



MASTER SERVICES AGREEMENT



SIMTRONIC

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INTRODUCTION

- A. Simtronic Technologies is a supplier of telecommunications products and services.
- B. The Customer wishes to order products and services from Simtronic Technologies on the pre-agreed terms and conditions specified in this Agreement.
- C. Additional terms and conditions specified in Service Schedules and Service Orders for the products and services ordered by the Customer and agreed to from time to time by Simtronic Technologies and the Customer, shall be incorporated into this Agreement.

IT IS AGREED

1. SERVICE SCHEDULES AND SERVICE ORDERS

- 1.1. Upon request, Simtronic Technologies will provide the Customer with Service Schedules and Service Orders setting out the specific terms and conditions that shall apply to the products or services the Customer wishes to acquire from Simtronic Technologies. Those terms and conditions shall be binding on the parties in addition to the terms and conditions specified in clauses 1-31 herein, which shall also be binding. The provision of such Service Schedules and Service Orders to the customer pursuant to this subclause 1.1 shall constitute an invitation for the customer to apply for the provision of Products and Services from Simtronic Technologies.
- 1.2. If the Customer wishes to request the delivery of any Products or Services from Simtronic Technologies, it must execute and return to Simtronic Technologies the Service Schedules and Service Orders.
- 1.3. Each Service Schedule and Service Order executed by both Parties in writing constitutes a separate contract between Simtronic Technologies and the Customer.
- 1.4. If a term of an agreed Service Schedule or Service Order would otherwise expire after the term, the Term shall be extended automatically to coincide with the expiry of the term specified in that agreed Service Schedule or Service Order.
- 1.5. Where any conflict occurs between a Service Schedule or Service Order and any other part of this Agreement, the conflicting provisions shall, where possible, be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the Service Schedule or the Service Order (as the case may be) without otherwise diminishing the enforceability of the remaining provisions of this Agreement.
- 1.6. Simtronic Technologies may at its discretion conduct any credit worthiness check regarding the Customer prior to issuing any Service Schedule or Service Order to the Customer and the Customer hereby authorises Simtronic Technologies to make all enquiries reasonably necessary to determine the Customer's credit worthiness including, by conducting requests for information from banks, credit agencies and other financial institutions.

2. SUPPLY OF PRODUCTS AND SERVICES

- 2.1. The delivery of the Services will be subject to the service levels specified in the relevant Service Schedules. Subject to clause 11, the Customer's sole remedy for breach of the service levels shall be the service level rebates specified in the Service Schedules.
- 2.2. The Customer agrees and acknowledges that Simtronic Technologies may change or replace the Products or Services at any time in its absolute discretion, provided that such change or replacement does not materially adversely affect the Products or Services or adversely financially impact the customer.
- 2.3. The Customer agrees and acknowledges that it will report any faults in the Products or Services to Simtronic Technologies immediately upon such faults becoming known to the Customer. Simtronic Technologies will deal with all reported faults urgently and use its best endeavours to remedy those faults or cause them to be remedied.

- 2.4. Upon delivery of the Products or Services to the Customer, the Customer shall take full responsibility for the use of those Products or Services. So that Simtronic Technologies can allocate sufficient Products and Services to the Customer, Simtronic Technologies may request that the Customer provide Simtronic Technologies with its estimated capacity requirements. The Customer acknowledges that any notification of its capacity requirements provided to Simtronic Technologies less than 90 days in advance may prevent Simtronic Technologies from securing sufficient capacity on its networks for the Customer. Simtronic Technologies reserves the right to issue new Service Schedules if the Customer changes its capacity requirements.
- 2.5. The Customer agrees and acknowledges that if Simtronic Technologies acquires products or services from a carrier (as defined under the *Telecommunications Act 1997 (Cth)*, the Customer will comply with all reasonable directions of Simtronic Technologies as is necessary for Simtronic Technologies to comply with its obligations under any agreement with that carrier.
- 2.6. Simtronic Technologies may publish or refer to the Customer as a customer of Simtronic Technologies in any Simtronic Technologies press release, marketing, sales or financial material or reports.
- 2.7. The Customer acknowledges that the intellectual property rights in the Products and Services remain at all times owned by Simtronic Technologies or its licensors.

3. SECURITY

- 3.1. Simtronic Technologies will require no security bond from the Customer, other than the warranties outlined in the credit application form.

4. PAYMENT AND PAYMENT TERMS

- 4.1. The Charges will apply on and from the dates for commencement of the delivery of the Products or Services specified in the Service Orders and it is the Customer's responsibility to ensure it is fully ready to accept delivery of the Products and Services on those dates.
- 4.2. The Customer agrees to pay the Charges at the rate and in the manner specified in the Service Orders.
- 4.3. All fixed-price Products and Services including line rental, flat rate transit and DSL tails must be paid for in advance. All usage-based Products including volume-based transit, Voice calls and DSL excess usage and Services must be paid for in arrears.
- 4.4. All Charges must be paid within 7 days of Simtronic Technologies issuing an invoice to the Customer. The Customer is not entitled to offset any amounts payable by it, whether under any other agreement, counterclaim or otherwise.
- 4.5. If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by Simtronic Technologies, the Customer shall pay the undisputed amount claimed and shall notify Simtronic Technologies in writing (within 7 days of receipt of the invoice) of the reasons for disputing the invoice. If the parties cannot come to an agreement in relation to the disputed amounts within 14 days of notification in writing by the Customer to Simtronic Technologies of the disputed amounts in accordance with this subclause, the parties shall attempt to resolve the dispute via the dispute resolution procedure set out in clause 19 herein.
- 4.6. The Charges are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of the Products and Services. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the date of this Agreement in respect of the Products and Services.
- 4.7. Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- 4.8. In addition to paying the Charges and any other amount payable under or in connection with this Agreement (which is exclusive of GST), the Customer will:

- 4.8.1. pay to Simtronic Technologies an amount equal to any GST payable for any supply by Simtronic Technologies in respect of which the Charges or other amount is payable under this agreement; and
- 4.8.2. make such payment on the date when the Charges or other amounts to which it relates is due.
- 4.9. Without limitation to any other rights or remedies of Simtronic Technologies, if the Customer fails to pay any amount payable by it under this Agreement, Simtronic Technologies shall be entitled, but not obliged, to:
 - 4.9.1. suspend the provision of the Services upon giving the Customer 5 days written notice and charge a reconnection fee equal to 1 months' Charges if the Customer pays the outstanding Charges,(provided such reconnection shall not limit Simtronic Technologies' rights to terminate this Agreement for any subsequent non- payment); or
 - 4.9.2. terminate this Agreement in accordance with clause 11; and/or
 - 4.9.3. charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from 21 days after the due date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum; and/or
 - 4.9.4. charge the Customer a late payment fee of 5% on any invoice which falls 7 days or more overdue. The late fee of 5% will be calculated on the invoice total including GST and will also incur GST.

5. ACCESS

- 5.1. The Customer shall provide Simtronic Technologies and its suppliers, contractors, agents and employees with full, safe and uninterrupted access to the Customer's premises (including via remote access) as may reasonably be required for the purpose of installing and maintaining the Products and Services. The premises must be safe and comply with all occupational health and safety laws.

6. END USERS

- 6.1. The customers of the Customer ("End Users") are the sole liability of the Customer and the Customer hereby agrees and acknowledges that any misuse of the Products or Services conducted by the Customer or any End Users, and any billing, disputes and support matters relating to the End Users shall be the sole responsibility of the Customer. The Customer also agrees to indemnify Simtronic Technologies in relation to any claims, threats or action (made by the customer or an end user), including without limitation for breach of copyright or the transmission of illegal or offensive or obscene, threatening or abusive data or for loss or damages claimed in any court or tribunal or other judicial body as a result of the negligent, fraudulent, criminal, illegal or other wrongful usage by the Customer or End Users of the Products or Services, or any negligence of the Customer or End Users

7. INSURANCE

- 7.1. Simtronic Technologies and any contractors or sub-contractors working on behalf of Simtronic Technologies will take out and maintain all insurance policies relevant to Its business.

8. CONFIDENTIALITY

- 8.1. The existence and content of this Agreement is confidential, subject to clause 2.7
- 8.2. This clause will survive the termination of this Agreement.
- 8.3. A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 8.4. A Party will not be in breach of subclause 8.3 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 8.5. Each Party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.

8.6. Notwithstanding any other provision of this clause, a Party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its lawyers on condition that its lawyers maintain the confidentiality as specified herein.

9. RIGHTS NOT TO BE ASSIGNED

9.1. Neither party will assign, novate or otherwise transfer all nor any part of its rights or obligations under this Agreement without the prior written consent of the other party.

10. LIABILITY AND INDEMNITY

10.1. Simtronic Technologies will not be liable to the Customer in respect of any or any direct, indirect, special or consequential losses (including but not limited to loss of profits or loss of revenue) however caused, and regardless of whether the Customer has been advised of the possibility of such loss, where such loss arises as a result of the breach of this Agreement other than as a result of any negligence or a statutory liability arising in connection with the supply of Products or performance of Services under this Agreement.

10.2. Except in relation to liability for personal injury (including sickness and death), and subject to subclause 1, Simtronic Technologies will not be liable to the Customer in respect of any loss or damage which may be suffered or incurred or which may arise directly or indirectly in respect of the use or effect of Products or Services supplied pursuant to this Agreement or in respect of a failure or omission on the part of Simtronic Technologies to comply with its obligations under this Agreement.

10.3. The Customer releases and indemnifies Simtronic Technologies, its servants and agents against all actions, claims and demands (including the cost of defending or settling any action, claim or demand) which may be instituted against Simtronic Technologies arising out of a breach of this Agreement by the Customer or the fraud or negligence of the Customer, its agents, employees or subcontractors or of any other person for whose acts or omissions the Customer is vicariously liable.

10.4. The Customer releases and indemnifies Simtronic Technologies against any action, claim or demand by the Customer's End Users, servants, employees or agents or their personal representatives or dependants arising out of the performance of this Agreement other than as a result of any negligence or a statutory liability arising in connection with the supply of Products or performance of Services under this Agreement.

10.5. The Customer shall at all times indemnify and hold harmless Simtronic Technologies and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

10.5.1. *a breach by the Customer of its obligations under this Agreement; or*

10.5.2. *any wilful, unlawful or negligent act or omission of the Customer.*

10.6. Where any liability of Simtronic Technologies is not otherwise limited under this Agreement, the aggregate liability of Simtronic Technologies shall be limited to the total Charges paid by the Customer in the last month preceding the accrual of the relevant liability, and if liability has accrued on more than one occasion, the month preceding the most recent accrual of liability.

11. TERMINATION AND EXPIRY

11.1. Upon expiry of this Agreement, it shall automatically renew (and all current Service Orders and Service Schedules shall be renewed) for successive periods of 30 days until either Party gives 14 days notice that it wishes to terminate this Agreement.

11.2. The Customer may terminate this Agreement during the Term if Simtronic Technologies is in material breach of its obligations herein or is unable to provide the Services due to a Force Majeure Event, for a period of more than 15 days.

- 11.3. Without limiting the generality of any other clause in this Agreement, Simtronic Technologies may terminate this Agreement immediately by notice during the Term if:
- 11.3.1. (a) *the Customer is in breach of any term of this Agreement and such breach is not remedied within 30 days of the Customer being notified of the breach;*
 - 11.3.2. (b) *the Customer or its End Users remain in breach of the acceptable use policies or other policies of Simtronic Technologies provided by Simtronic Technologies from time to time after 5 days notification of such breach (provided that any such breach that is deemed to be illegal activity or likely in the reasonable opinion of Simtronic Technologies to cause injury to any other person will not be subject to 5 days notification);*
 - 11.3.3. (c) *the Customer suffers or threatens to suffer an Insolvency Event.*
 - 11.3.4. (d) *the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;*
 - 11.3.5. (e) *the Customer, being a natural person, dies;*
 - 11.3.6. (f) *the Customer or its End Users fails to obtain or renew or are in breach (as the case may be) of any law, regulation, licence, permit or directive of any competent authority relevant to its use of the Products and/or Services;*
 - 11.3.7. (g) *the Customer ceases or threatens to cease conducting business;*
 - 11.3.8. (h) *if a supplier of Services or Products to Simtronic Technologies suspends, cancels, terminates or does not renew its supply of Products or Services to Simtronic Technologies (through no fault of Simtronic Technologies), and as a result, impairs or prevents Simtronic Technologies from delivering the Products or Services;*
 - 11.3.9. (i) *a Force Majeure Event occurs for more than 30 days.*
- 11.4. If notice is given to the Customer pursuant to subclause 3, Simtronic Technologies may, in addition to terminating the Agreement:
- 11.4.1. (a) *retain all or a portion of the security bond to cover any unpaid debt;*
 - 11.4.2. (b) *charge a reasonable sum for work performed in respect of which work no sum has been previously charged;*
 - 11.4.3. (c) *be regarded as discharged from any further obligations under this Agreement;*
 - 11.4.4. (d) *be entitled to payment of all and any monies owing by the Customer to Simtronic Technologies under this Agreement within 7 days;*
 - 11.4.5. (e) *be entitled to the return of any Products or Services or Confidential Information or materials of Simtronic Technologies in the possession of the Customer or any customer or End User of the Customer within 7 days;*
 - 11.4.6. (f) *repossess and/or resell any Products in respect of which the Customer has not paid Simtronic Technologies in full (and gain access to the Customer's premises for this purpose); and*
 - 11.4.7. (g) *pursue any additional or alternative remedies provided by law or equity.*
- 11.5. *In addition to the remedies specified in subclause 4, and without limitation to any other rights and remedies of Simtronic Technologies, if:*
- 11.5.1. *this Agreement is terminated during the Term by the Customer (other than in accordance with subclause 2); or*
 - 11.5.2. (b) *this Agreement is terminated by Simtronic Technologies as a result of the matters specified in subclause 3(a)-(f), Simtronic Technologies may charge a cancellation fee calculated by multiplying the number of months remaining in the Term by the average fixed Charges. The Parties agree that this is not a penalty but an accurate estimate of the loss and damage that Simtronic Technologies will suffer as a result of early termination of this Agreement for which the Customer will be liable.*

11.6. The Customer acknowledges that Simtronic Technologies shall obtain capacity to provide the Products and Services based on the agreed Service Orders, which may include obtaining capacity from third parties. The Customer further acknowledges that Simtronic Technologies will suffer loss and damage which it will hold the Customer accountable for and which the Customer will be liable for if the Customer wishes to vary or cancel the capacity specified in the Service Order during the Term.

12. IMPLIED TERMS

12.1. Subject to subclause 2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

12.2. Where legislation implies in this Agreement 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 shall be deemed to be included in this Agreement. However, the liability of Simtronic Technologies for any breach of such condition or warranty shall be limited, at the option of Simtronic Technologies, to one or more of the following:

12.2.1. *if the breach relates to goods:*

12.2.1.1. *the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods;*

12.2.1.2. *the payment of the cost of replacing the goods or of acquiring equivalent goods; or*

12.2.1.3. *the payment of the cost of having the Products repaired; and*

12.2.2. *if the breach relates to services:*

12.2.2.1. *the supplying of the services again; or*

12.3. The Customer acknowledges that to the extent Simtronic Technologies has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

13. GST AND CLAIMS

13.1. If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for an indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST.

13.2. If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST.

13.3. If a Party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

14. FORCE MAJEURE

14.1. Simtronic Technologies will not be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to a Force Majeure Event.

14.2. If a delay or failure of Simtronic Technologies to perform its obligations is caused to a Force Majeure Event, the performance of Simtronic Technologies' obligations will be suspended.

14.3. If a delay or failure by either party to perform its obligations due to a Force Majeure Event exceeds thirty (30) Days, either party may immediately terminate the Agreement on providing notice in writing to the other Party without liability and the provisions of clause 11.4 shall apply.

15. FAILURE TO ENFORCE NOT TO AFFECT VALIDITY

15.1. The failure of Simtronic Technologies or the customer at any time to enforce any of the provisions of this Agreement or any rights in respect hereto or to exercise any election herein provided will not be a waiver of those provisions, rights or elections or affect the validity of this Agreement.

16. NOTICES

16.1. A notice or other communication required or permitted to be given by one party to another must be in writing and:

16.1.1. *delivered personally;*

16.1.2. *sent by pre-paid mail to the address of the addressee specified in this Agreement;*

or

16.1.3. *sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.*

16.2. A notice or other communication is taken to have been given:

16.2.1. *If delivered personally, immediately upon delivery;*

16.2.2. *if mailed, on the second Business Day after posting; or*

16.2.3. *if sent by facsimile before 4 pm 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.*

16.3. A party may change its address for service by giving notice of that change in writing to the other parties.

16.4. The parties' respective contact details for notification under this Agreement are as follows:

Simtronic Technologies
PO Box 4161
Penrith Plaza NSW 2750
Fax: 02 4749 4950
Attention: Communications and Contracts Manager

17. WAIVER OR VARIATION

17.1. Simtronic Technologies' or the customers failure or delay to exercise a power or right does not operate as a waiver of that power or right.

17.2. The exercise of a power or right does not preclude:

17.2.1. *its future exercise; or*

17.2.2. *the exercise of any other power or right.*

17.3. The variation or waiver of a provision of this Agreement or Simtronic Technologies' consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

18. SUBCONTRACTORS

18.1. Simtronic Technologies may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the Products or the Services.

19. DISPUTES

- 19.1. Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives will be submitted to arbitration in accordance with the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators and Mediators Australia (or such other equivalent rules in force by that organisation). During such arbitration, both Parties may be legally represented.
- 19.2. Prior to referring a matter to arbitration pursuant to subclause 19.1, the
- 19.2.1. Parties will:
- 19.2.2. *in good faith, attempt to resolve the dispute within five (5) Business Days (or such other period as is agreed between the Parties); and*
- 19.2.3. *in good faith explore the prospect of mediation.*
- 19.3. Nothing in this clause 19 shall prevent any Party from seeking injunctive relief from a Court at any time.

20. COOPERATION

- 20.1. Each Party will sign all documents and do all things necessary or desirable to give effect to this Agreement and will procure its officers, employees and agents to declare, make or sign all documents and do all things necessary or desirable to give full effect to this Agreement.
- 20.2. Each Party will pay its own costs in relation to the preparation, negotiation and execution of this Agreement.
- 20.3. In addition to and notwithstanding any other obligation under this Agreement, each Party will:
- 20.3.1. *to the extent practical, cooperate with the other Party in the pursuit of the other party's business objectives relevant to this Agreement; and*
- 20.3.2. *as soon as practicable consult with the other Party on any matter arising which may materially affect the performance by the first mentioned Party of its obligations under this Agreement.*
- 20.4. Notwithstanding any other provision of this Agreement, the Customer agrees to follow any procedures and directions and technical specifications notified by Simtronic Technologies to the Customer regarding the use of the Products or Services from time to time, which the Customer agrees to notify to any other person or persons or entity immediately upon direction by Simtronic Technologies. The Customer also agrees to provide full, safe and unfettered access to all systems and premises as is required by Simtronic Technologies in order to facilitate the provision of the Products or Services.

21. GOVERNING LAW AND JURISDICTION

- 21.1. This Agreement is governed by the laws of New South Wales.
- 21.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

22. FURTHER ASSURANCE

- 22.1. 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. The parties also agree to pay their own legal costs relating to this Agreement.

23. COUNTERPARTS

23.1. This Agreement may be executed in counterparts. Where this Agreement is executed in counterparts by the respective Parties, 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, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

24. WHOLE AGREEMENT

24.1. In relation to the subject matter of this Agreement:

24.1.1. this Agreement is the whole agreement between the parties; and

24.1.2. this Agreement supersedes all oral and written communications by or on behalf of any of the parties.

25. NO RELIANCE ON WARRANTIES AND REPRESENTATIONS

25.1. In entering into this Agreement, each party:

25.1.1. 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; and

25.1.2. has relied entirely on its own enquiries in relation to the subject matter of this agreement.

26. SURVIVABILITY

26.1. Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.

26.2. 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.

26.3. Each indemnity in this Agreement survives the expiry or termination

27. SEVERANCE

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

28. NO MERGER

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

29. CONSENTS AND APPROVALS

29.1. Where this Agreement gives either party a right or power to consent or approve in relation to a matter under this Agreement, That party 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 the other party imposes on its consent or approval.

29.2. 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 Products and Services.

30. RELATIONSHIP

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

31. INTERPRETATION

31.1. In this Agreement, unless otherwise indicated by the context:

31.1.1. **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales;

31.1.2. **Agreement** means this Master Services Agreement and its Schedules (including any Service Schedules and Service Orders agreed upon from time to time by the Parties);

31.1.3. **Charges** means the fees payable by the Customer to Simtronic Technologies, based on the prices and rates set out in the Service Schedules and the Service Orders;

31.1.4. **Confidential Information** means the confidential information of a Party which relates to the subject matter of this Agreement;

31.1.5. **End Users** means the customers of the Customer;

31.1.6. **Force Majeure Event** means any occurrence or omission as a direct or indirect result of which Simtronic Technologies is prevented from or delayed in performing any of its obligations under this Agreement and that is beyond the reasonable control of Simtronic Technologies, including forces of nature, any act of God, fire, storm, explosion, strike, lockout, industrial action or action or inaction by a government agency, or any unscheduled emergency maintenance of the Products or Services or any fault in and telecommunications network or any acts or omissions of any supplier to Simtronic Technologies or any other events beyond the reasonable control of Simtronic Technologies;

31.1.7. **GST** means: (a) the same as in the GST Law; (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and (c) any additional tax, penalty, tax, fine, interest or other charge under a law of such a tax;

31.1.8. **GST Law** means the same as "GST law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

31.1.9. **Insolvency Event** means in relation to a party:

31.1.9.1. a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth) or similar official is appointed over any of the assets or undertakings of the other party

31.1.9.2. the party suspends payment of its debts generally;

31.1.9.3. 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 2001* (Cth);

31.1.9.4. 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;

31.1.9.5. the party ceases to carry on business or threatens to cease to carry on business;

31.1.9.6. a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or

31.1.9.7. 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;

31.1.10. **Party** or **party** means either the Customer or Simtronic Technologies as the context dictates and includes a permitted substitute or permitted assign of each entity (and in the case of Simtronic Technologies, any Related bodies

31.1.11. corporate as defined in Section 50 of the *Corporations Act 2001* (Cth);

31.1.12. **Payment Terms** are the agreed terms and conditions for payment of the Charges as specified in clause 4 and in agreed Service Orders and Service Schedules;

31.1.13. **Product** means a product which is made available by Simtronic Technologies to the Customer pursuant to this Agreement, more particularly as specified in the Service Schedules and Service Orders and includes without limitation

any equipment, wires, cables, ports, switches, routers, cabinets, racks and any other hardware and telecommunications equipment;

31.1.14. **Security** means as specified in Service Orders or Service Schedules;

31.1.15. **Service** means a service which is made available by Simtronic Technologies to the Customer pursuant to this Agreement, more particularly as specified in the Service Schedules and Service Orders;

31.1.16. **Term** means a period of 3 years from the date of this Agreement;

32. In this Agreement, unless otherwise indicated by the context:

32.1. words importing the singular include the plural and vice versa;

32.2. headings are for convenience only and do not affect interpretation of this agreement;

32.3. a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Agreement;

32.4. where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;

32.5. an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;

32.6. a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;

32.7. a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;

32.8. a provision of this Agreement will not be interpreted against a party just because that party prepared the provision;

32.9. the words "include", "includes", "included", "including" and similar are not words of limitation;

32.10. a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and

32.11. a reference to a body, whether statutory or not;

32.12. Which ceases to exist; or

32.13. Whose powers or functions are transferred to another body; is a reference to the body which replaces it or which substantially succeeds to its powers or func