



# Mid-Market Managed Service Master Agreement

## Recitals

- (a) NTT is experienced in the provision of Services described in this Mid-Market Managed Services Master Agreement (as published on NTT's website found here <https://hello.global.ntt/-/media/ntt/global/legal/australia/mid-market-managed-service-master-agreement.pdf> and updated from time to time) ("**Master Agreement**"), collectively known as Information and Communications Technology ("**ICT**") Services and Products.
- (b) The Client plans to acquire ICT Services and Products ("**ICT Services**") from NTT under this Master Agreement from time to time.

## Agreed Terms

### 1 Interpretation

1.1 In this Master Agreement, except where the context otherwise dictates:

- (a) A reference to a:
  - (i) party includes a party's successor in title, permitted substitute, permitted assign, executor or administrator of that party;
  - (ii) person includes a natural person, a body corporate, a joint venture, partnership, and any other type of entity;
  - (iii) 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;
- (b) The expressions "includes" and "including", "for example" and similar expressions do not limit the scope of the right, obligation or concept referred to;
- (c) Words in the singular include the plural and vice versa and a word, which suggests one gender, includes the other genders;
- (d) If a word or phrase is defined, other grammatical forms of that word or phrase have corresponding meanings;
- (e) Monetary references are to Australian currency, unless expressly stated otherwise;
- (f) Headings are for convenience and do not affect interpretation;
- (g) 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;
- (h) No provision will be construed adversely to a party solely on the basis that the party was responsible for the preparation of that provision.
- (i) 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
- (j) 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:
  - (i) 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
  - (ii) the Service Schedule (or Quotation in the case of Infrastructure Resale Services only);
  - (iii) this Master Agreement.
- (k) Capitalised terms have the meanings set out in Attachment A – Definitions of this Master Agreement.

### 2 Terms of Business and Formation of the Contract

- 2.1 The Client may request the supply of ICT Services to the Client or to the Client'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 Client issues a purchase order to NTT in connection with an Agreement:
  - (a) in the case of Infrastructure Resale Services where a Quotation has been provided to the Client by NTT:
    - (i) the purchase order must reference the Quotation number; and
    - (ii) subject to section 2.3(a)(i), the Agreement will be deemed executed by the Client and the purchase order will be deemed to be the Order Form whether or not the Client has signed an Order Form;
  - (b) for Services other than Infrastructure Resale Services:

- (i) the purchase order must reference the Order Form number; and
  - (ii) the Client must execute both the Service Schedule and Order Form to form an Agreement.
- 2.4 NTT's obligations under an Agreement may be performed by NTT or a third party subcontractor appointed by NTT, in which case NTT remains responsible for ensuring that the third party complies with the Agreement.
- 2.5 NTT'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 Client.
- 2.6 NTT may require that the Client completes NTT's Credit Application Form, which is available at Attachment B, and is satisfied as to the continued credit worthiness of the Client prior to supplying Services and/or Products under an Agreement.
- 2.7 NTT will assign an account manager to manage the relationship with the Client 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 Client. The Client 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 Client fails to pay an undisputed tax invoice when due, NTT 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 NTT in recovering the overdue amount, provided NTT gives the Client reasonable notice of its intent to do so.
- 4.3 The Client may only withhold payment of that part of an invoice that the Client 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 NTT on or before the due date for the disputed payment.
- 4.4 NTT may increase the Charges on 30 days' notice if the prices or inputs payable by NTT 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 NTT are altered retrospectively such altered rates may also be applied retrospectively. If, following such alteration, the revised Charges are not acceptable to the Client, the Client may terminate the applicable Agreement on 30 days' Notice to NTT from the date of its receipt of the notification of the revised Charges. The Client's failure to terminate the applicable Agreement pursuant to this section will constitute a deemed acceptance by the Client of the revised Charges. If the Client terminates an Agreement under this section during the Minimum Service Period, the Client must pay the Charges and expenses incurred by NTT to the date of termination but will not be required to pay the Charges for the remainder of the Minimum Service Period.
- 4.5 To secure the payment of all moneys owed and owing by the Client to NTT under this Agreement ("**Secured Money**"), the Client grants a security interest pursuant to the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") in all the Client's present and after acquired property as security for the Client's obligations in respect of the Secured Money. The Client hereby irrevocably appoints NTT and any person nominated by NTT as the attorney of the Client with power to execute, sign, seal and deliver any documents to better secure the Secured Money and to perfect any security.

### 5 Warranties and Disclaimer

- 5.1 Subject to section 8, NTT warrants that the Services will:
  - (a) be provided with all reasonable care and skill of a competent provider of similar ICT Services. The Client must provide Notice to NTT within 5 Business Days of delivery of Services of any failure by NTT to comply with this warranty to enable corrective action to be taken by NTT; and
  - (b) 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, NTT will make available to the Client any standard manufacturer warranties for Products.
- 5.3 The Client acknowledges that any Products provided to the Client by NTT is provided on an 'as-is' basis.

- 5.4 Without limiting section 8, NTT does not warrant:
- (a) that Products or Services will be free from error, interruption or external intrusion;
  - (b) 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
  - (c) the quality, content or accuracy associated with any products, services or information provided by a third party received by the Client through or as a result of the use of the Services.
- 5.5 Subject to section 8.1, NTT is not responsible for:
- (a) any defect in the Services or Products arising from:
    - (i) any drawing, design or specification supplied by the Client;
    - (ii) fair wear and tear, wilful damage, negligence, or abnormal working conditions imposed by the Client, failure by the Client or an End User to follow NTT's or the manufacturer's instructions (whether oral or in writing), misuse, alteration or repair of the Services or Products by the Client or an End User without NTT's or the manufacturer's approval;
    - (iii) any unauthorised modifications or customisation of the Products provided by NTT;
  - (b) any parts, materials or equipment in respect of which the Client is entitled to the benefit of any warranty or guarantee given by the manufacturer;
  - (c) the performance of any Software, or the equipment, products, services or information provided by a third party other than a subcontractor of NTT, and used by NTT in providing the Services;
  - (d) incorrect or unauthorised use of the Products that is not in accordance with the corresponding operating manuals; or
  - (e) content or use of any Data transferred either to or from the Client or stored by the Client or any End User via the Services.
- 5.6 The Client warrants that:
- (a) it has the right to use and to permit NTT to use all software, material, data or documents provided by or on behalf of the Client to NTT for the provision of the Services, and that the caching of Client Data, if required to perform the Services, will not infringe the Intellectual Property Rights or privacy rights of the Client or any third party; and
  - (b) neither the Client nor its officers, employees or contractors have relied on any representation, promise or undertaking made by or on behalf of NTT which is not expressly set out in the Agreement.
- 5.7 The Client acknowledges and agrees that NTT exercises no control over, and accepts no responsibility or liability for, the content of the information (including but not limited to the Client Data) passing through NTT's host computers, Network hubs and points of presence or the Internet;
- 5.8 Each party represents and warrants to the other that:
- (a) it will perform its obligations so as to avoid hindering the performance of the other party;
  - (b) 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;
  - (c) it will comply with all laws and regulations applicable to it; and
  - (d) the persons signing on its behalf have full authority and right to enter into this Master Agreement and each Agreement.

## 6 Client Responsibilities

- 6.1 In addition to any responsibilities of the Client specified in an Agreement, the Client must:
- (a) provide NTT with sufficient and safe access (including remote access) to the Client's Location (including facilities, systems, information, personnel, and resources), without charge to NTT, as reasonably required by NTT to perform its obligations under the Agreement;
  - (b) undertake such tasks assigned to it by NTT under a Service Schedule, and provide timely information and direction to NTT upon NTT's reasonable request to enable NTT to fulfil its obligations under the Agreement;
  - (c) ensure that, where Services or Products are provided to a Related Body Corporate of the Client, the Related Body Corporate complies with the Agreement. Any failure by a Related Body Corporate of the Client to observe the obligations (including payment) of the Client under an Agreement will be deemed to be a breach of that Agreement by the Client for which the Client will be responsible. The Client indemnifies NTT for all loss and damage incurred as a result of a failure of a Related Body Corporate of the Client to observe the obligations (including payment) of the Client under the Agreement; and
  - (d) comply with the Acceptable Use Policy as it applies to Network Services.
- 6.2 NTT 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 Client's failure to comply with section 6.1 or any other obligation under an Agreement. Any additional costs incurred by NTT as a result of the failure or delay of the

Client, its Related Body Corporate, or a subcontractor of the Client or of a Client Related Body Corporate affecting NTT in performing the Services, will be charged to the Client.

## 7 NTT Equipment

7.1 Where NTT provides NTT Equipment:

- (a) title to NTT Equipment remains with NTT and the Client must not lease, transfer, sell or grant any security interest over NTT Equipment;
- (b) risk and responsibility for the safe keeping of NTT Equipment transfers to the Client upon delivery of NTT Equipment to the Client's Location and remains with the Client until NTT has regained possession of NTT Equipment;
- (c) the Client must:
  - (i) obtain any consents required to install NTT Equipment at the Client's Location;
  - (ii) ensure that the Client's public liability insurance policy extends cover to NTT Equipment against loss or damage whilst at the Client's Location;
  - (iii) take all necessary action to prevent NTT Equipment being interfered with or damaged and return it to NTT upon NTT's request;
  - (iv) conduct at its cost any scheduled maintenance of NTT Equipment, where such maintenance is specified in the Agreement; and
  - (v) permit NTT to access NTT Equipment at the Client's Location upon reasonable request, provided that NTT complies with the Client's security policies notified in writing to NTT.
- (d) NTT may:
  - (i) consult with the Client in respect to the installation of NTT Equipment, provided that NTT retains the right to make all decisions in relation to the routing of cables and the positioning of NTT Equipment; and
  - (ii) in its sole discretion and upon prior Notice to the Client, change, modify or remove NTT Equipment, provided that NTT 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, NTT'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 NTT to limit its liability, then NTT's liability will be limited to:

- (a) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
- (b) 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:

- (a) death or personal injury (including sickness) for which that party is legally liable;
- (b) breach of confidentiality or privacy; or
- (c) 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:

- (a) 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
- (b) where Services other than Infrastructure Resale Services or Professional Services are provided, an amount equal to the Charges paid or payable by the Client to NTT 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:
- (a) 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
  - (b) where Services other than Infrastructure Resale Services or Professional Services are provided, an amount equal to the greater of (i) the Charges received by NTT 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 Client'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 NTT or otherwise in the course of providing the Services ("**Developed IP**") vests in NTT from its creation, unless otherwise agreed in the relevant Order Form.

9.4 Unless otherwise specified in an Agreement, any rights granted by NTT for the Client to use NTT's Intellectual Property Rights may be further sub-licensed by the Client provided it has obtained NTT's written consent prior to doing so. Nothing in this section 9.4 limits the Client's responsibilities under section 6.1(c).

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

- (a) In the event a third party brings a claim against the Client that a Deliverable provided by NTT under this Master Agreement infringes that party's Intellectual Property Rights ("**IP Claim**"), NTT will, as the Client's exclusive remedy, have sole control of the defence against the IP Claim, defend the Client against the IP Claim and indemnify the Client from the resulting costs, damages and attorney's fees that a court awards against the Client to such third party or that are agreed to in settlement (approved in advance by NTT), provided NTT:
  - (i) procures the right for the Client to continue to use the Deliverable; or
  - (ii) modifies or replaces the Deliverable to avoid continuing infringement; or
  - (iii) 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 Client in relation to the infringing Deliverable.
- (b) NTT will have no liability for any IP Claim based on:
  - (i) modifications to the Deliverable made by or on behalf of the Client by anyone other than NTT without NTT's approval;
  - (ii) NTT's compliance with any directions or specifications provided by the Client or a third party on the Client's behalf;
  - (iii) 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
  - (iv) 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:

- (a) 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;
- (b) information identified by the Disclosing Party as confidential;
- (c) information regarding clients, Clients, employees, contractors of, or other persons doing business with, the Disclosing Party; and
- (d) the terms of this Master Agreement and any Agreement.

10.2 The Receiving Party:

- (a) 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;
- (b) must not use Confidential Information for a purpose other than the performance of its obligations under an Agreement;
- (c) may disclose Confidential Information to any of its directors, officers, employees, professional advisors and contractors or those of its Related Bodies Corporate (each 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;
- (d) must not disclose Confidential Information to a third party without the Disclosing Party’s prior written consent unless otherwise permitted under this section 10;
- (e) 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
- (f) 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:

- (a) is or becomes publicly available other than through a breach of confidentiality;
- (b) was independently developed by the Receiving Party without access to the Confidential Information;
- (c) was obtained from a source other than the Disclosing Party without obligation of confidentiality;
- (d) 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:

- (a) 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 it bound to comply with the Privacy Act, that party must comply with the Privacy Act as it is was bound to do so;
- (b) use or disclose Personal Information only for the purposes of performing its obligations under this Master Agreement;
- (c) 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
- (d) 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 Client acknowledges and agrees that NTT 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 Client provides any Personal Information to NTT under this Master Agreement, the Client 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, NTT of that Personal Information.

- 11.4 The Client must ensure that any person who receives Services from NTT pursuant to this Master Agreement, or whose information is disclosed to NTT in connection with this Master Agreement, consents to NTT 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 Client 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 Client acknowledges and agrees that all legal and regulatory obligations regarding the handling of such information is the responsibility of the Client, and no dedicated security systems are included in the Services unless expressly specified as NTT'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, NTT 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 Client acknowledges and agrees that:
- (a) NTT does not make any warranty or representation that the Security Services will be sufficient to protect the Client Data and/or the Client's network;
  - (b) 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 NTT will not be liable for loss or damage caused by such security incidents;
  - (c) the Client is solely responsible for:
    - (i) the design of the solutions (including selecting the Security Services) to be implemented for the protection of the Client Data and/or the Client's network; and
    - (ii) deciding whether to implement any advice or recommendation provided by NTT, or to rely on any security-related opinion, conclusion or other information provided by NTT; and
  - (d) NTT is not responsible for any misuse or unauthorised modification, loss, transmission or disclosure of, unauthorised access to, or interference with, the Client Data or the Client's network, which results (directly or indirectly) from:
    - (i) a security breach or incident occurring despite the implementation of the Security Services;
    - (ii) failures by the Client to take reasonable steps to prevent unauthorised access to the Services, the Client Data and/or the Client's network (for example, by disclosing the security credentials such as user names and passwords related to the Services); or
    - (iii) events beyond the reasonable control of NTT, including security incidents affecting hardware, software or services not controlled by NTT.

## 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:
- (a) 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;
  - (b) suffers an Insolvency Event;
  - (c) in the case of the Client, has not paid an undisputed invoice within 60 days of the due date; or
  - (d) 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 Client's Material Breach, the Client 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:
- (a) this Master Agreement does not automatically terminate an Agreement; and
  - (b) one Agreement has no effect on other Agreements.
- 13.4 Upon termination or expiry of this Master Agreement or an Agreement, the Client must (and must procure that each Related Body Corporate will) immediately cease using the Services and return NTT Equipment or, at NTT's option, permit NTT to retrieve NTT Equipment, as the Client'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 NTT may suspend at any time on Notice with immediate effect, all or any part of the Services, if:
- (a) the Client is in Material Breach of an Agreement, including but not limited to any failure to pay any Charges when due, in which case NTT will give five Business Days' Notice;
  - (b) NTT needs to carry out any emergency maintenance or repairs to any part of the Network or other infrastructure used to provide the Services;
  - (c) NTT 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;
  - (d) a threat or risk exists in respect of the integrity of the Service (including security incidents); or
  - (e) NTT reasonably believes that the Client is in breach of the Acceptable Use Policy as it applies to Network Services.
- 13.7 Where Services are suspended under sections 13.6(b), 13.6(c) or 13.6(d), 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(a), for non-payment of money due to NTT, or under section 13.6(e).
- 13.8 Where a Service has been suspended for the Client's breach, the Service will resume as soon as reasonably practicable after the Client's breach has been remedied and upon the Client 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:
- (a) 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
  - (b) 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 responsible for determining the legal requirements applicable to the Client's business, including those relating to the ICT Services provided to the Client under an Agreement. Each party will comply with all applicable export and import laws.
- 15.2 The Client 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. NTT reserves the right to vary the provisions of an Agreement to ensure compliance with such laws and regulation, upon Notice to the Client 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 NTT will maintain the following insurance policies for the term of this Master Agreement and will provide certificates of currency upon the Client'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 18 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, NTT may assign this Master Agreement or an Agreement to a Related Body Corporate without the prior written consent of the Client.

### 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

- (a) NTT 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.
- (b) 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 Client under an Agreement are solely for the Client'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 Client). For the avoidance of doubt, any terms issued by the Client (including the pre-printed terms and conditions of the Client'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.

## Attachment A Definitions

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 NTT's Acceptable Use Policy published on NTT's website (found here as at the Effective Date: <https://hello.global.ntt/-/media/ntt/global/documents/legal/au-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 application form at Attachment B;

**Client** means the entity acquiring ICT Services from NTT under an Agreement;

**Client Data** means all Data generated, processed, transmitted or stored by the Client 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 Client 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 a 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 Client) whom the Client 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 NTT to the Client under an Agreement;

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

**ICT** has the meaning given to it in Recital A;

**ICT Services** has the meaning given to it in Recital B;

**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:
  - (i) 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
  - (ii) being unable to pay its debts or otherwise insolvent;
- (g) 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 Client'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** has the meaning given to it in Recital A;

**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 NTT or a third party and used by NTT to provide Services;

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

**Notice** has the meaning given to it in section 19.6;

**NTT** means NTT Com ICT Solutions (Australia) Pty Ltd (ABN 65 059 040 998), or, where expressly specified on the Order Form, NTT Australia Pty Ltd (ABN 35 003 371 239);

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

**Order Form** means the Client'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 NTT's Privacy Policy published on NTT's website (found here as at the Effective Date: <https://hello.global.ntt/en-us/legal/privacy-statement>) and updated from time to time;

**Products** (or Goods) means Hardware and/or Software supplied by NTT to the Client under an Agreement;

**Professional Services** means consulting, integration, or technical Services, as further described in a 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 NTT as detailed in the relevant Service Schedule;

**Service Start Date** means the date the 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 Client 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://hello.global.ntt/-/media/ntt/global/legal/australia/standard-terms-and-conditions-for-supply-of-goods.pdf>

**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 NTT on a wholesale basis.

Attachment B **Credit Application**

Date of Application	
Registered Name	
Trading Name	
Date Established	
CAN	
ABN	
Postal Address	
Delivery Address <small>(if different to above)</small>	
Telephone	
Fax	
Type of Business <small>(select one)</small>	
Previous Registered Name <small>(if changed in past 2 years)</small>	
<b>Details of Owner / Partner / Director</b> <small>(if more than 2 please attach)</small>	
Name	
Residential Address	
Telephone	
Signature	
Name	
Residential Address	
Telephone	
Signature	

Account Dept. Contact	
Designation	
Purchasing Officer	
Chief Financial Officer	
Banking Details	
Branch Address	
Branch Contact Tel.	
Branch Contact Email	
Details of Trade References <small>(Minimum of 3)</small>	
<b>Reference 1:</b>	
Name	
Address	
Telephone	
Current Credit Limit	\$
<b>Reference 2:</b>	
Name	
Address	
Telephone	
Current Credit Limit	\$
<b>Reference 2:</b>	
Name	
Address	
Telephone	
Current Credit Limit	\$

Credit Limit Requests	\$
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Signature

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For and on behalf of party

The applicant hereby irrevocably authorises NTT from time to time to make such enquires, whether written or oral with the trade references named above or with any other organisations, that NTT deems appropriate to properly consider the applicant's credit worthiness. The applicant authorises NTT to give such persons or organisations to whom the enquiry is made, all information relating to circumstances, nature and or purpose of the enquiry to enable NTT to obtain the information requested.

The applicant acknowledges having received a copy of NTT's Master Agreement and in consideration of NTT agreeing to consider the credit application, agrees that any orders placed by the applicant is subject to those terms and conditions. The applicant understands that NTT may refuse credit at its absolute discretion and that any credit granted will be based on NTT's standard credit terms being 30 days from the date of the invoice.

The applicant declares that all information provided in this application for credit is accurate and undertakes to notify NTT of any material change after submission of this application.

**Specific Authorisation and Declarations**

In addition to the above general conditions the applicant agrees to NTT:

1. Seeking consumer credit information as described in Section 18K(1) (b) of the Privacy Act 1988. If NTT considers it relevant to assessing our application for commercial credit the applicant agrees to NTT obtaining from a credit reporting agency information containing personal credit information about the applicant in relation to commercial credit provided by NTT.
2. Exchanging information with other Credit Providers (Section 18K (1) (b) of the Privacy Act 1988. The applicant agrees to NTT obtaining personal information about the applicant from other credit providers, whose names the applicant has provided for NTT or is agreed that may be named in a credit report for purposes of assessing the application for commercial credit.

Signature of Director / Secretary		Signature of Director	
Name		Name	
Date		Date	
Signature of Witness		Signature of Witness	
Name		Name	
Date		Date	