



**Customer Agreement**

# **Master Services Agreement**

*(ACN xxx xxx xxx)*

Revision: 3.5

23 March 2022

**COMMERCIAL IN CONFIDENCE**

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## THE PARTIES

## OPER8

Company Name	Oper8 Global Pty Ltd
Company Short Name	Oper8
ACN / ABN	ABN 33 157 875 048
Primary Phone Number	1300 516 288
Primary Email Address	sales.apac@oper8global.com
Primary Contact Name	Nick Lovell
Primary Mobile Number	0421 614 219
Head Office Address	Unit 7, 120 Bluestone Cct Seventeen Mile Rocks, QLD, 4073

## CUSTOMER

Company Name	[Company] Pty Ltd
Company Short Name	[abbreviated name if applicable]
ACN / ABN	ABN xxxxxxxxxxxx
Primary Phone Number	07 xxxxxxxxxxxx
Primary Email Address	xxxxx@xxxxxxx.com.au
Primary Contact Name	xxxxxxxxxxxxxx
Primary Mobile Number	04xxxxxxx
Head Office Address	[street] [city] [state] [postcode]
Billing Address	[street] [city] [state] [postcode]
Accounts Payable Contact	[name]
Accounts Payable Email	xxxxx@xxxxxxx.com.au
Accounts Payable Phone	07 xxxxxxxxxxxx
Contract Term	36 Months
Auto Rollover	Yes from Month 37 inclusive unless otherwise terminated. All terms and conditions continue to apply.
CPI Increase	Applies as per clause 7.5
GST Payable	Yes, the Company will pay GST on invoices.

## BACKGROUND

- A. Oper8 and its related bodies corporate are suppliers of telecommunications, software, storage, cloud, and data centre products and services.
- B. The Customer wishes to purchase products and/or services from Oper8.
- C. This Master Services Agreement sets out the general terms and conditions that apply to the provision of all products or services to the Customer, whether under a Service Order, Service Schedule or otherwise.

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

1.1. The following Terms have defined meanings as follows:

<i>Term</i>	<i>Meaning</i>
ABS	Australian Bureau of Statistics, Australian Government. <a href="http://www.abs.gov.au">www.abs.gov.au</a>
Agreement	means this Master Services Agreement and its schedules and annexures, as varied from time to time.
Business Day	a) in relation to a service provided at a data centre, a day that is not a Saturday, Sunday or public holiday in the state in which that data centre is located; and in all other cases, b) a day that is not a Saturday, Sunday or Government Gazetted Public Holiday in Queensland, Australia.
Business Hours	8.00am – 5:00pm Australian Eastern Standard Time on all Business Days.
Charges	means the fees payable by the Customer to Oper8 for Services provided under this Agreement or any relevant Service Schedules or Service Orders, including any installation, product or Fixed Term Charge.
CPI Increase	Consumer Price Index (CPI) Increase is applied to the Charges on an annual basis as specified in clause 7.5
Confidential Information	of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.
Control	has the meaning given in the Corporations Act.
Corporations Act	means the Corporations Act 2001 (Cth).
CPE	Customer Premise Equipment – means equipment, hardware or systems deployed on the Customer premises. It does not suggest ownership by the Customer.
Customer Equipment	means any hardware, software, equipment, systems and cabling provided by the Customer or an End User used in the provision of Services.
Dark Fibre	has the meaning given in the Dark Fibre Service Schedule.
End User	means a customer of the Customer.
Fixed Term Charge	means the charge payable in accordance with clause 7.2 for a Fixed Term Service for the total duration of the Initial Term.
Fixed Term Service	means any Service supplied by Oper8 in a fixed or minimum amount per month for a fixed Initial Term, (for example,

<i>Term</i>	<i>Meaning</i>
	100Mbps Internet bandwidth per month for 24 months), where the number of months in the Initial Term is specified in the relevant Service Order for that Service.
Force Majeure Event	means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement or any Service Schedule or Service Order including (without limitation): <ul style="list-style-type: none"> <li>a) forces of nature, any act of God, fire, flood, pandemic, epidemic, volcanic activity, seismic event, storm or explosion;</li> <li>b) any strike, lockout or industrial action; and</li> <li>c) any action or inaction by any organ of government or government agency including any travel restrictions or lockdowns.</li> </ul>
GST	has the same as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Initial Term	means, in respect of a Service, the minimum contract period specified in a Service Order applicable to that Service, the term of which shall be deemed to commence on the RFS Date.
Insolvency Event	means in relation to a party: <ul style="list-style-type: none"> <li>a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act or similar official is appointed over any of the assets or undertaking of the party;</li> <li>b) the party suspends payment of its debts generally;</li> <li>c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act;</li> <li>d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;</li> <li>e) the party ceases to carry on business or threatens to cease to carry on business;</li> <li>f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or</li> <li>g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;</li> <li>h) a party threatens to do any of (a) – (g).</li> </ul>
Intellectual Property Rights	means all intellectual property rights, including the following rights:

<i>Term</i>	<i>Meaning</i>
	<ul style="list-style-type: none"> <li>a) patents, copyright, rights in circuit layouts, registered and unregistered designs, trademarks, domain names, business names and any right to have confidential information kept confidential; and</li> <li>b) any application or right to apply for registration of any of the rights referred to in paragraph (a).</li> </ul>
Interest Rate	means the business banking rate charged from time to time by Commonwealth Bank of Australia plus 2%.
MSA	Master Service Agreement, meaning this document.
Non-Business Hours	Hours of the day that fall outside Business Hours.
Oper8	Oper8 Global Pty Ltd (ABN 33 157 875 048) trading as Oper8 Global
Oper8 Equipment	means any equipment owned or used by Oper8 in the provision of a Service. Refer to Secured Property.
Oper8 Sales Order	Refer to Services Order
Oper8 Sales Quote	Refer to Services Order
Oper8 Services Order	Refer to Services Order
Oper8 Services Quote	Refer to Services Order
PPSA	Personal Property Securities Act 2009 (Cth)
PPSR	Personal Property Securities Register ( <a href="http://www.ppsr.gov.au">www.ppsr.gov.au</a> )
Planned Maintenance	means maintenance by Oper8 of its network or equipment of which not less than 20 Business Days' notice has been given to the Customer.
Right of Entry	Means and includes the right of Oper8 entry into the Customers place of business where Oper8 owned equipment (Secured Property) is installed.
RFS Date	Ready for Service (RFS) Date, in relation to a particular Service, means: <ul style="list-style-type: none"> <li>a) the ready for service date specified in the Service Order for that Service; or</li> <li>b) if no date is specified in the Service Order, the date notified to the Customer as the RFS Date by email from Oper8; or</li> <li>c) if neither (a) nor (b) applies, the date on which the Service is first made available to the Customer by Oper8; or</li> <li>d) in the case of Dark Fibre, the Service Acceptance Date.</li> </ul>
Scheduled Maintenance	means maintenance to be carried out by Oper8 from time to time and notified in advance to the Customer in writing.
Secured Property	Means any asset, product or item that remains the personal property of Oper8 during and after the contract term with the customer. Ownership of such asset, product or item does not pass to the customer under any circumstance.
Security Deposit	means an amount up to one month's Charges payable by the Customer under clause 5.1 as security for payment of all sums due under this Agreement, a Service Schedule or a Service Order.

<i>Term</i>	<i>Meaning</i>
Service	means a product or service supplied by Oper8 to the Customer under this Agreement, as more particularly specified in a Service Schedule or Service Order and includes any software, equipment, wires, cables, ports, switches, routers, cabinets, racks, storage systems, and other hardware or telecommunications equipment supplied with that product or service.
Service Acceptance Date	Has the meaning given to it in the Services Schedule.
Service Order	means an order in Oper8's standard written format for the provision of a Service, which includes details of the Initial Term and Charges for the Services provided, signed on behalf of both parties.
Service Schedule	means a schedule supplied to the Customer by Oper8 setting out the specifications, system requirements and performance capabilities of a Service, and signed on behalf of both parties.
Services Order	The Oper8 form or schedule detailing the Service, delivery characteristics, Term of supply in Months or Years, the financial and payment conditions applying to the service as presented to the Customer.
Supplier Failure	means a failure of any equipment, product or service supplied to Oper8 by a third party which is required by Oper8 to enable it perform its obligations under this Agreement or a Service Schedule or Service Order.
Telecommunications Act	means the Telecommunications Act 1997 (Cth).

## 2. MASTER SERVICES AGREEMENT AND SERVICE SCHEDULES

- 2.1. This Agreement will be executed prior to the Customer executing any Service Schedules and related Service Orders.
- 2.2. Oper8 must provide the Customer with a Service Schedule in respect of each Service supplied to the Customer.
- 2.3. A Service Schedule will be binding in respect of all supplies of the Service to which it relates and will continue in force for as long as Oper8 continues to supply the relevant Service.
- 2.4. Customer specific alterations may only be made in Service Schedules.
- 2.5. Where Oper8 Secured Property is deployed on Customer premises, a Right of Entry Schedule must be executed between the parties.

## 3. SERVICE ORDER

- 3.1. Oper8 must provide the Customer with a Service Order in respect of each individual supply of a Service. Once agreed, the Customer must sign and return a copy of each Service Order which will be binding in accordance with its terms in respect of the particular supply of the Service to which it relates.

- 3.2. A Service Order will continue in force for the specified Initial Term. After expiry of the Initial Term it will continue in force until terminated by either party giving 30 days' written notice to the other.
- 3.3. Termination of a Service Order does not automatically terminate this Agreement or any applicable Service Schedule, which will each continue in force until terminated in accordance with this Agreement.
- 4. INTERACTION BETWEEN THE MSA, SERVICE SCHEDULE AND SERVICE ORDER**
- 4.1. In the event of any inconsistency between the terms of this Agreement, a Service Schedule, Right to Entry Schedule and a Service Order in relation to a particular supply of a Service, the following order of priority applies:
- a) first the Right to Entry Schedule, then
  - b) the Service Order; then
  - c) the Service Schedule; and last
  - d) this Master Service Agreement.
- 5. SECURITY DEPOSIT AND CREDIT CHECKS**
- 5.1. **Payment of Deposit**
- If the Customer fails to pay any amount due under this Agreement or a Service Schedule or Service Order by the due date for payment, Oper8 may by notice in writing require the Customer to pay a Security Deposit.
- 5.2. **Payment of Security Deposit**
- If required under clause 5.1, the Customer must pay the Security Deposit to Oper8 within 5 Business Days of the date of the notice. In addition to any other rights available to it under this Agreement, Oper8 may terminate or suspend a Service if the Customer fails to pay the Security Deposit within the time required under this clause.
- 5.3. **Use of Security Deposit**
- Oper8 must hold the Security Deposit as security for the payment of any sums due under this Agreement, a Service Schedule or a Service Order. If the Customer fails to pay any amount due on the due date for payment, Oper8 may immediately deduct that amount from the Security Deposit in set-off of the Customer's payment obligation.
- 5.4. **Reinstatement of Security Deposit**
- If Oper8 deducts any monies from the Security Deposit under clause 5.3 the Customer must pay Oper8 on demand by way of additional security that amount to replace the amount of the Security Deposit used.
- 5.5. **Return of Security Deposit**
- Oper8 must return any part of the Security Deposit which is unused to the Customer on termination of this Agreement.
- 5.6. **Credit Reference Check**
- Oper8 may conduct a credit check on the Customer prior to entering into any Service Schedule or Service Order with the Customer. The Customer authorises Oper8 to make all enquiries reasonably necessary to determine the Customer's creditworthiness



including by conducting requests for information from banks, credit agencies and other financial institutions.

#### 5.7. Security Interests

This clause 5.7 sets out the Security Agreement between Oper8 and the Customer.

- a) The Customer (Grantor) grants to Oper8 (Secured Party) a Security Interest in all present and after-acquired Products (individually and together, Collateral) as security for all or part of the payment due for the Products. This shall also create a Purchase Money Security Interest (**PMSI**).
- b) This security interest in favour of the Secured Party attaches to the Collateral by virtue of possession of the Products as bailee under clause 5.7(f).
- c) Oper8 may, without notice to the Customer or any other person, apply to register a financing statement with respect to the Security Interest described in this clause 5.7 in the Personal Property Securities Register (**PPSR**).
- d) Until full title in the Products has passed to the Customer, the Customer will ensure that the Collateral is identifiable and distinguishable:
  - i. from any other goods that may be in the Customer's possession; and
  - ii. as to each particular invoice of Products.
- e) Oper8 will retain absolute legal and beneficial title over the Collateral until:
  - i. Oper8 has received payment in full in respect of such Collateral; or
  - ii. The Collateral is returned to Oper8 on completion of any Oper8 services agreement incorporating the Collateral.
- f) After delivery of the Collateral, until the full payment has been made the Customer, and during any Oper8 services agreement incorporating the Collateral, the Customer shall possess the Products as bailee only.
- g) Until payment in full for the Collateral has been received by Oper8, Oper8 may, without notice, seize the Collateral if:
  - i. a Termination Event occurs; or
  - ii. the Customer breaches this Agreement or any related Services Schedule.
- h) For the purposes of carrying out seizure under clause 5.7(g), Oper8 may without notice, enter the premises of the Customer and seek any and all remedies provided under Chapter 4 of the Personal Property Security Act 2009 (**PPSA**) and any other remedies provided at law or in equity or otherwise.
- i) The Customer may only sell all or any of the Collateral (in respect of which full payment for Products has not been received in full as cleared funds by Oper8) to a third party if:
  - i. Oper8 has not exercised its right to seize the Collateral under clause 5.7(g);
  - ii. the sale is a bona fide transaction at market value in the ordinary course of business; and
  - iii. all proceeds of sale of the Collateral is (to the extent of the amount due and payable for Products):

- a. immediately paid to Oper8; or
  - b. held on trust for Oper8 in a separate trust account, payable immediately on demand.
- j) Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on Oper8 in favour of the Customer.
- k) The Customer agrees to waive its rights to receive from Oper8 a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.
- l) The Customer acknowledges and agrees that at no time will the Customer have any claim of ownership, or have any rights in selling any systems, platforms, products or infrastructure owned and delivered by Oper8 as a Service.
- m) The Customer shall immediately notify Oper8 in writing of any change of name, ABN or ACN details.
- n) The Customer acknowledges receipt of a copy and due notice of this Security Agreement.

## **6. SUPPLY OF SERVICES AND SERVICE LEVELS**

### **6.1. Supply by Oper8**

Oper8 must supply Services specified in a Service Order in a professional and workmanlike manner in accordance with industry standards and the applicable Service Schedule.

### **6.2. Service Levels**

Oper8 must provide the Services in accordance with the relevant service levels specified in the Service Schedule. The Customer's sole remedy for failure to meet a service level is the service level rebates specified in the relevant Service Schedule, and the Customer waives any right to any additional remedy.

### **6.3. Use of Services**

The Customer must only use the Services in accordance with the terms specified in the Service Order and any relevant Service Schedule.

### **6.4. Additional Services**

If the Customer requires any additional Services a new Service Order (and, if required, Service Schedule) must be completed and signed by the parties.

## **7. PAYMENT TERMS**

### **7.1. Payment of Fees and Charges**

- a) Unless otherwise specified in a Service Schedule or Service Order, Oper8 must invoice the Customer monthly in advance for the Services to be provided to the Customer for the following month.
- b) The Customer must pay the invoiced Charges in Australian dollars within 30 days of the invoice date.

- c) Unless clearly specified, all fees and charges detailed in any Services Schedule, Services Order or Services Quote are exclusive of GST, and stated in Australian dollars.
- d) GST will be applied to all invoices as required under Australian Law.
- e) Outstanding Payments by the Customer will incur a 5% Recovery Fee applied to the Outstanding Payment Amount each 30 Days a payment remains outstanding.
- f) The Customer must pay all amounts in cleared funds by direct deposit, cash or cheque and without set-off, counterclaim or deduction.
- g) Oper8 may start to invoice a Customer for a Service from the RFS Date whether or not the Customer has used the Service since that date.
- h) Non-payment of outstanding Invoices may result in Service suspension or termination in accordance with clause 13.4.
- i) Oper8 fees and charges are stated in Australian dollars, which the Customer agrees to remit payment only in Australian dollars. Any fees incurred by Oper8 as a result of Customer payments being remitted in foreign currencies will be charged back to the Customer which the Customer agrees to pay Oper8.
- j) Annual CPI Increases to Oper8 fees and Charges are applied in accordance with clause 7.5.

#### 7.2. Fixed Term Charges

- a) Subject to clauses 7.2(b) and 7.5 as to instalment payment terms, where the Customer purchases a Fixed Term Service, the Fixed Term Charge is payable on the RFS Date and constitutes a debt due to Oper8 as from that date.
- b) The Customer may pay the Fixed Term Charge in equal monthly instalments over the Initial Term for so long as the Customer complies with the terms of this Agreement, the Service Order and any Service Schedule.
- c) Oper8 must issue invoices to the Customer in respect of each monthly instalment of the Fixed Term Charge in advance.
- d) If the Customer breaches any term of this Agreement or any applicable Service Schedule or Service Order (including non-payment of any invoice issued under clause 7.2(c)), any unpaid part of any Fixed Term Charge outstanding becomes immediately due and payable.
- e) Annual CPI Increases to Oper8 fees and Charges are applied in accordance with clause 7.5.

#### 7.3. Disputed Invoices

- a) If the Customer disputes any part of an invoice submitted by Oper8, the Customer must:
  - i. notify Oper8 in writing within 14 days of receipt of the invoice of the reasons for disputing the invoice; and
  - ii. pay the undisputed amount on or before the due date for payment.
- b) Any invoice not disputed under clause e)(a) is deemed accepted by the Customer and is final and binding.

- c) The parties must endeavour to resolve the disputed amount between themselves within 21 days of the notification being given by the Customer. If the parties do not agree the disputed amounts within 21 days of notification in writing by the Customer, the dispute resolution procedure set out in clause 18 applies.

#### 7.4. Additional Charges for Regulatory Changes

Oper8 reserves the right to vary any Charges where Oper8's cost of supply increases as a result of any additional regulatory costs, imposts, penalties or taxes imposed by any governmental or regulatory body, including without limitation any costs, imposts, penalties or taxes arising as a result of any carbon tax or power levy.

#### 7.5. Annual Indexed Price Increases (CPI Increase)

Oper8's fees and Charges will increase on an annual basis from RFS Date as follows:

- a) The first annual CPI Increase will apply twelve (12) calendar months after the RFS Date;
- b) Subsequent CPI Increases apply every twelve (12) months from the anniversary of the RFS Date during the Contract Term and any agreed Contract Extensions;
- c) The Customer agrees that CPI increases may apply to any and all fees and Charges from Oper8 in the delivery of contracted services, including Term contracts with monthly service fees over multiple years;
- d) The annual CPI Increase is the higher of 2% and the Annual Consumer Price Index (CPI) Australia (All Groups CPI, Weighted average of Eight Capital Cities) measured over the previous twelve (12) month period (since the anniversary of the RFS Date);
  - i. The Annual Consumer Price Index (CPI) Australia (All Groups CPI, Weighted average of Eight Capital Cities) is reported by the Australian Bureau of Statistics (ABS);
  - ii. Refer: [Consumer Price Index, Australia, Australian Bureau of Statistics \(abs.gov.au\) - Latest Release](https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release)<sup>1</sup>, All Groups CPI, Weighted average of Eight Capital Cities;
  - iii. The last available ABS reported CPI number for the previous 12 (twelve) months is used in this calculation, for example the 'Dec Qtr 2020 to Dec Qtr 2021' noting 'Over the twelve months to the December 2021 quarter, the CPI rose 3.5%';
  - iv. Should the All Groups CPI, Weighted average of Eight Capital Cities index be changed or removed by the ABS, for example the quantity of Cities changes, the nearest available All Groups CPI, Weighted average across Australia as reported by the ABS as an annual index rate is to be used;
- e) Revised Charges for Oper8 fees and services will apply from the anniversary of the RFS Date for the following 12 (twelve) calendar months of the Contract Term;

<sup>1</sup> <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

- i. Oper8 will advise the Customer of the new Charges that apply to the products and Services for the subsequent 12 month period;
- f) Oper8 will adjust Customer Charges and related invoices to reflect the revised Charges in accordance with this clause 7.5;

## 8. CUSTOMER'S OBLIGATIONS

### 8.1. General obligations

The Customer must:

- a) if relevant, provide and maintain its own network and network security;
- b) comply with any operational procedures and technical specifications specified in any Service Schedule or other reasonable directions given by Oper8 in relation to the Customer's obligations under this Agreement or a Service Schedule or Service Order;
- c) provide Oper8 with all information, assistance and co-operation reasonably requested by Oper8 in order to enable Oper8 to meet its obligations under this Agreement, a Service Schedule or Service Order;
- d) ensure that any equipment it connects to the Oper8 network is adequately maintained and meets minimum technical standards necessary for its usual operation;
- e) not do, or omit to do, anything which could have a material adverse effect on the operation or maintenance of Oper8 Equipment, Oper8's Service or Oper8's network;
- f) not copy, modify, distribute, sell or lease any part of Oper8's Services or included software, nor may the Customer reverse engineer or attempt to extract the source code of the software unless the Customer has been provided with Oper8's written permission;
- g) maintain responsibility for virus protection of the Customer's data and content, and for the logical and physical protection of the Customer's networks and systems.

8.2. The Customer acknowledges that Oper8's ability to deliver the Services is dependent upon the Customer's full and timely co-operation with Oper8, as well as the accuracy and completeness of any information and data the Customer provides.

8.3. The Customer agrees that the Customer will be liable for any delays to the SLA response times to the extent they are caused by the Customer or result from the Customer's failure to fulfil any of its obligations under this Agreement.

8.4. The Customer acknowledges that Oper8 will not be liable to the Customer for any costs or losses incurred by the Customer as a result of the Customer's failure to comply with the terms of this Agreement.

8.5. The Customer must take all reasonable steps to ensure that its employees, consultants, contractors and agents (where relevant) comply with all the terms of this Agreement and that no unauthorised use is made of any software or Service provisioned under this Agreement.

8.6. The Customer is responsible for the provision, performance and quality of all services subcontracted by the Customer.

- 8.7. Unauthorised representations or warranties
- The Customer must not make any representation or give any warranty in relation to any Service that is inconsistent with written materials supplied by Oper8 for that purpose other than as expressly authorised in writing by Oper8.
- 8.8. End Users
- The Customer is solely liable for any dispute raised by any End Users in relation to the provision of any Services by the Customer to those End Users. Other than as expressly provided in this Agreement, Oper8 disclaims any liability which may arise either on the part of the Customer or an End User as a result of the use of a Service by an End User or any related or ancillary claim, and the Customer indemnifies Oper8 in respect of any liability so incurred.
- 8.9. Access
- 8.9.1. The Customer must provide Oper8 and its suppliers, contractors, agents and employees with such reasonable access to the Customer's premises as is required for the purpose of delivering the Services.
- 8.9.2. Where Oper8 has provided platforms, devices, appliances and other systems on the Customer's premises, the Customer is required to provide timely physical site access by Oper8 to maintain, upgrade and/or retrieve such items as owned by Oper8.
- 8.9.3. Where Oper8 employees are given access to the Customer's premises in order to provide a Service:
- a) the Customer must ensure that the Customer's premises are safe and comply with all occupational health and safety laws; and
  - b) Oper8 must ensure that its employees comply with any reasonable direction given by the Customer or its employees in relation to maintenance of health and safety at the Customer's premises.
- 9. RIGHT OF ENTRY**
- 9.1. This clause 9 only applies where Oper8 owned equipment (Secured Property) has been installed in the Customer's premises.
- 9.2. The Customer hereby consents to Oper8 to enter the premises, leased or otherwise to install, repair, maintain, replace or remove the Secured Property after Oper8 has given notice to the Customer of its intention to do so.
- 9.3. The Customer consents to Oper8 entering the premises, leased or otherwise, and exercise all or any of its powers under the Right of Entry security.
- 9.4. Oper8 if it so desires may exercise its right of entry prior to any written notice of its intention to do so within a period of 24 hours.
- 9.5. Oper8 is responsible for the costs of rectification and reinstatement of any damage to the Customer's property caused by Oper8's entry under this Clause for the removal of the Secured Property in exercise of Oper8's rights under the Right of Entry security.
- 9.6. Oper8 is not required to reinstate the premises, leased or otherwise, to a better condition other than those existing at the time of removal of the Secured Property.
- 9.7. Oper8 may assign or otherwise deal with their rights pursuant to this clause in any way in which they consider appropriate. Oper8 has the discretion to inform the Customer of its intention to do so and the Customer may not claim against any assignee (or any other

person who has an interest in the Secured Property) and there is no right of set off or sets that the Customer has against Oper8.

- 9.8. The Customer upon entering this Master Services Agreement, shall also enter into a Right of Entry Schedule which permits Oper8 to gain access to any property in which Oper8 Secured Property has been deployed in delivery of Oper8’s services for the Customer.
- 9.9. The Customer acknowledges and consents that Oper8 are the owners of Secured Property, and Oper8 has the sole control and possession of such equipment.
- 9.10. As outlined in clause 5.7 the Customer hereby consents and permits Oper8 to lodge a Personal Property Security Register over the said Customer’s business and/or entity in order for Oper8 to protect and control the said ownership of the Secured Property.
- 9.11. The Customer shall be solely responsible for the safety, wellbeing and insurance of the Secured Property whilst the equipment is in the Customer’s possession, power and control.

**10. FAULT REPORTING AND RECOVERY**

10.1. Fault reporting and restoration

- a) The Customer must report any faults in relation to the Services to the Oper8 Service Desk as soon as reasonably practicable after it becomes aware of them.
- b) Service level outages are calculated from the time the Oper8 Service Desk receives notification of the fault from the Customer.
- c) Oper8 must use its reasonable endeavours to rectify any fault as soon as reasonably practicable after it has been reported.

10.2. Charges for Restoration

Oper8 will charge the Customer at its then standard Call Out Rates (including additional rates for out of hours service, as published in the relevant Service Schedule or Service Order) for fault restoration services where the fault or interruption of Services has arisen:

- a) As a result of any negligent act or omission of the Customer or an End User, or any other person for whom the Customer or End User is liable;
- b) In the case of Oper8 Internet, Ethernet and Software Services as a result of any defect in any Customer Equipment or its installation.

10.3. Unless otherwise stated in a Services Schedule, the following contact methods apply to fault reporting by the Customer:

<i>Method</i>	<i>Description / Process</i>
Oper8 Web Portal	Faults and requests can be logged through the secure Oper8 web based portal. The Customer will be provided with a unique login account. Login to: <a href="http://support.oper8global.com">http://support.oper8global.com</a>
Telephone	Please call: 1300 51 62 88
Email	Send an email to: <a href="mailto:supportdesk@oper8global.com">supportdesk@oper8global.com</a>

10.4. Unless otherwise stated in a Services Schedule, the following default Priority Levels apply to fault reporting:

<i>Incidents / Faults</i>		<i>Service Target</i>	
<i>Priority</i>	<i>Description</i>	<i>Response Target*</i>	<i>Closure Target*</i>
P1	An incident with significant Service impact, including total Service failure.	15 minutes	4 hours

<i>Incidents / Faults</i>		<i>Service Target</i>	
<i>Priority</i>	<i>Description</i>	<i>Response Target*</i>	<i>Closure Target*</i>
P2	Loss of part of the Service or functional component causing business impact.	2 hours	1 day
P3 (Default)	Infrequent failures such as minor degradation of Service performance or throughout, or single user failure.	4 hours	2 days
P4	Non-critical, intermittent, hardware or systems breaks related to the Service. Advice only such as application enquiry, advice and general guidance, and general enquiries.	1 day	3 days

\* During Business Hours

**11. CONFIDENTIALITY**

11.1. Confidentiality Obligation

Each party (Recipient) which receives Confidential Information of the other party (Disclosing Party) under this Agreement acknowledges that all Confidential Information provided to it or to which it is exposed is confidential to the Disclosing Party.

11.2. Loss suffered

The Recipient acknowledges and agrees that the Confidential Information is by virtue of its special nature valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the Confidential Information.

11.3. Non-Disclosure

The Recipient must:

- a) treat all Confidential Information as confidential and not make public or disclose to any other person that Confidential Information unless it has first obtained the written consent of Disclosing Party to do so;
- b) prevent third parties from gaining access to the Confidential Information; and
- c) deliver and surrender to Disclosing Party upon request all records of Confidential Information held by it.

11.4. Disclosure Required

The Recipient may disclose Confidential Information if required to do so by a government agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

11.5. Reference to Customer

Oper8 may acknowledge that the Customer is a customer of Oper8 and use the Customer’s logo in any press release, marketing, sales, or stock exchange reporting materials. Oper8 must seek the Customer’s prior written consent on a case-by-case basis, which will not be unreasonably withheld by the Customer.

**12. INTELLECTUAL PROPERTY RIGHTS**

12.1. Ownership of Intellectual Property Rights



- a) All Intellectual Property Rights which are owned by either party as at the date of this Agreement will at all times remain owned by that party exclusively.
- b) Except as expressly provided, nothing in this Agreement or any Service Schedule or Service Order confers on the Customer any right or interest in, or licence to use, any of Oper8's or any third party's Intellectual Property Rights.

#### 12.2. Domain Names and Internet Protocols

- a) The Oper8 network space assigned by Oper8 to the Customer is not portable and must be returned to Oper8 immediately if Oper8 suspends or discontinues supply of Oper8 Services.
- b) Where Oper8 allots any internet protocol numbers to the Customer in connection with a Service, the Customer may only use such internet protocol numbers in connection with that Service. If the Customer or Oper8 suspends or discontinues the use or supply of a Service for whatever reason, the Customer's right to use such internet protocol numbers will cease and Oper8 may reallocate such numbers as it sees fit.

#### 12.3. Storage Namespace and Tenant Names

- a) The Oper8 storage capacity, tenant names, and namespaces assigned by Oper8 to the Customer is not portable and will be returned to Oper8 immediately if Oper8 suspends or discontinues supply of storage Services.
- b) Virtual Portal, administration names and associated Internet sub-domains allocated to the Customer on the Oper8 storage platforms are not portable, and may be removed or reallocated by Oper8 as it sees fit.

### 13. TERM AND TERMINATION

#### 13.1. Term

- a) This Agreement, a Service Schedule or Service Order continues until terminated in accordance with this clause 13.
- b) Other than where terminated by the Customer under clause 13.2 or by Oper8 under clause 13.3, a Service Order remains in force for the specified Initial Term.
- c) After the Initial Term expires, the Service Order remains in force on a month to month basis until terminated by either party giving the other not less than 30 days written notice of termination.
- d) This Agreement and any relevant Service Schedule or Service Order remains in force in respect of any Service supplied to a Customer for as long as Oper8 continues to supply that Service to the Customer.

#### 13.2. Customer Termination

The Customer may terminate this Agreement, or an individual Service Schedule or Service Order (as the case may be) by notice in writing to Oper8, if:

- a) Oper8 has committed a material breach of this Agreement, the Service Schedule or Service Order (as the case may be) and either:
  - i. the breach is not remedied within 14 days of the date written notice of the breach is given to Oper8; or
  - ii. the breach is not capable of remedy; or

- b) Oper8 suffers an Insolvency Event; or
- c) Oper8 is unable to provide the Services due to a Force Majeure Event, which continues for a period of more than 15 Business Days.

### 13.3. Oper8 Termination

Oper8 may terminate this Agreement, or an individual Service Schedule or Service Order (as the case may be) by notice in writing to the Customer if:

- a) the Customer has committed a material breach of this Agreement, the Service Schedule or Service Order (as the case may be), and:
  - i. the breach is not remedied within 14 days of the date written notice of the breach is given to the party; or
  - ii. the breach is not capable of remedy; or
- b) the Customer suffers an Insolvency Event; or
- c) a Supplier Failure occurs which impairs or prevents Oper8 from delivering the Services in accordance with this Agreement, a Service Schedule or a Service Order; or
- d) any permit, licence or consent required for the provision of the Services cannot reasonably be obtained or retained by Oper8; or
- e) Oper8 is unable to provide the Services due to a Force Majeure Event, which event continues for a period of more than 15 Business Days.

### 13.4. Failure to Pay

Failure to pay any sum due under this Agreement, a Service Schedule or a Service Order on the due date for payment (other than an amount which is the subject of a valid dispute in accordance with clause e)) constitutes a material breach of this Agreement for the purposes of clause 13.3. In addition to the right to terminate this Agreement, Oper8 may do any one or more of the following:

- a) suspend the provision of the Services upon giving the Customer 2 Business Days written notice;
- b) invoice the Customer for the remainder of any Fixed Term Charge not paid in full at the date of the breach;
- c) charge the Customer interest on the overdue amount from the due date for payment up to the date of actual payment, after as well as before judgment, at the Interest Rate;
- d) where services include rack rentals in a data centre, suspend all Customer access to the data centre;
- e) where services include Customer data stored on Oper8's storage systems and Services,
  - i. if 45 days or more overdue, restrict access to the storage Service to read-only mode;
  - ii. if 60 days or more overdue, suspend all Customer use of the Service;

- iii. if 90 days or more overdue, Oper8 will terminate the Service, permanently delete stored Customer data, and reallocate the storage capacity to other customers;
- f) seek assistance from an appropriate debt collection agency at the Customer's cost.

#### 13.5. Suspended Services

If Oper8 suspends the provision of any Services under clause 13.4, Oper8 may reinstate those Services if all amounts due (including interest) are subsequently paid. In that event, Oper8 may charge a reconnection fee equal to Oper8's reasonable costs incurred in suspending and reconnecting the Services and reconnection will not occur until those costs have been paid.

#### 13.6. Actions on termination

On termination of this Agreement, a Service Schedule or Service Order:

- a) all unpaid sums owing by each party will immediately become due and payable to the other party;
- b) in addition to any other rights it may have, Oper8 may:
  - i. retain any moneys paid to it in respect of services provided;
  - ii. invoice the Customer in respect of any Services provided prior to the date of termination which have not been invoiced;
- c) the Customer must:
  - i. immediately return to Oper8 all Confidential Information of Oper8, all access codes and keys of any type and any other materials in the Customer's possession relating to Oper8;
  - ii. where the Customer has equipment in an Oper8 data centre, at Oper8's request remove all such equipment. If the Customer fails to remove the equipment within 2 Business Days of written request from Oper8 to do so, the Customer waives any proprietary rights it may have in that equipment, and Oper8 may remove that equipment and do anything (including sell, dispose of or dump) that equipment at its absolute discretion.

### 14. LIMITATION OF LIABILITY

#### 14.1. No indirect loss

Unless expressly stated to the contrary in this Agreement or a Service Schedule or Service Order, neither party is liable to the other for any indirect, special or consequential loss (including but not limited to loss of profits or loss of revenue, loss of data, loss of business or opportunity) however caused in connection with or related to this Agreement, a Service Schedule or a Service Order.

#### 14.2. No implied terms

All terms, conditions or warranties which may be implied into this Agreement, a Service Schedule or Service Order are excluded to the fullest extent permitted by law.

#### 14.3. Resupply of Services

Where legislation implies in this Agreement or any Service Schedule or Service Order any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included. The liability of Oper8 for any breach of such condition or warranty is limited, at the option of Oper8, to one or more of the following:

- a) if the breach relates to goods:
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repair of such goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the products repaired; and
- b) if the breach relates to services:
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

#### 14.4. Limitation of liability

The total aggregate liability of each party in respect of all claims made under this Agreement (including under any Service Schedule or Service Order) or otherwise in respect of the provision of Services (including in respect of any claims in tort or negligence) is limited as follows:

- a) for Oper8, where the breach occurs as a result of a failure to meet any service level specified in a Service Schedule, the service level rebate specified in that Service Schedule;
- b) in every other case, an amount equal to:
  - i. where this Agreement has been in force for more than 24 months, the total Charges paid by the Customer in the 24 month period prior to the date of the relevant claim; or
  - ii. where this Agreement has not been in force for 24 months or more, the amount calculated by multiplying the monthly recurring revenue payable in respect of all services the Customer has with Oper8 at the date of the breach by 12.

## 15. INDEMNITY

### 15.1. Mutual Indemnity

Subject to the limitations on liability set out in clause 14, each party (the Indemnifying Party) indemnifies the other and its Related Bodies Corporate, directors, officers, employees and agents from and against all losses, damages, liabilities, claims and expenses incurred (including but not limited to reasonable legal costs and defence or settlement costs) arising as a result of:

- a) any breach by the Indemnifying Party of this Agreement or any Service Schedule or Service Order;

- b) any negligent act or omission of the Indemnifying Party or any of its employees, consultants, contractors, agents or representatives relating to this Agreement or any Services provided under this Agreement.

15.2. Customer indemnifies in respect of End Users

- a) The Customer indemnifies Oper8 (and its Related Bodies Corporate, directors, officers, employees and agents) on a full indemnity basis in respect of any losses, damages, costs, penalties, awards, interest or other liabilities incurred as a result of any claim made by an End User relating to or in connection with Services or their use by the Customer or the End User.
- b) The Customer further indemnifies Oper8 (and its employees, directors or Related Bodies Corporate) in respect of any losses, damages, costs, penalties, awards, interest or other liabilities incurred as a result of the negligent, fraudulent, criminal or other illegal or wrongful use by the Customer or any End User of any Service supplied under this Agreement, a Service Schedule or a Service Order.

**16. FORCE MAJEURE**

16.1. No liability

Oper8 is not liable for any delay or failure to perform its obligations under this Agreement or any Service Schedule or Service Order to the extent that the delay or failure is due to a Force Majeure Event.

**17. GST**

17.1. GST

- a) All prices quoted for supplies made and/or to be made under this Agreement or any Service Schedule or Service Order are in Australian dollars and are exclusive of GST, unless expressed to the contrary in writing.
- b) If GST is applicable to any supply made by Oper8 under this Agreement, a Service Schedule or Service Order, Oper8 is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- c) The Customer agrees to pay Oper8 such GST charge in the same manner and at the same time as the payment for the relevant supply.
- d) Oper8 will issue tax invoices to the Customer for the purposes of GST.
- e) If required by applicable law, Oper8 will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Service Schedule within 30 days after the date Oper8 becomes aware of the adjustment event.
- f) For the purposes of this clause 14.1, "GST" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**18. DISPUTES**

18.1. Disputes resolution prior to litigation

The parties must exhaust the provisions of this clause 18 before initiating any legal proceedings in court.

18.2. Senior representative resolution

The parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this Agreement, a Service Schedule or Service Order by negotiation between a senior manager of each of them.

18.3. CEO Resolution

If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, the dispute must be escalated to the CEO of each party for resolution.

18.4. Litigation

If the CEOs of the parties fail to resolve the dispute within 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.

18.5. Interlocutory relief

Nothing in this clause 18 prevents any party from seeking urgent interlocutory relief from a court at any time.

**19. ASSIGNMENT**

19.1. No Assignment by Customer

The Customer may not assign, charge or deal with any its rights and obligations under this Agreement or any Service Schedule or Service Order, or attempt or purport to do so, without the prior written consent of Oper8, which consent shall not be unreasonably withheld.

19.2. Assignment by Oper8

Oper8 may assign, novate or subcontract any of its rights or obligations under this Agreement or any Service Schedule or Service Order to any person without the Customer's consent.

**20. GENERAL**

20.1. Notices

- a) A notice or other communication required or permitted to be given by one party to another must be in writing and:
  - i. delivered personally;
  - ii. sent by pre-paid mail to the address of the addressee specified in this Agreement; or
  - iii. sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee; or
  - iv. sent by email to an email address previously used or advised by the other party.
- b) A notice or other communication is taken to have been given:
  - i. If delivered personally, immediately upon delivery;
  - ii. if mailed, on the second Business Day after posting;

- iii. if sent by facsimile before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
  - iv. if emailed, on the date sent, unless the recipient is able to demonstrate that the email failed to be delivered.
- c) A party may change its address for service, or the respective contact details, by giving notice of that change in writing to the other parties.
  - d) The parties' respective contact details for notification under this Agreement are as set out in the Parties section above.

20.2. Governing law and jurisdiction

This Agreement is governed by the laws of Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

20.3. Further assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement. Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with this Agreement.

20.4. Counterparts and facsimile signatures

- a) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- b) The transmission by a party by email, fax or other electronic means of an executed copy of this Agreement (or any Service Schedule or Service Order) will be deemed proof of signature of the original for the purposes of constituting a binding agreement between the parties, and the signed copy so transmitted will be deemed the original for the purposes of this Agreement.

20.5. Whole agreement

In relation to the subject matter of this Agreement:

- a) this Agreement, and any relevant Service Schedule and Service Order, is taken to be the whole agreement between the parties; and
- b) supersedes all oral and written communications by or on behalf of any of the parties in relation to the subject matter of the Agreement, Service Schedule or Service Order, as the case may be.

20.6. No reliance on warranties and representations

In entering into this Agreement, each party:

- a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person other than as expressly stated in this Agreement; and
- b) has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

20.7. Survivability

- a) Subject to any provision to the contrary, this Agreement will ensure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not ensure to the benefit of any other persons.
- b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement will remain in full force and effect following the expiration of this Agreement.
- c) Each indemnity in this Agreement survives the expiry or termination of this document.

**20.8. Severance**

If any part of this Agreement is legally unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

**20.9. No merger**

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that Oper8 may have against the Customer or any other person at any time.

**20.10. Consents and approvals**

- a) Where this Agreement gives Oper8 a right or power to consent or approve in relation to a matter under this Agreement, Oper8 may withhold any consent or approval or give consent or approval conditionally or unconditionally and in its absolute discretion. The party seeking consent or approval must comply with any conditions Oper8 imposes on its consent or approval.
- b) The Customer warrants it has and will maintain the power and authority and has obtained and will comply with all necessary licenses and consents, necessary for it to enter into this Agreement and obtain and utilise the Services.

**20.11. Relationship**

The parties agree that this Agreement does not create any relationship of partnership or employment, franchise, joint venture or agency and that Oper8 is an independent contractor.



**EXECUTED AS AN AGREEMENT**

Executed for and on behalf of OPER8 GLOBAL PTY LTD (ABN 33 157 875 048) in accordance with Section 127(1) of the *Corporations Act 2001* by authority of the Directors:

..... Signature of Authorised Officer	..... Signature of Witness
..... Name of Authorised Officer	..... Name of Witness
..... Date	..... Date

Executed for and on behalf of \_\_\_\_\_ (ABN \_\_\_\_\_)  
in accordance with Section 127(1) of the *Corporations Act 2001* by authority of the Directors:

..... Signature of Authorised Officer	..... Signature of Witness
..... Name of Authorised Officer	..... Name of Witness
..... Date	..... Date