

Definitions and Interpretation

In this Master Agreement, capitalised terms have the following meanings. Capitalised terms relating to specific Services or Products are defined in the applicable Service Schedule or Quotation, as the case may be.

Acceptable Use Policy or **AUP** means the Supplier's Acceptable Use Policy published on the Supplier's website (found here as at the Effective Date: <https://www.nttict.com/company/about/acceptable-use-policy/>) and updated from time to time;

Agreement means the contract formed by:

- (a) an Order Form and Service Schedule; or
- (b) an Order Form (or, subject to section 19.13, a purchase order) referencing a Quotation, applicable for the provision of Infrastructure Resale Services only,

executed by both parties, which incorporates the terms and conditions of this Master Agreement.

Appendix means an appendix to this Master Agreement, Service Schedule or Order Form;

Business Day means a day that is not a Saturday, Sunday or a public holiday in Sydney, New South Wales or Melbourne, Victoria;

Business Hours means 8.30am to 6.00pm on a Business Day;

Cardholder Data has the meaning given to it by the Global PCI Security Standards Council;

Charges means the fees and charges for the supply of Services and/or Products as specified in the Order Form unless otherwise agreed;

Confidential Information has the meaning given to in section 10;

Credit Application Form means the document set out in Appendix 1;

Customer means the entity acquiring ICT Services from the Supplier under an Agreement;

Customer Data means all Data generated, processed, transmitted or stored by the Customer or an End User by using the Services and includes:

- (a) any database in which such Data is contained;
- (b) the work product resulting from the use or manipulation of such Data;
- (c) Data entered into or generated, processed, transmitted or stored by any Customer or End User hardware or software; and
- (d) any copies of the above;

Data means data and information;

Data Centre Services means the Services described in the Data Centre Services Service Schedule;

Deliverable means any work (as defined in the *Copyright Act 1966*) or output provided by one party to the other under an Agreement, whether or not specified in a Service Schedule or Order Form;

Developed IP has the meaning given to it in section 9;

Disclosing Party means the party disclosing Confidential Information to the Receiving Party;

Dispute Period has the meaning given to it in section 18.1;

Effective Date means the effective date of an Agreement, being the date by which both parties have executed all executable documents comprising the Agreement;

End User means any person (including a Related Body Corporate of the Customer) whom the Customer permits to use the Services and/or Products in accordance with this Master Agreement and any Agreement;

Force Majeure Event means an event beyond the reasonable control of a party including but not limited to forces of nature, acts of war or terrorism or industrial action;

Goods has the same meaning as Products

GST has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hardware means the hardware sold or rented by the Supplier to the Customer under an Agreement;

Health Record has the meaning given to in the *My Health Records Act 2012* (Cth)

ICT Services means the supply of information and communications technology Services and Products by the Supplier.

Infrastructure Resale Services means the resale of Products;

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (c) the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the persons:
 1. suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 2. being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction, unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Indemnifying Party has the meaning given to it in section 11.6;

Intellectual Property Rights means all intellectual property rights including copyright, trademarks, service marks, patents, designs, semiconductor, circuit layout rights, or other proprietary rights, or any similar rights protected by statute, from time to time existing in Australia or elsewhere whether or not such rights are registered or capable of being registered, whether created before, on or after the Effective Date;

IP Claim has the meaning given to it in section 9;

Location means the location (including the Customer's location) from or to which Services and /or Products will be supplied as specified in the Service Schedule and/or Order Form;

Master Agreement means these terms and conditions;

Material Breach has the meaning given to it in section 13;

Minimum Service Period means the minimum service period applicable to certain Services, as specified in the relevant Order Form;

Network means the telecommunications network and systems owned or operated by the Supplier or a third party and used by the Supplier to provide Services;

Network Services means the Services relating to the Network as further described in the Network Services Service Schedule;

Notice has the meaning given to it in section 19.6;

Order Form means the Customer's order for the supply of Services or Products;

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth);

Pre-Existing IP has the meaning given to it in section 9;

Privacy Act means the *Privacy Act 1988* (Cth);

Privacy Laws means the Privacy Act and all other applicable legislation relating to the handling of Personal Information;

Privacy Policy means the Supplier's Privacy Policy published on the Supplier's website (found here as at the Effective Date: <https://www.nttict.com/company/about/privacy-policy/>) and updated from time to time;

Products (or Goods) means Hardware and/or Software supplied by the Supplier to the Customer under an Agreement;

Professional Services means consulting, integration, or technical Services, as further described in the Professional Services Service Schedule;

Quotation means a quotation for Products and certain associated Services provided through Infrastructure Resale Services and incorporating the Standard Terms and Conditions for the Supply of Goods;

Receiving Party means the party receiving Confidential Information from the Disclosing Party;

Recipient has the meaning given to it in section 10;

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

Security Services has the meaning given to it in section 12.1;

Service Schedule means a schedule to this Master Agreement which describes the Services;

Service Level or SLA means the agreed level of Services, measured by a defined metric as described in the relevant Service Schedule;

Services means the services to be provided by the Supplier as detailed in the relevant Service Schedule;

Service Start Date means the date Services will commence as specified in the Agreement;

Software means the machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures provided or made available to the Customer under an Agreement. Software may include commercial off the shelf software and open source software;

Standard Terms and Conditions for the Supply of Goods means the separate terms applicable to Infrastructure Resale Services located here: <https://nttict.com/standard-terms-and-conditions-for-the-supply-of-goods/?stage=Live>;

Supplier means NTT Com ICT Solutions (Australia) Pty Ltd, ABN 61 059 040 998;

Supplier Equipment means the equipment owned by the Supplier and provided to the Customer for the duration of the Services, where specified in an Agreement;

Term has the meaning given to it in section 3.1;

Third Party Terms means the terms and conditions of the Product manufacturer or vendor, including licence terms for Software or vendor installation and/or maintenance services sold with the Product; and.

Utility Service Provider means an organisation that provides electricity, gas, or water to the Supplier on a wholesale basis.