not give any warranty that the Services purchased under this Agreement are fit for any particular purpose.

11.1.4 All express or implied terms, conditions, warranties, statements, assurances and representations in relation to any Services are hereby expressly negated save for the terms or conditions necessarily implied by law;

12. LIABILITY OF COMPANY

UNDER NO CIRCUMSTANCES WILL COMPANY, OR ITS EMPLOYEES, DIRECTORS, CONTRACTORS, OR AGENTS, BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER ARISING OUT OF THE USE OR INABILITY TO USE THE CLIENT SOFTWARE OR THE SERVICE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THE MSA EXCEED THE AMOUNTS PAID BY YOU FOR ACCESS TO AND USE OF THE SERVICE IN THE SIX (6) MONTHS PRIOR TO EVENT GIVING RISE TO SUCH LIABILITY. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

12.1 INDEMNIFICATION: You agree that You will be responsible for Your use of the Service and any Client Software, and You agree to defend, indemnify, and hold harmless Company and its officers, directors, employees, consultants, affiliates, subsidiaries and agents from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with (a) Your access to, use of, or alleged use of the Service; (b) Your violation of the MSA, this Schedule or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (c) Your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (d) any disputes or issues between You and any third party. Company reserves the right, at Company's own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by You (and without limiting Your indemnification obligations with respect to such matter), and in such case, You agree to cooperate with Company's defense of such claim.