**MASTER SERVICES AGREEMENT**

**Preamble**

This ${nameOfAgreement} (the “Agreement”) dated ${effectiveDate} (the “Effective Date”) is between ${nameCounterparty} (the “Customer”) with its registered office at ${counterpartyAddress} and ${nameClient} (“Service Provider”) with its registered office at ${clientAddress}.  
  
The Customer wishes to avail certain services as described in this Agreement and the Service Provider desires to provide such services to the Customer on the terms and conditions provided below.  
  
NOW THEREFORE, the parties agree as follows:

1. **Description of Services:**
2. **Service Description.** As of the Effective Date, the Customer engages the Service Provider to provide and the Service Provider shall provide services as set forth in Exhibit A or any statement of work ("SOW") entered into by the parties (the "Services").
3. **Responsibility for Use.** The Customer is responsible for all use of the Services at the Customer's Premises and from the Service Delivery Point, even unauthorized use. This means that if someone uses the Services without the Customer’s knowledge or consent, the Customer is liable for all costs arising from that use.
4. **Restrictions to Use.** The Customer must not use the Services and must use its reasonable endeavors to prevent any other person from using the Services:
5. to break any law or infringe any person’s rights;
6. to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
7. In any way that damages, interferes with or interrupts the Services or the systems that Service Provider uses to supply the Services.
8. **Customer's Responsibility:**

To enable the provision of the Services, the Customer must:

1. Provide access to the Service Provider's employees, agents or sub-contractors to the Customer Premises to install the Equipment and the Network Access Line;
2. Provide full and unhindered access to the Equipment during normal business hours or at such other times as the Customer and Service Provider mutually agree.
3. Not cause or permit any Equipment to be altered, repaired, serviced or moved except by service personnel approved by Service Provider and shall ensure, at its own cost that the Equipment is protected from power surges and is located in a suitable physical environment for the operation of the Equipment.
4. Ensure, at its own cost, that it has all equipment and software necessary (whether by firewall or by any other means) to protect from external attack the security and integrity of its communications or computer systems and/or network and of the configuration of the Equipment.
5. **Fees, Taxes and Credit Limit:**
6. **Fees.** The Service Provider shall perform the Services at the fixed rate of ${serviceFeeCurrency} ${serviceFees} or as stated in the applicable statement of work (“Fees”). Upon acceptance by Service Provider of a Service Schedule, Service Provider may invoice the Customer for a service fee deposit of ${serviceFeeDeposit} of the cost of the Equipment set out in a Service Schedule which is payable within ${depositPaymentTimeline} of invoice date. The costs of any maintenance contract procured by Service Provider on behalf of the Customer are payable annually in advance.
7. **Taxes.** All Fees are exclusive of all taxes and applicable levies. The Company will be responsible for any tax-related or other legal obligations applicable to the Service Provider, other than any taxes levied on its income.
8. **Credit Limit.** Service Provider reserves the right to impose a credit limit of ${creditLimit} for the Customer. If the Customer exceeds the credit limit determined by Service Provider, Service Provider may:
9. require the Customer to pay in advance for any Services; or
10. Suspend the Services or any part of the Services (including help desk services) until the Customer’s account is brought within the credit limit determined by Service Provider.
11. **Expenses and Reimbursements:**
12. **Reimbursement.** The Customer shall reimburse the Service Provider for all reasonable, and necessary expenses incurred in performing the Services, including cost of any development software or commercial software libraries the developer deems necessary to complete this project.
13. **Receipts, etc.** The Service Provider shall provide the Customer with satisfactory documentation supporting all expense requisitions.
14. **Payment.** Service Provider shall raise an invoice for all expenses and the Customer shall pay such invoice within ${paymentOfReimbursements} of receipt.
15. **Invoicing and Payments:**
16. **Invoices.** The Service Provider shall deliver its invoices for Services to the Customer monthly in advance of its performance of the related Services.
17. **Payment.** The Customer shall pay the invoice amount within ${invoicePaymentTimeline} from the date of receipt of the invoice.
18. **Overdue Payments.** Interest on any undisputed overdue payments will accrue at a rate of no more than ${interestOverduePayments} per year, calculated monthly.
19. **Credit.** Service Provider reserves the right to impose a credit limit for the Customer. If the Customer exceeds the credit limit determined by Service Provider, Service Provider may:
20. Require the Customer to pay in advance for any Services; or
21. Suspend the Services or any part of the Services (including help desk services) until the Customer's account is brought within the credit limit determined by Service Provider.
22. **Representations and Warranties:**

The Service Provider represents and warrants to the Customer as follows, acknowledging that the Customer is relying on these representations and warranties:

1. **Authority.** The Service Provider has the corporate power and capacity to execute and deliver, and to perform its obligations under, this Agreement. It has taken all necessary corporate action to authorize its execution and delivery of, and the performance of its obligations under this Agreement.
2. **No Conflicts.** The Service Provider is under no restriction or obligation that may affect the performance of the Services.
3. **Performance.** The Services will be performed in a good and professional and workmanlike manner and in accordance with any statutes, regulations or ordinances applicable to the Services.
4. **No Infringement.** In providing the services, the Service Provider shall not infringe, misappropriate, or violate any intellectual property or other right of any person or entity.
5. **Delivery, Title and Risk of Loss:**
6. If required for the provision of Services, the Service Provider will deliver all Equipment and other components of the Service to the Company according to the Service Schedule. Service Provider will select the mode of shipment and the carrier. Service Provider will invoice the Company for freight, shipping and any insurance charges.
7. Delivery takes place when the Equipment is delivered by Service Provider to the carrier of Customer's preference.
8. All risk of loss or damage to the Equipment passes to the Company upon delivery to the carrier. Title to the Equipment shall pass only upon full payment of all Equipment by Customer.
9. **Indemnity:**
10. Service Provider shall indemnify, defend and hold harmless Customer and its officers, directors, agents and employees, from and against any and all claims, demands, causes of action, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to Service Provider's performance of its obligations, including, but not limited to acts or omissions of Service Provider or anyone Service Provider has engaged to perform any portion of the Services, or any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance of Services under this Agreement.
11. Customer shall indemnify, defend and hold harmless Service Provider and his heirs and successors from and against any and all claims, demands, causes of action, losses, damages, costs and expenses (including reasonable attorneys' fees) that might arise or be imposed due to Customer's breach of its obligations under this Agreement or that is a result of Customer's negligent or willful conduct.
12. **Limitation of Liability:**

SERVICE PROVIDER'S LIABILITY TO CUSTOMER UNDER ANY PROVISIONS OF THIS AGREEMENT FOR DAMAGES FINALLY AWARDED SHALL BE LIMITED TO ${liabilityLimitationAmount}. IN NO EVENT SHALL NEAR BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, LOSS OF PROFITS OR INTERRUPTION OF BUSINESS, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.

1. **Suspension of Services:**

The Service Provider may suspend its Services in whole or in part if:

1. An invoice to Customer is not paid for 10 (ten) workings days past is payment due date;
2. with notice of at least 24 (twenty-four) hours in case of emergency maintenance and/or 2 (two) working days in case of scheduled maintenance in connection with the Service Access Line or its network or systems; or
3. Service Provider is required to do so by law or to comply with a request from a Regulator or emergency service organization.
4. **Confidentiality:**
5. **Definition of Confidential Information.** The term "Confidential Information" includes all ${confidentialInformation}, written or oral, disclosed or made available to the receiving party ("Recipient") by the disclosing party ("Discloser") that is:
6. disclosed by Discloser in writing and marked as confidential (or with other similar designation) at the time of disclosure; and/or
7. disclosed by Discloser in any other manner (visually, orally) and identified as confidential at the time of disclosure and also summarized and designated as confidential in a written memorandum delivered to Recipient within thirty (30) days of the disclosure.
8. **Confidentiality Obligations.** The Recipient shall hold all Confidential Information in confidence using the same degree of care that it uses to protect its own information of like name but no less than a reasonable degree of care.
9. **Use only for the Purpose.** Recipient shall use Confidential Information solely for the purpose contemplated under this Agreement. Confidential Information shall be shared only with such employees and sub-contractors who have a need to know this information for performance of Services under this Agreement and have executed an agreement no less protective of the Discloser's intellectual property and confidential information.
10. **Data Protection (U.S.):**

Both parties shall ensure that they, their employees, agents and sub-Service Providers shall observe all requirements of any federal and state privacy laws and any amendments, including but not limited to Electronic Communications Privacy Act or revisions thereto and shall comply with any request made or direction given to the other which is directly due to the requirements of such laws.

1. **Non-Solicitation:**

During the Term of this Agreement and for a period of ${nonSolicitationPeriod} following the termination of this Agreement, the Service Provider, on the Service Provider's own behalf or in the service or on behalf of others, shall not:

1. Induce or attempt to induce any officer, director, or employee to leave the Customer, or
2. Solicit the business of any customer or consultant of the Customer.

This does not apply to situations where the Service Provider is soliciting business from Customer's customers through an open tendering process or to recruiting employees who have responded to general job postings of Service Provider available in public domain.

1. **Independent Contractor Status (U.S.):**
2. **Control.** Customer shall not control the details, manner or means by which Service Provider performs the Services in any material respect.
3. **Status.** The Service Provider is an independent Service Provider. Nothing contained in this Agreement creates a partnership, joint venture, employer/employee, principal-and-agent, or any similar relationship between the parties.
4. **Deemed Employment.** If, notwithstanding such specific intention and agreement, Service Provider is finally adjudged to be an employee of Customer by a court of competent jurisdiction, then to the maximum extent permitted by applicable law, such status shall not entitle Service Provider to, and Service Provider specifically waives entitlement to Customer employee benefits, including but not limited to, medical, dental, life insurance, 401(k) program, stock option plans, stock purchase plan, vacation leave, sick leave and holidays. In the event Service Provider is finally adjudged to be entitled to any of such benefits by a court of competent jurisdiction, Customer shall be entitled to recover from Service Provider the fair market value of any such benefits if, and to the extent that, the monetary compensation payable to Service Provider under this Agreement exceeds the reasonable salary, prorated for the term of this Agreement, that Service Provider would have received if Service Provider had actually been hired, as of the Effective Date of this Agreement, as an employee of Customer to do equivalent work.
5. **Insurance:**
6. **Coverage.** Throughout the Term of this Agreement, the Service Provider shall, in connection with its performance of the Services, maintain:
7. workers' compensation insurance in the amount required by law; and
8. comprehensive general liability insurance with coverage of at least ${insuranceCoverage} per occurrence for bodily injury, property damage, or other losses.
9. **Proof of Insurance.** At the Customer's request, the Service Provider shall provide the Customer with:
10. certificates or other acceptable evidence of insurance evidencing its coverage in compliance with this section, and
11. Notice of any material change to that coverage.
12. **Term:**

This Agreement will begin on the Effective Date and will continue for a period of ${term} (the "Term"), unless terminated earlier in accordance with this Agreement.

1. **Termination:**

Either party may terminate this Agreement by written notice of ${terminationForDefault} to the other party, if:

1. There is a breach by the other party of any provision of the Agreement which expressly entitles the party not in breach to terminate the Agreement; and / or
2. A party has materially breached any obligation herein and such breach remains uncured for a period of ${noticeOfBreach} after written notice of such breach is sent to the other party.
3. **Notices:**

All notices, invoices or other documents required to be given to or served upon either party pursuant to or in connection with this Agreement shall be in writing in the English language and shall be deemed to be duly given or served when delivered (in the case of facsimile, provided confirmation of transmission has been received) to the party to which such notice is given. All notices to Customer and Service Provider shall be sent to the addresses as provided under the Preamble of this Agreement.  
  
A written notice includes a notice by facsimile, e-mail or through post.

1. **Compliance with Applicable Laws:**

The Service Provider agrees to abide by all federal, state and local laws, ordinances and regulations as may apply to this Agreement.

1. **Alternative Dispute Resolution:**
2. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in ${jurisdiction}, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect by 3 (three) arbitrator(s), one selected by each party and the third selected by the two appointed arbitrators.
3. **Judgment.** Judgment may be entered on the arbitrator's award in any court having jurisdiction. The arbitrator shall not have the power to award any punitive or consequential damages.
4. **Assignment:**

Either party may not assign its rights or obligations under this Agreement without the prior written consent of Service Provider, which consent shall not be unreasonably withheld.

1. **No Waiver:**

A party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

1. **Force Majeure:**

Force majeure event means any cause(s) which render(s) a party wholly or partly unable to perform its obligations under this Agreement (other than obligations to make payments when due), and which are neither reasonably within the control of such party nor the result of the fault or negligence of such party, and which occur despite all reasonable attempts to avoid, mitigate or remedy, and shall include acts of God, war, riots, civil insurrections, cyclones, hurricanes, floods, fires, explosions, earthquakes, lightning, storms, chemical contamination, epidemics or plagues, acts or campaigns of terrorism or sabotage, blockades, embargoes, accidents or interruptions to transportation, trade restrictions, acts of any Governmental Authority after the date of this Agreement, strikes and other labor difficulties, and other events or circumstances beyond the reasonable control of such party. Either party may terminate this Agreement with a ${forceMajeureTerminationNotice} notice in the event performance under this Agreement is not resumed within ${forceMajeureRemedyPeriod} post the force majeure event.

1. **Entire Agreement:**

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter to which this Agreement relates and, other than a Service Schedule, there are no other prior or subsequent agreements, understandings, terms, conditions, warranties, representations, covenants, inducements, promises, arrangements or undertakings oral or written, whether express or implied, between the parties extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to the subject matter to which this Agreement relates.

1. **Governing Law and Jurisdiction:**

This Agreement is made under and shall be construed according to the laws of the ${governingLaw}. In the event that this Agreement is breached, any and all disputes must be settled in the ${venue} courts of the state of ${jurisdiction}.

1. **Signatures:**

Agreed and accepted:  
  
${nameClient}  
  
Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Address: ${clientAddress}  
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
${nameCounterparty}  
  
Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Address: ${counterpartyAddress}  
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Definitions and Interpretations**

**(Exhibit A)**

1. **DEFINITIONS:**
2. **“Adverse Event”** in relation to a party means any of the following:
3. anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes:
4. a meeting of the party’s creditors being called or held;
5. a step being taken to make the party bankrupt or to wind the party up;
6. the appointment of a controller or administrator; or
7. the party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;
8. the party being made subject to a deed of Customer arrangement;
9. a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the party or any of its assets; or
10. the party ceasing, or indicating that it is about to cease, carrying on business;
11. **“Customer Premises”** means those premises set out in the Service Schedule at which Service Provider will supply the Services;
12. **“Equipment”** means any equipment supplied by Service Provider to the Customer and required for the supply of the Services and includes costs for configuration, installation, project management and training for the Customer;
13. **“Taxes”** means tax (such as GST, VAT, service tax) levied by the government for sale of goods and/or services;
14. **“Regulator”** means the Minister (or his delegate) responsible for administration of the Telecommunications Laws in ${jurisdiction};
15. **“Service Access Line”** means the dedicated access line between the Customer Premises and Service Provider or between two or more Customer Premises, used in connection with the Services;
16. **“Service Delivery Point”** means the point and/or location at the Customer Premises at which the Equipment and/or the Customer’s equipment and/or communications network connects to the Services;
17. **“Service Level”** means the service level specified in a Service Schedule (if any);
18. **“Services”** means only the services and functions relating to provision of fixed line and mobile telecommunication and data services as set out in detail in a Statement of Work;
19. **“Service Schedule”** means the document in the form of document attached as Schedule 1 signed by the Customer and Service Provider describing, inter alia, the Services that the Customer requests Service Provider to provide to it;
20. **“Service Start Date”** means the date that Service Provider starts to provide Services or is deemed to do so; and
21. **“Telecommunications Laws”** means the ${complianceWithSpecificLaws} as amended or varied from time to time and any regulations promulgated or codes of conduct or practice issued pursuant or relating to that Act.
22. **INTERPRETATION:**

In this Agreement, unless the context requires otherwise:

1. words importing the singular shall (where appropriate) include the plural and vice versa;
2. words importing any gender shall (where appropriate) include the other genders and vice versa;
3. words importing natural persons shall (where appropriate) include firms, corporations, unincorporated associations, partnerships and any other entities recognized by law and vice versa;
4. headings are included for convenience of reference only and shall not affect the meaning or interpretation of this Agreement;
5. references in this Agreement to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
6. references in this Agreement to clauses, schedules and parties shall be construed as references to the clauses, schedules and parties of and to this Agreement;
7. a reference to ${serviceFeeCurrency} is a reference to the lawful currency of [INSERT]; and
8. The obligations and liabilities imposed and the rights and benefits conferred on the parties under this Agreement shall be binding upon and ensure in favor of the respective parties and each of their respective legal personal representatives, successors in title and permitted assigns.
9. **HEADINGS**  
   The headings in this Agreement are for the purpose of more convenient reference only and shall not form part of this Agreement or affect its construction or interpretation.
10. **BUSINESS DAYS**  
    Except where otherwise expressly provided, where under or pursuant to this Agreement the day on or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.
11. **SUCCESSORS AND ASSIGNS**  
    The obligations and liabilities imposed and the rights and benefits conferred on the parties under this Agreement will be binding upon and ensure in favor of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.
12. **ORDER OF PRECEDENCE**  
    This Standard Form of Master Service Agreement is made up of:
13. these terms and conditions; and
14. Its Annexures and Exhibits.

If there is any conflict between these terms and conditions and a Service Schedule, unless otherwise agreed in writing, these terms and conditions prevail to the extent of any conflict or inconsistency.

**Statement of Work (Form)**

**(Exhibit B)**

This Statement of Work forms part of and is issued under the Master Service Agreement dated ${effectiveDate} (the “Agreement”) between ${nameCounterparty} and ${nameClient}. The Customer is requesting for certain Services (as defined in the Agreement) under this Statement of Work.  
  
**Service Details:**  
[INSERT]  
  
**Service Description:**  
[INSERT]  
  
**Service Schedule Date:**  
[INSERT]  
  
**Customer ACN/ABN Service Schedule Number:**  
[INSERT]  
  
**Customer Address Billing Address:**  
[INSERT]  
  
**Customer accounts contact Telephone E-mail:**  
[INSERT]  
  
**Customer technical contact Telephone E-mail Emergency contact number:**  
[INSERT]  
  
**Service Delivery Address:**  
[INSERT]  
  
**Service and Functions Equipment:**  
[INSERT]  
  
**Installation Charges Deposit:**  
[INSERT VALUE]  
  
**Maintenance Contract Annual charge:**  
[INSERT VALUE]  
  
**Administration fees for:**  
Resumption after suspension [INSERT VALUE]  
Reconnection [INSERT VALUE]  
Change to account details [INSERT VALUE]  
Change in network settings [INSERT VALUE]  
Incorrect fault reporting [INSERT VALUE]  
  
All prices quoted are exclusive of all applicable taxes and levies.

**Service Level Agreements**

**(Exhibit C)**

Service Provider is committed to providing a reliable, high quality network. The Service Levels are set out below.

The Credits, including Service Provider’s obligations and mechanisms to provide them are set out below.

1. The Core Network [Add]
2. Core Network Latency [Add]
3. Network Measurement Criteria [Add]
4. Network Latency [Add]
5. Packet Delivery [Add]
6. Access Port Availability
7. Service Provider Ethernet and Service Provider Clear

The providers of these services deliver these products as un-contended services. This ensures that all Fiber services are provided to The Customer with a 1:1 contention ratio. Service Provider warranty and SLA on these services is the same as the warranty and SLA provided by the supplying carrier.

1. Monthly Reports Service Provider will provide the customer with access to monthly and weekly reports via its on line web portal to enable the customer to monitor the agreed Service Levels and to make claims for credits where justified by breach an agreed Service Level.
2. Business Hours (a) The Customer operates normal business hours from Monday to Friday. (b) Only authorized staff of The Customer or as delegated, are permitted to contact Service Provider direct unless there is an emergency. (c) During public holidays, Service Provider will make appropriate emergency contact information available to the Customer.
3. Non Business Hours: The Customer may operate outside of normal business hours.

In this event, Service Provider will provide appropriate out of hours contact information to the Help Desk. This includes:

1. On line fault logging and tracking
2. SMS notification to Service Provider support staff
3. 24x7 network monitoring.
4. Fault severity table [ADD]

Service Provider reserves the right to charge the Customer for excessive incorrect usage of Severity 1 Call usage at commercial time and material rates. 12 Service Credit calculation (a) Service Levels are measured on a monthly calendar basis according to the SLA above (b) Service Provider will provide credits (each a “Service Level Credit”) for failure to deliver a Service pursuant to the SLA calculated at the hourly rate charged for the service together with a penalty equal to the service charge. (c) The Credit per Fault will be a rebate to the Customer, calculated as a percentage of the monthly charges the Customer pays in respect of the affected portion of the Services. It applies for the calendar month in which the Fault occurred. Note that where one Access Port is unavailable, the Credit applies against the recurring charge for that Access Port, not the charge for the whole Corporate Network. (d) In any one calendar month you are only entitled to a maximum Credit of 25% for the month. (e) In the calculation of Packet loss and Network Latency, measurements during a Planned or unplanned Outage are excluded. (f) For the purposes of this section an example calculation is set out below:

1. Access Port availability provides up time of 99.75. The allowable variance is 1.86 hours per month.

If the end of month service is established to be 99.5 i.e.3.72 hours down time then the applicable credit to the customer for the month on that service will be a credit of 7.44 hours i.e. twice the down time.

**Rate Card**

**(Exhibit D)**

[INSERT DETAILS]