

MASTER AGREEMENT

Recitals

- A. NTT Com ICT Solutions (Australia) Pty Ltd, ABN 61 059 040 998 (the “**Supplier**”) is experienced in the provision of Services described in this Master Agreement collectively known as information and communications technology (“**ICT**”) services and products.
- B. The Customer plans to acquire ICT Services and Products (“**ICT Services**”) from the Supplier under this Master Agreement from time to time.
- (b) the Service Schedule (or Quotation in the case of Infrastructure Resale Services only);
- (c) this Master Agreement.
- 1.1.11 Capitalised terms have the meanings set out in the Master Agreement Definitions which are available at the following URL: <https://www.nttict.com/legal/>

Agreed Terms

1 INTERPRETATION

- 1.1 In this Master Agreement, except where the context otherwise dictates:
- 1.1.1 A reference to a:
- (a) party includes a party’s successor in title, permitted substitute, permitted assign, executor or administrator of that party;
- (a) person includes a natural person, a body corporate, a joint venture, partnership, and any other type of entity;
- (b) clause, section, paragraph, schedule, attachment or annexure is to a clause, section or paragraph of, or schedule, attachment or annexure to, this Master Agreement, and a reference to this Master Agreement includes any schedule, attachment or annexure;
- 1.1.2 The expressions “includes” and “including”, “for example” and similar expressions do not limit the scope of the right, obligation or concept referred to;
- 1.1.3 Words in the singular include the plural and vice versa and a word, which suggests one gender, includes the other genders;
- 1.1.4 If a word or phrase is defined, other grammatical forms of that word or phrase have corresponding meanings;
- 1.1.5 Monetary references are to Australian currency, unless expressly stated otherwise;
- 1.1.6 Headings are for convenience and do not affect interpretation;
- 1.1.7 Any reference to a provision of a statute, regulation, proclamation, ordinance or by-law includes reference to that provision as amended, consolidated or replaced regardless of whether that became law before or after this Master Agreement or an Agreement;
- 1.1.8 No provision will be construed adversely to a party solely on the basis that the party was responsible for the preparation of that provision.
- 1.1.9 Where the day on or by which an act is to be done is not a Business Day, that act must be done on or by the next Business Day; and
- 1.1.10 Unless otherwise agreed in an Order Form, in the event of any conflict between the documents comprising an Agreement, the conflict will be resolved in the following order of precedence:
- (a) the Order Form, including any special conditions, provided however that no special condition in an Order Form will be taken to override these terms and conditions (or the Standard Terms and Conditions for the Supply of Goods, if applicable), unless the provision being overridden is expressly and specifically identified;
- (b) the Service Schedule (or Quotation in the case of Infrastructure Resale Services only);
- (c) this Master Agreement.
- 1.1.11 Capitalised terms have the meanings set out in the Master Agreement Definitions which are available at the following URL: <https://www.nttict.com/legal/>
- #### 2 TERMS OF BUSINESS AND FORMATION OF THE CONTRACT
- 2.1 The Customer may request the supply of ICT Services to the Customer or to the Customer’s Related Body Corporate by executing an Agreement.
- 2.2 Each Order Form executed constitutes a separate and independent Agreement. For clarity, multiple Order Forms may be executed under one Service Schedule, each constituting a separate Agreement.
- 2.3 Where the Customer issues a purchase order to the Supplier in connection with an Agreement:
- 2.3.1 in the case of Infrastructure Resale Services where a Quotation has been provided to the Customer by the Supplier:
- (a) the purchase order must reference the Quotation number; and
- (b) subject to section 2.3.1(a), the Agreement will be deemed executed by the Customer and the purchase order will be deemed to be the Order Form whether or not the Customer has signed an Order Form;
- 2.3.2 for Services other than Infrastructure Resale Services:
- (a) the purchase order must reference the Order Form number; and
- (b) the Customer must execute both the Service Schedule and Order Form to form an Agreement.
- 2.4 The Supplier’s obligations under an Agreement may be performed by the Supplier or a third party subcontractor appointed by the Supplier, in which case the Supplier remains responsible for ensuring that the third party complies with the Agreement.
- 2.5 The Supplier’s responsibility for third party performance in section 2.4 does not apply to Infrastructure Resale Services and other Services where Third Party Terms are specified in the applicable Agreement. Third Party Terms are entered into by the applicable third party licensor of the Software or the manufacturer of the Product, and the Customer.
- 2.6 The Supplier may require that the Customer completes the Supplier’s Credit Application Form which is available at the following URL: <https://www.nttict.com/legal/> and is satisfied as to the continued credit worthiness of the Customer prior to supplying Services and/or Products under an Agreement.
- 2.7 The Supplier will assign an account manager to manage the relationship with the Customer during the Term.
- #### 3 TERM
- 3.1 This Master Agreement continues until terminated in accordance with section 13 (“**Term**”).
- 3.2 An Agreement commences on the Effective Date and continues for the period specified in the Order Form.
- 3.3 Unless otherwise agreed in the Order Form, when the Minimum Service Period expires, the Agreement will continue on a rolling month-to-month basis until one party gives the other party 45 days’ Notice of its intent to terminate the Agreement.

4 INVOICING AND PAYMENT

- 4.1 Charges will be specified in the Order Form, including one-off and recurring Charges as applicable. Tax invoices may be sent by email to the address notified in writing by the Customer. The Customer must pay the Charges, plus GST and any other current or future tax, regulatory charge or impost applying to the Services or Products within 30 days of receipt of a tax invoice without any set off or deduction.
- 4.2 Subject to section 4.3, if the Customer fails to pay an undisputed tax invoice when due, the Supplier may, in addition to its other remedies, charge interest (accruing daily) on the overdue sum at the rate of 2% per annum above the Westpac Banking Corporation business overdraft rate or the maximum permitted by law from the date the payment was due until payment of the overdue sum, together with all reasonable costs incurred by the Supplier in recovering the overdue amount, provided the Supplier gives the Customer reasonable notice of its intent to do so.
- 4.3 The Customer may only withhold payment of that part of an invoice that the Customer disputes in good faith and on reasonable grounds until such dispute has been resolved in accordance with section 18, or as otherwise agreed in writing. Notwithstanding the foregoing, payment may only be withheld provided notice of the disputed amount is delivered to the Supplier on or before the due date for the disputed payment.
- 4.4 The Supplier may increase the Charges on 30 days' notice if the prices or inputs payable by the Supplier for obtaining any goods or services required to provide the Services are materially altered as a result of a Government, regulatory, or Utility Service Provider action. If the rates charged to the Supplier are altered retrospectively such altered rates may also be applied retrospectively. If, following such alteration, the revised Charges are not acceptable to the Customer, the Customer may terminate the applicable Agreement on 30 days' Notice to the Supplier from the date of its receipt of the notification of the revised Charges. The Customer's failure to terminate the applicable Agreement pursuant to this section will constitute a deemed acceptance by the Customer of the revised Charges. If the Customer terminates an Agreement under this section during the Minimum Service Period, the Customer must pay the Charges and expenses incurred by the Supplier to the date of termination but will not be required to pay the Charges for the remainder of the Minimum Service Period.

5 WARRANTIES AND DISCLAIMER

- 5.1 Subject to section 8, the Supplier warrants that:
- 5.1.1 the Services will be provided with all reasonable care and skill of a competent provider of similar ICT Services. The Customer must provide Notice to the Supplier within 5 Business Days of delivery of Services of any failure by the Supplier to comply with this warranty to enable corrective action to be taken by the Supplier; and
- 5.1.2 the Services will comply with any specifications set out in the Agreement.
- 5.2 Subject to section 8, to the extent it is legally able to do so, the Supplier will make available to the Customer any standard manufacturer warranties for Products.
- 5.3 The Customer acknowledges that any Products provided to the Customer by the Supplier is provided on an 'as-is' basis.
- 5.4 Without limiting section 8, the Supplier does not warrant:
- 5.4.1 that Products or Services will be free from error, interruption or external intrusion;
- 5.4.2 the results that may be obtained from the use of the Products or Services or the accuracy, reliability or content of any information contained in or provided through the Services; or

- 5.4.3 the quality, content or accuracy associated with any products, services or information provided by a third party received by the Customer through or as a result of the use of the Services.

- 5.5 Subject to section 8.1, the Supplier is not responsible for:

- 5.5.1 any defect in the Services or Products arising from:
- (a) any drawing, design or specification supplied by the Customer;
- (b) fair wear and tear, wilful damage, negligence, or abnormal working conditions imposed by the Customer, failure by the Customer or an End User to follow the Supplier's or the manufacturer's instructions (whether oral or in writing), misuse, alteration or repair of the Services or Products by the Customer or an End User without the Supplier's or the manufacturer's approval;
- (c) any unauthorised modifications or customisation of the Products provided by the Supplier;
- 5.5.2 any parts, materials or equipment in respect of which the Customer is entitled to the benefit of any warranty or guarantee given by the manufacturer;
- 5.5.3 the performance of any Software, or the equipment, products, services or information provided by a third party other than a subcontractor of the Supplier, and used by the Supplier in providing the Services;
- 5.5.4 incorrect or unauthorised use of the Products that is not in accordance with the corresponding operating manuals; or
- 5.5.5 content or use of any Data transferred either to or from the Customer or stored by the Customer or any End User via the Services.

- 5.6 The Customer warrants that:

- 5.6.1 it has the right to use and to permit the Supplier to use all software, material, data or documents provided by or on behalf of the Customer to the Supplier for the provision of the Services, and that the caching of Customer Data, if required to perform the Services, will not infringe the Intellectual Property Rights or privacy rights of the Customer or any third party;
- 5.6.2 neither the Customer nor its officers, employees or contractors have relied on any representation, promise or undertaking made by or on behalf of the Supplier which is not expressly set out in the Agreement.

- 5.7 The Customer acknowledges and agrees that the Supplier exercises no control over, and accepts no responsibility or liability for, the content of the information (including but not limited to the Customer Data) passing through the Supplier's host computers, Network hubs and points of presence or the Internet.

- 5.8 Each party represents and warrants to the other that:

- 5.8.1 it will perform its obligations so as to avoid hindering the performance of the other party;
- 5.8.2 it will act in a collaborative manner, reasonably and in good faith with respect to matters that arise out of, or in connection with, this Master Agreement and each Agreement;
- 5.8.3 it will comply with all laws and regulations applicable to it; and
- 5.8.4 the persons signing on its behalf have full authority and right to enter into this Master Agreement and each Agreement.

6 CUSTOMER RESPONSIBILITIES

- 6.1 In addition to any responsibilities of the Customer specified in an Agreement, the Customer must:
- 6.1.1 provide the Supplier with sufficient and safe access (including remote access) to the Customer's Location (including facilities, systems, information, personnel, and resources), without charge to the Supplier, as reasonably required by the Supplier to perform its obligations under the Agreement;
- 6.1.2 undertake such tasks assigned to it by the Supplier under a Service Schedule, and provide timely information and direction to the Supplier upon the Supplier's reasonable request to enable the Supplier to fulfil its obligations under the Agreement;
- 6.1.3 ensure that, where Services or Products are provided to a Related Body Corporate of the Customer, the Related Body Corporate complies with the Agreement. Any failure by a Related Body Corporate of the Customer to observe the obligations (including payment) of the Customer under an Agreement will be deemed to be a breach of that Agreement by the Customer for which the Customer will be responsible. The Customer indemnifies the Supplier for all loss and damage incurred as a result of a failure of a Related Body Corporate of the Customer to observe the obligations (including payment) of the Customer under the Agreement; and
- 6.1.4 comply with the Acceptable Use Policy as it applies to Network Services.
- 6.2 The Supplier is not liable for any failure or delay in performing its obligations under an Agreement to the extent such failure or delay was caused or contributed to by the Customer's failure to comply with section 6.1 or any other obligation under an Agreement. Any additional costs incurred by the Supplier as a result of the failure or delay of the Customer, its Related Body Corporate, or a subcontractor of the Customer or of a Customer Related Body Corporate affecting the Supplier in performing the Services, will be charged to the Customer.

7 SUPPLIER EQUIPMENT

- 7.1 Where the Supplier provides Supplier Equipment:
- 7.1.1 title to the Supplier Equipment remains with the Supplier and the Customer must not lease, transfer, sell or grant any security interest over the Supplier Equipment;
- 7.1.2 risk and responsibility for the safe keeping of the Supplier Equipment transfers to the Customer upon delivery of the Supplier Equipment to the Customer's Location and remains with the Customer until the Supplier has regained possession of the Supplier Equipment;
- 7.1.3 the Customer must:
- obtain any consents required to install the Supplier Equipment at the Customer's Location;
 - ensure that the Customer's public liability insurance policy extends cover to the Supplier Equipment against loss or damage whilst at the Customer's Location;
 - take all necessary action to prevent the Supplier Equipment being interfered with or damaged and return it to the Supplier upon the Supplier's request;
 - conduct at its cost any scheduled maintenance of the Supplier Equipment, where such maintenance is specified in the Agreement; and
 - permit the Supplier to access the Supplier Equipment at the Customer's Location upon reasonable request, provided that the Supplier complies with the Customer's security policies notified in writing to the Supplier.

- 7.1.4 the Supplier may:

- consult with the Customer in respect to the installation of the Supplier Equipment, provided that the Supplier retains the right to make all decisions in relation to the routing of cables and the positioning of the Supplier Equipment; and
- in its sole discretion and upon prior Notice to the Customer, change, modify or remove the Supplier Equipment, provided that the Supplier remains responsible for performing the Services in accordance with the Agreement.

8 LIMITATION OF LIABILITY

- 8.1 To the extent permitted by applicable law, conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Master Agreement.
- 8.2 Where the applicable law prescribes a remedy or liability for breach of a statutory guarantee or warranty for the supply of Services or Products, the Supplier's liability is limited to the prescribed remedy or liability.
- 8.3 Without limiting section 8.2, if a supply under an Agreement is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), nothing in this Master Agreement excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent the Australian Consumer Law permits the Supplier to limit its liability, then the Supplier's liability will be limited to:
- in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
 - in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- 8.4 Subject to section 8.5, nothing in this Master Agreement operates to exclude or restrict a party's liability for:
- death or personal injury (including sickness) for which that party is legally liable;
 - breach of confidentiality or privacy; or
 - fraud or fraudulent misrepresentation.
- 8.5 In no circumstances will a party be liable for loss of revenue; loss of profits or anticipated savings; loss of business or goodwill; loss or corruption of data; or for any indirect, special or consequential loss or damage, however caused, even if the other party was advised of or aware of the possibility for such liability.
- 8.6 Subject to section 8.7, the liability of a party in contract, tort, breach of statute, or other legal theory arising out of or in relation to the provision of Services and Products under an Agreement, is limited in aggregate to:
- where Infrastructure Resale Services or Professional Services are provided, an amount equal to the Charges in respect of the Infrastructure Resale Services or Professional Services (as applicable); and
 - where Services other than Infrastructure Resale Services or Professional Services are provided, an amount equal to the Charges paid or payable by the Customer to the Supplier under the Agreement during the twelve (12) month period immediately preceding the claim.
- 8.7 The liability of a party in contract, tort, breach of statute, or other legal theory for damage to real property and/or tangible personal property arising out of or in relation to the provision of Services and Products under an Agreement, is limited in aggregate to:

- 8.7.1 where Infrastructure Resale Services or Professional Services are provided, an amount equal to the greater of (i) the Charges in respect of the Infrastructure Resale Services or Professional Services (as applicable); and (ii) \$5 million; and
- 8.7.2 where Services other than Infrastructure Resale Services or Professional Services are provided, an amount equal to the greater of (i) the Charges received by the Supplier under the Agreement during the twelve (12) month period immediately preceding the claim; and (ii) \$5 million.
- 8.8 Each party must take reasonable steps to mitigate its loss or damage (including under an indemnity). The liability of a party for loss or damage (including under an indemnity) will be reduced proportionally to the extent that the loss or damage was caused or contributed to by a negligent act or omission or wilful misconduct of the other party or by a breach of this Agreement, by the other party.
- 8.9 Nothing in this section 8 affects the Customer's obligation to make payment under section 4.

9 INTELLECTUAL PROPERTY

- 9.1 Nothing in this Master Agreement affects a party's Intellectual Property Rights which exist prior to parties first entering into an Agreement ("Pre-Existing IP").
- 9.2 Each party grants to the other party a non-exclusive, royalty free licence to use its Pre-Existing IP only to the extent necessary for the purpose of performing its obligations or exercising its rights under an Agreement. This licence is only granted for the term of the relevant Agreement and will immediately come to an end upon termination or expiry of that Agreement or if this Master Agreement is terminated for any reason.
- 9.3 Ownership of all Intellectual Property Rights created or developed under an Agreement by the Supplier or otherwise in the course of providing the Services ("Developed IP") vests in the Supplier from its creation, unless otherwise agreed in the relevant Order Form.
- 9.4 Unless otherwise specified in an Agreement, any rights granted by the Supplier for the Customer to use the Supplier's Intellectual Property Rights may be further sub-licensed by the Customer provided it has obtained the Supplier's written consent prior to doing so. Nothing in this section 9.4 limits the Customer's responsibilities under section 6.1.3.
- 9.5 Each party hereby agrees not to infringe the Intellectual Property Rights of the other party, and except as expressly authorised under these terms and conditions, neither party may use, copy, adapt, translate or otherwise exploit the Intellectual Property Rights of the other party.
- 9.6 Nothing in these terms and conditions affects the Intellectual Property Rights in any open source software. Intellectual Property Rights in all open source software is subject to the terms of the open source software licence under which it is provided.
- 9.7 **IP Claims**
- 9.7.1 In the event a third party brings a claim against the Customer that a Deliverable provided by the Supplier under this Master Agreement infringes that party's Intellectual Property Rights ("IP Claim"), the Supplier will, as the Customer's exclusive remedy, have sole control of the defence against the IP Claim, defend the Customer against the IP Claim and indemnify the Customer from the resulting costs, damages and attorney's fees that a court awards against the Customer to such third party or that are agreed to in settlement (approved in advance by the Supplier), provided the Supplier:
- procures the right for the Customer to continue to use the Deliverable; or
 - modifies or replaces the Deliverable to avoid continuing infringement; or

- if neither of the alternatives in the preceding paragraphs is reasonably available, removes the infringing Deliverable and provides a refund of the Charges paid by the Customer in relation to the infringing Deliverable.

- 9.7.2 The Supplier will have no liability for any IP Claim based on:
- modifications to the Deliverable made by or on behalf of the Customer by anyone other than the Supplier without the Supplier's approval;
 - the Supplier's compliance with any directions or specifications provided by the Customer or a third party on the Customer's behalf;
 - use of a Deliverable other than in accordance with the manufacturer's specifications and applicable licence restrictions, or the use of a superseded version of a Deliverable should the IP Claim have been avoided by using the current version; or
 - use of the Deliverable in combination with equipment or software for a purpose or in a manner for which the Deliverable was not reasonably intended.

10 CONFIDENTIAL INFORMATION

10.1 "Confidential Information" means:

- information of a confidential nature relating to or developed in connection with the business or affairs of the Disclosing Party which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the Receiving Party;
- information identified by the Disclosing Party as confidential;
- information regarding clients, customers, employees, contractors of, or other persons doing business with, the Disclosing Party; and
- the terms of this Master Agreement and any Agreement.

10.2 The Receiving Party:

- must protect Confidential Information against loss or unauthorised disclosure with the same degree of care that it uses to protect its own proprietary and confidential information but in no event less than a reasonable standard of care;
- must not use Confidential Information for a purpose other than the performance of its obligations under an Agreement;
- may disclose Confidential Information to any of its directors, officers, employees, professional advisors and contractors or those of its Related Bodies Corporate (a "Recipient") solely to the extent that disclosure is strictly necessary for the purposes of an Agreement, provided that the Receiving Party ensures that each Recipient complies with the Receiving Party's obligations of confidentiality, and indemnifies the Disclosing Party for all loss and damage incurred as a result of a Recipient's breach of those confidentiality obligations;
- must not disclose Confidential Information to a third party without the Disclosing Party's prior written consent unless otherwise permitted under this section 10;
- must notify the Disclosing Party immediately if the Receiving Party becomes aware of a suspected or actual unauthorised disclosure of the Confidential Information and must comply with any reasonable direction issued by the Disclosing Party in relation to the Confidential Information; and
- must return, delete or destroy (at the Disclosing Party's option) Confidential Information on the Disclosing Party's request or otherwise when such information is no longer required for the purposes of this Master Agreement or the relevant Agreement, provided that the Receiving Party may retain a copy of the Confidential Information for audit purposes and where required by law.

- 10.3 Obligations of confidentiality do not apply to Confidential Information which:
- 10.3.1 is or becomes publicly available other than through a breach of confidentiality;
 - 10.3.2 was independently developed by the Receiving Party without access to the Confidential Information;
 - 10.3.3 was obtained from a source other than the Disclosing Party without obligation of confidentiality;
 - 10.3.4 is required to be disclosed by law or regulation, or the rules of any stock exchange provided that the Receiving Party (a) discloses only the minimum amount of Confidential Information required to satisfy the law or rules and (b) to the extent permitted by law, gives the Disclosing Party Notice prior to such disclosure as soon as practicable.
- 10.4 The parties acknowledge that a breach of this section 10 may cause irreparable damage for which monetary damages may be an inadequate remedy. The Disclosing Party may therefore seek injunctive relief against such a breach or threatened breach, in addition to pursuing any remedy at law or in equity.
- 10.5 Obligations of confidentiality survive termination or expiration of any Agreement and this Master Agreement.

11 PRIVACY AND DATA PROTECTION

- 11.1 Each party must:
- 11.1.1 comply with the Privacy Laws in relation to any Personal information that is collected, used, stored or disclosed under this Master Agreement, and, where a party is bound to comply with the Privacy Act, that party must comply with the Privacy Act as it is bound to do so;
 - 11.1.2 use or disclose Personal Information only for the purposes of performing its obligations under this Master Agreement;
 - 11.1.3 cooperate with the other party to resolve all requests, complaints or inquiries made under a Privacy Law in relation to Personal Information that is collected, used or disclosed under this Master Agreement; and
 - 11.1.4 not do anything, or omit to do anything, with Personal Information that would cause the other party to be in breach of any Privacy Laws.
- 11.2 The Customer acknowledges and agrees that the Supplier may collect and manage Personal Information as contemplated by, and in accordance with, the Privacy Policy, including by disclosing Personal Information to entities located outside Australia, such as its Related Bodies Corporate and subcontractors.
- 11.3 Where the Customer provides any Personal Information to the Supplier under this Master Agreement, the Customer warrants that such Personal Information has been collected, and disclosures have been made, in accordance with all Privacy Laws, including by making those persons from whom the Personal Information was collected (including End Users) aware of the matters required by the Privacy Laws in relation to the disclosure to, and use by, the Supplier of that Personal Information.
- 11.4 The Customer must ensure that any person who receives Services from the Supplier pursuant to this Master Agreement, or whose information is disclosed to the Supplier in connection with this Master Agreement, consents to the Supplier using and disclosing their Personal Information in accordance with the Privacy Policy.
- 11.5 The handling of any individual or data-subject's Cardholder Data, Health Records and other Personal Information which the Customer holds, possesses, processes, or controls, requires dedicated security systems for compliance with legal and regulatory obligations under the Privacy Laws, including but not limited to the Privacy Act. The Customer acknowledges and agrees that all legal and regulatory obligations regarding the handling of such information is the responsibility of the Customer, and no dedicated security systems are included in the Services unless expressly specified as the Supplier's responsibility in the applicable Service Schedule and/or Order Form.

- 11.6 Each party (the "Indemnifying Party") indemnifies the other party from and against any loss, liability, fines, damages, costs and expenses incurred by the other party, its Related Bodies Corporate and its subcontractors arising out of, or in connection with, any breach of this section 11 by the Indemnifying Party.

12 SECURITY

- 12.1 If specified in an Agreement, the Supplier will provide security services comprising the security measures specified in the applicable Service Schedule and/or Order Form ("Security Services").
- 12.2 Despite section 12.1, the Customer acknowledges and agrees that:
- 12.2.1 the Supplier does not make any warranty or representation that the Security Services will be sufficient to protect the Customer Data and/or the Customer's network;
 - 12.2.2 security incidents (such as denial of service, malicious codes and any other form cyber-attack) may occur despite the provision of the Security Services, and the Supplier will not be liable for loss or damage caused by such security incidents;
 - 12.2.3 the Customer is solely responsible for:
 - (a) the design of the solutions (including selecting the Security Services) to be implemented for the protection of the Customer Data and/or the Customer's network; and
 - (b) deciding whether to implement any advice or recommendation provided by the Supplier, or to rely on any security-related opinion, conclusion or other information provided by the Supplier; and
 - 12.2.4 the Supplier is not responsible for any misuse or unauthorised modification, loss, transmission or disclosure of, unauthorised access to, or interference with, the Customer Data or the Customer's network, which results (directly or indirectly) from:
 - (a) a security breach or incident occurring despite the implementation of the Security Services;
 - (b) failures by the Customer to take reasonable steps to prevent unauthorised access to the Services, the Customer Data and/or the Customer's network (for example, by disclosing the security credentials such as user names and passwords related to the Services); or
 - (c) events beyond the reasonable control of the Supplier, including security incidents affecting hardware, software or services not controlled by the Supplier.

13 TERMINATION AND SUSPENSION

- 13.1 A party may terminate this Master Agreement, and/or an Agreement, on Notice with immediate effect, if the other party:
- 13.1.1 breaches a material obligation which is not capable of remedy, or has failed to remedy the breach within 30 days of Notice by the other party;
 - 13.1.2 suffers an Insolvency Event;
 - 13.1.3 in the case of the Customer, has not paid an undisputed invoice within 60 days of the due date; or
 - 13.1.4 does not hold the necessary licences or authorisations required by law to provide or use the Services or Products, each, a "Material Breach".
- 13.2 Where an Agreement is terminated due to the Customer's Material Breach, the Customer must pay all amounts due for the period up to and including the effective date of termination and all Charges for the remainder of the applicable Minimum Service Period.
- 13.3 Unless otherwise agreed in writing, termination of:
- 13.3.1 this Master Agreement does not automatically terminate an Agreement; and

13.3.2 one Agreement has no effect on other Agreements.

13.4 Upon termination or expiry of this Master Agreement or an Agreement, the Customer must (and must procure that each Related Body Corporate will) immediately cease using the Services and return the Supplier Equipment or, at the Supplier's option, permit the Supplier to retrieve the Supplier Equipment, as the Customer's cost.

13.5 Termination of this Master Agreement or an Agreement is without prejudice to any right of action or remedy of a party which has accrued before termination or which may accrue at or after termination.

13.6 The Supplier may suspend at any time on Notice with immediate effect, all or any part of the Services, if:

13.6.1 the Customer is in Material Breach of an Agreement, including but not limited to any failure to pay any Charges when due, in which case the Supplier will give five Business Days' Notice;

13.6.2 the Supplier needs to carry out any emergency maintenance or repairs to any part of the Network or other infrastructure used to provide the Services;

13.6.3 the Supplier is required to suspend to comply with any applicable law, regulation, order, licence, or instruction or request of Government, a regulatory body, administrative authority, emergency services or the Data Centre manager;

13.6.4 a threat or risk exists in respect of the integrity of the Service (including security incidents); or

13.6.5 the Supplier reasonably believes that the Customer is in breach of the Acceptable Use Policy as it applies to Network Services.

13.7 Where Services are suspended under sections 13.6.2, 13.6.3 or 13.6.4, the Charges for the suspended Services will be temporarily suspended for the duration of the suspension. Charges will not be suspended if Services are suspended under section 13.6.1, for non-payment of money due to the Supplier, or under section 13.6.5.

13.8 Where a Service has been suspended for the Customer's breach, the Service will resume as soon as reasonably practicable after the Customer's breach has been remedied and upon the Customer paying any applicable resumption of service fee.

14 FORCE MAJEURE

14.1 Neither party will be liable for any delay or failure to perform its obligations pursuant to an Agreement where such delay is caused by a Force Majeure Event, provided that the performance of the affected party's obligations will be suspended only to the extent and for as long as the Force Majeure Event continues to prevent performance, and the affected party:

14.1.1 provides prompt written notification to the other party of the details and the proposed actions that party will take to remedy the Force Majeure Event; and

14.1.2 uses reasonable endeavours to mitigate the impact of the Force Majeure Event as soon as possible.

14.2 A party is not relieved from performing its obligations if the delay or failure to perform or the Force Majeure Event itself could have been prevented by taking reasonable precautions by that party.

14.3 Either party may terminate the relevant Agreement on 7 days' Notice to the other if the Force Majeure Event continues for more than 60 days.

15 COMPLIANCE WITH LAWS

15.1 The Supplier will comply with local laws generally applicable to it as a provider of ICT Services. The Customer is responsible for determining the legal requirements applicable to the Customer's business, including those relating to the ICT Services provided to the Customer under an Agreement. Each party will comply with all applicable export and import laws.

15.2 The Customer acknowledges that each Agreement and the provision of the ICT Services thereunder is subject to the applicable laws and

regulations in the country in which the ICT Services are provided. The Supplier reserves the right to vary the provisions of an Agreement to ensure compliance with such laws and regulation, upon Notice to the Customer specifying the applicable law or regulation and the reason for the variation.

16 PERSONNEL

16.1 Each party must assign personnel that are qualified to perform the tasks required of it under an Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

16.2 Neither party may (and must procure that its Related Bodies Corporate do not) during the term of this Master Agreement and for three months after its termination employ, engage, induce or entice away (whether directly or indirectly) any person who, during the previous 12 months, has been employed or engaged by the other party or its subcontractors to perform the Services. The foregoing does not prohibit a party from recruiting a person through a recruitment agency or in a response to a newspaper, web page or other public employment advertisement (except if the party or the agency targets employees or subcontractors of the other party through prior discussion and solicitation).

17 INSURANCE

17.1 The Supplier will maintain the following insurance policies for the term of this Master Agreement and will provide certificates of currency upon the Customer's reasonable request:

- (a) public liability in the amount of \$20 million in any one claim and unlimited in the aggregate;
- (b) products liability in the amount of \$20 million in any one claim and in the annual aggregate;
- (c) professional indemnity in the amount of \$10 million in any one claim and in the annual aggregate; and
- (d) worker's compensation in accordance with statutory requirements.

18 DISPUTES

18.1 The parties must act reasonably and in good faith to resolve any dispute within 10 Business Days ("**Dispute Period**") of one party giving Notice to the other that a dispute has arisen. If the dispute remains unresolved upon expiry of the Dispute Period, the parties must escalate the dispute to their respective Chief Executive Officers and if, after a further 10 Business Days the dispute is still not resolved, the parties may commence legal proceedings.

18.2 Neither party may commence legal proceedings (other than for urgent interlocutory relief) in relation to a dispute unless the dispute resolution procedures set out in this section have been followed.

18.3 Both parties must continue to perform their obligations under the Agreement despite the existence of a dispute, unless the dispute relates to non-payment of a Charge.

19 MISCELLANEOUS

19.1 Jurisdiction

The laws in force in New South Wales, Australia govern this Master Agreement and each Agreement, and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any courts competent to hear appeals from those courts.

19.2 Waiver

No waiver of any breach, or failure to enforce any provision, of this Master Agreement or an Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Master Agreement or the relevant Agreement, as applicable.

19.3 Severability

If any terms and conditions of this Master Agreement or an Agreement are invalid or unenforceable, the remaining terms and conditions of this Master Agreement or the Agreement (as applicable) remain in full force and effect.

19.4 Survival

Sections 5, 8, 10, 11, 18, 19.4 (and any other provisions which by their nature are intended to survive termination or expiry) will survive termination or expiry of this Master Agreement or an Agreement for any reason.

19.5 Assignment

Neither party may assign, novate or otherwise transfer this Master Agreement or an Agreement to a third party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. Any such attempted assignment, novation or transfer will be null and void. Notwithstanding the foregoing, the Supplier may assign this Master Agreement or an Agreement to a Related Body Corporate without the prior written consent of the Customer.

19.6 Notices

All notices, requests, claims, demands and consents must be given in writing in the English language and must be signed by a person duly authorised to provide such notice ("**Notice**"). Notices permitted or required to be given under this Master Agreement or an Agreement will be deemed sufficient if given by registered, certified or ordinary pre-paid mail, private courier service, or electronic means addressed to the respective addressees of the parties specified in the Order Form or as otherwise notified in writing by the respective party from time to time. The parties agree that the use of electronic transmissions such as facsimile and email is acceptable as a signed writing. Notice will be deemed to have occurred on the 4th Business Day after the date the Notice was sent by mail or courier service, and upon acknowledgement of receipt of electronic transmission by the recipient or the recipient's electronic system administrator, whichever occurs first.

19.7 Further assurance

Each party must promptly execute and deliver, and must use all reasonable endeavours to procure any relevant third party to promptly execute and deliver, the documents and perform the acts reasonably required to give full effect to this Master Agreement and any Agreement.

19.8 Relationship

The Supplier provides the ICT Services as an independent contractor. No partnership, agency or joint venture is created between the parties, nor does either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other, unless otherwise expressly agreed in an Agreement.

Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

19.9 Internal use

Unless otherwise expressly permitted in an Agreement, ICT Services acquired by the Customer under an Agreement are solely for the Customer's own internal use and not for resale.

19.10 Remedies

Except as expressly provided in this Master Agreement, the rights and remedies provided hereunder are in addition to, and not exclusive of, any rights or remedies provided by law.

19.11 Counterparts

This Master Agreement and each Agreement may be executed in any number of counterparts by the parties, each of which when executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

19.12 Variation

Subject to section 15.2, neither this Master Agreement nor an Agreement may be varied, or added to, unless by written agreement signed by authorised representatives of both parties.

19.13 Entire Agreement

This Master Agreement and each Agreement formed under it constitutes the entire agreement and understanding between the parties with respect to its subject matter and in each case supersedes any prior negotiations, agreement, understanding or arrangement between the parties, whether oral or in writing (including any terms and conditions set out in any purchase order or other documentation issued by the Customer). For the avoidance of doubt, any terms issued by the Customer (including the pre-printed terms and conditions of the Customer's purchase order, if any) which conflict with the terms of this Master Agreement, a Service Schedule or an Order Form, are null and void and are expressly excluded.