

Terms & Conditions: Uptime[®] Maintenance and Support Services

Term

The Initial Term of the Agreement starts on the Commencement Date.

After the Initial Term or any renewed Term, the Agreement continues for a further Term of 12 months, unless either party gives the other party written notice not to renew the Agreement at least 90 days prior to the end of the Initial Term or the renewed Term, as the case may be

The Service Charges payable for a renewed Term must be the same amount as was payable immediately before expiry of the prior Term, unless varied pursuant to clause "Service Charges Variation".

This Agreement and the Record of Entitlement by Client may not be terminated for convenience by Client.

Service

During the Term, NTT Luxembourg PSF S.A. must supply the Service to the Client and the Client must pay the Service Charges and any Additional Charges.

Service Charges and Payment Terms

Payment terms

The Client must pay the Service Charges, any applicable Set-Up Fee and any Additional Charges within 30 days after the date on which NTT Luxembourg PSF S.A.'s invoice is rendered.

Currency

When the initial quote is done at the given EURO-USD exchange rate, the Euro pricing remains valid as far as the conversion rate stays within a variance less than 3%.

If the EURO-USD conversion rate would fall out of this variance at the moment NTT Luxembourg PSF S.A. receive the order, NTT Luxembourg PSF S.A. retains the right to adjust the Euro prices accordingly. NTT Luxembourg PSF S.A. will then use the conversion rate valid on the day of order reception.

Invoicing

NTT Luxembourg PSF S.A. will issue invoices for the Service Charges annually in advance or as otherwise defined in the Agreement and must send each invoice to the address specified in the Agreement or as the Client may otherwise specify in writing. If applicable the invoice for the Set-Up Fee will be rendered at the commencement of the Term. Where agreed changes are made to the Record of Entitlement, NTT Luxembourg PSF S.A. must invoice the Service Charges for the adjustments pro rata to the end of the then current Term. If the Client disputes an invoice in part, it may defer payment of only that disputed part pending resolution of the dispute. Notwithstanding that the relevant Record of Entitlement may be delayed or not received by NTT Luxembourg PSF S.A., NTT Luxembourg PSF S.A. may proceed to invoice for the Service Charges in accordance with the foregoing.

NTT Luxembourg PSF S.A. must issue invoices for any Additional Charges when it has done the relevant work, supplied the goods and services, or incurred the expenses.

Service charges variation

NTT Luxembourg PSF S.A. may, by giving at least 30 days' written notice of the variation to the Client, vary the Service Charges:

- at any time after the first 12 months of the Term, if the Initial Term exceeds 12 months and if there are changes in exchange rate movements, adverse business conditions or if OEM of the Products amends its prices (whether for Products or Services) to NTT Luxembourg PSF S.A., but not more than once in a 12 month period.
- at any time after the first 12 months of the Term, if the Initial Term exceeds 12 months and NTT Luxembourg PSF S.A. has, with the Client's consent sub-contracted the Service to a third party which has supplied its services for a price expressed in a currency other than Euros.

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If the Client fails to object to the varied Service Charges within 30 days of NTT Luxembourg PSF S.A.'s notice, the varied Service Charges will become automatically applicable.

Non-payment consequences

If the Client fails to pay any amounts payable to NTT Luxembourg PSF S.A. by the due date, NTT Luxembourg PSF S.A. may, on 7 days' written notice, suspend supply of all or any part of the Service until the Client pays all such overdue amounts.

Extra-services requirements

If access to or replacement of a Configuration Item by NTT Luxembourg PSF S.A. requires specialised equipment and/or additional resources to comply with legal or occupational health and safety requirements, the Client will incur an Additional Charge.

Record of entitlement termination

Should the Client terminate the Record of Entitlement for any reason other than breach by NTT Luxembourg PSF S.A. then the Client shall be liable for the balance of any unamortised Licence / support fees which shall be paid within 30 (thirty) days of such termination.

Credit status changes

NTT Luxembourg PSF S.A. reserves the right to modify the payment terms if, at any time, Client's credit status with NTT Luxembourg PSF S.A. has changed. Overdue amounts are subject to a finance charge (late payment charges) of one and one-half percent (1½%) per month. Any such amounts outstanding for more than ten (10) days after the date of invoice shall constitute a material breach on the part of Client.

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All charges are linked to the cost of living index based on the official level (STATEC – Moyenne semestrielle des indices rattachés à la base 1.1.1948). Charges shall be adjusted annually. In no circumstances may the charges be adjusted downwards.

Taxes and Duties

The Client shall be responsible for all taxes, such as excise, Goods and Services Tax (GST), Value-Added Tax (VAT), consumption tax, sales and use tax, withholding tax, and any similar tax and surcharges, imposed on or in connection with the Services.

If required and/or applicable under local law, Client may deduct withholding tax from payments to NTT Luxembourg PSF S.A. when making payment of an affected invoice. Client shall provide NTT Luxembourg PSF S.A. with appropriate receipts and other applicable documentation for any taxes so withheld and paid by Client to the applicable taxing authority on behalf of NTT Luxembourg PSF S.A.. NTT Luxembourg PSF S.A. will use such receipts and documentation to reclaim such withholding tax from its relevant taxing authorities. In the event that NTT Luxembourg PSF S.A. is unable to recover any such withholding taxes whether due to tax legislation or Client's failure to provide all required receipts or documentation, then NTT Luxembourg PSF S.A. will invoice the amount of such tax withholding to Client and Client agrees to pay such invoice

If GST applies to any supply made under or in connection with the Agreement, NTT Luxembourg PSF S.A. must issue a valid tax invoice to the Client and the Client must pay the GST at the same time it must pay the invoice for the Service Charges or the Additional Charge.

Insurance

During the Term, NTT Luxembourg PSF S.A. must:

comply with all workers' compensation or similar legislation in respect of its employees and will obtain and maintain all insurance under and pay all amounts required by that legislation;

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□ effect and maintain at its own expense:

- a public liability insurance policy, until 3 months following the expiration of the Term, for not less than \$10 million for each claim; ○ a professional indemnity insurance policy, which covers the carrying out of the Service under this Agreement, for an amount of not less than \$10 million for each claim and in the aggregate, and NTT Luxembourg PSF S.A. must ensure that every subcontractor has professional indemnity insurance for each and every claim; and
- upon request by the Client provide evidence of the insurance specified in this clause “Warranties and Disclaimer”.

Warranties and Disclaimer

NTT Luxembourg PSF S.A. warrants that it will provide the Service in a proper and professional manner and will ensure that the Service is performed by personnel who are suitably qualified to perform the Service.

The Client warrants that it has the appropriate licenses, rights and/or title to the Configuration Items that are the subject of the Agreement.

Specifications for Parts supplied by NTT Luxembourg PSF S.A. are subject to change without notice, provided that supplied Parts must have at least the same performance and functionality as the replaced components.

All reports, documentation and other information provided by NTT Luxembourg PSF S.A. to the Client are provided on an “as is” basis. The information collected and provided is not represented to be complete or accurate; and NTT Luxembourg PSF S.A. disclaims all representations and warranties (express or implied) relating to all reports, documentation and other information generated by NTT Luxembourg PSF S.A., including but not limited to the warranties of merchantability, non-infringement and fitness for a particular purpose.

NTT Luxembourg PSF S.A. does not warrant that any products or replacement part(s) (“Products”) supplied under the Agreement are fit for a particular purpose or that they meet particular criteria apart from those listed in the Original Equipment Manufacturer (“OEM”)’s specifications.

In particular, any Product delivered hereunder is subject to the warranties provided by the OEM as legally and contractually permissible for NTT Luxembourg PSF S.A. to pass onto, resell, or assign to Client.

Client acknowledges that NTT Luxembourg PSF S.A. is not the manufacturer of the Products and provides no warranty in respect of the Products.

Client’s Obligations

The Client must:

- provide NTT Luxembourg PSF S.A. with reasonable assistance and information to assist it to provide the Service;
- supply all communications interfaces NTT Luxembourg PSF S.A. requires to enable provision of the Service, except those that NTT Luxembourg PSF S.A. keeps on its own premises or installs at a Site for use in providing the Service and If NTT Luxembourg PSF S.A. owned equipment is installed at Customer location(s) the Customer agrees that:
 - NTT Luxembourg PSF S.A. retains all right title and interest in such equipment
 - such equipment will be used solely for the delivery of the Service
 - it assumes responsibly for any loss or damage to such equipment while installed at Customer location, ○ within thirty (30) days of expiration or termination of the Service such equipment will be returned to NTT Luxembourg PSF S.A. at Customer expense and

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- if such equipment is not returned within ten (10) days following NTT Luxembourg PSF S.A.'s written request for it NTT Luxembourg PSF S.A. may invoice Customer for its then current depreciated value of such equipment and Customer will pay such invoice
- ensure that NTT Luxembourg PSF S.A. information and materials which are in the custody of the Client for the purposes of the Agreement are protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- give NTT Luxembourg PSF S.A. access to a Site when required for the purpose of providing the Service;
- if requested, provide secure facilities at a Site for NTT Luxembourg PSF S.A. to store tools, Parts and other items necessary for it to perform its obligations under the Agreement;
- keep such records relating to use and performance of the Configuration Items as NTT Luxembourg PSF S.A. may reasonably request and ensure that NTT Luxembourg PSF S.A.'s personnel have access to such records at all reasonable times;
- comply with the Client's obligations set out in the Agreement; and
- carry out and maintain restorable backup copies of all relevant software licensed by the Client, whether operating systems, discrete applications or configurations and where NTT Luxembourg PSF S.A. requires them to supply the Service, make the same available to NTT Luxembourg PSF S.A. upon request.
- If the Client fails to promptly comply with any of the Client's obligations set out in the Agreement, NTT Luxembourg PSF S.A. may, in its absolute discretion, suspend performance of any or all of the Service affected as a result of the Client's failure or refusal until the Client has complied with its obligations.

Subcontractors

NTT Luxembourg PSF S.A. may subcontract services to such persons as it, in its discretion, considers necessary to enable it to fulfil its obligations under the Agreement.

Confidentiality

Neither party is permitted, without the prior written consent of the disclosing party, to disclose or communicate to any third party or to their employees, servants, agents, contractors, advisers or consultants any Confidential Information or use any Confidential Information for any purpose except for the purpose for which such Confidential Information was disclosed or for the proper performance of the Agreement.

Each party agrees that the documents attached to or incorporated in the Agreement by reference are confidential and must not be disclosed to any person (other than a party's legal or financial advisors or as required by law) without the prior written consent of the other party.

The operation of this clause survives the expiry or earlier termination of the Agreement.

Limitations and Exceptions

Other than in respect of its liability for death, personal injury, damage to tangible property, claims for breach of third party intellectual rights or breach of privacy laws, NTT Luxembourg PSF S.A.'s aggregate liability whether arising from breach of contract, negligence or any other tort/delict, breach of warranty, under an indemnity or statute, in equity or otherwise is limited to an amount equal to the annual Service Charges paid by the Client at the date such liability is proven to have arisen. To qualify for NTT Luxembourg PSF S.A.'s defence and payment for any claim for breach of third party intellectual rights that NTT Luxembourg PSF S.A. is obligated to indemnify for, Customer must: (a) give NTT Luxembourg PSF S.A. prompt written notice of such claim; and (b) allow NTT Luxembourg PSF S.A. to control the defence or settlement and (c) fully cooperate with NTT Luxembourg PSF S.A., at NTT Luxembourg PSF S.A.'s expense, in the defence and all related negotiations

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NTT Luxembourg PSF S.A. has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits,

goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not NTT Luxembourg PSF S.A. was aware of the possibility of such loss or damage.

To the fullest extent permitted by law, the parties agree to exclude all express or implied warranties, representations, statements, terms and conditions relating to NTT Luxembourg PSF S.A. or the provision of the Service under these terms, not expressly set out in these terms, are excluded from the Agreement between the parties. Notwithstanding the other provisions of this clause, NTT Luxembourg PSF S.A.'s liability for a breach of a condition or warranty shall be the re-performance of the Services giving rise to the breach or if such re-performance is not possible then Client may terminate the Service and receive a refund of any per-paid charges, of the cost of having the services supplied again or the supply of the services again.

The above remedy shall be the Client's sole and exclusive remedy for such breach

NTT Luxembourg PSF S.A. will not be liable for any failure or delay in providing the Service where such failure or delay is the direct or indirect result of any action by or the failure of the Client to comply with the Agreement.

Termination

- a. If a party breaches any provision of the Agreement (other than the Client's obligation to pay), the other party may:
 - suspend provision of the Service until the breach is remedied by the party in breach; and
 - terminate the Agreement, if the party in breach remains in breach of any such provision after receiving at least 30 days' notice in writing from the other party identifying the breach and requesting its remedy. The Client must on termination pay within five (5) working days to NTT Luxembourg PSF S.A. the total of all amounts due to NTT Luxembourg PSF S.A. pursuant to this Agreement.
- b. If the Client breaches the Agreement by failure to make payment, NTT Luxembourg PSF S.A. may terminate the Agreement, if the Client remains in breach of any such provision after receiving at least 10 days' notice in writing from the other party identifying the breach and requesting its remedy.
- c. NTT Luxembourg PSF S.A. is entitled to claim, in addition from the sums owing to NTT Luxembourg PSF S.A., all "stranded costs" which has been invested upfront by NTT Luxembourg PSF S.A. for the Services performed for Client.
- d. Either party may terminate the Agreement immediately if the other party:
 - enters into any arrangement between itself and its (or any class of its) creditors;
 - ceases to be able to pay its debts as they become due;
 - ceases to carry on business;
 - has a mortgagee enter into possession or disposes of the whole or any part of its assets or business;
 - enters into liquidation or any form of insolvency administration; or
 - has a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.
- e. If NTT Luxembourg PSF S.A. terminates the Agreement, the Client must immediately pay to NTT Luxembourg PSF S.A. the total of all amounts then due to NTT Luxembourg PSF S.A. pursuant to the Agreement.
- f. If NTT Luxembourg PSF S.A. terminates the Agreement on any of the grounds set out in clauses "a" or "c" the Client is not entitled to a refund or adjustment of any relevant Set-Up Fee or of any Service Charges paid to NTT Luxembourg PSF S.A..

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- g. If the Client terminates the Agreement on any of the grounds set out in clauses “a” or “c” the Client is entitled to a pro-rata refund of any part of the Service Charges it has paid for Service to be supplied after the date of termination.
- h. Termination of the Agreement (for whatever cause) does not affect any right or cause of action which has accrued to the party which terminates the Agreement at or prior to the date of termination.
- i. NTT Luxembourg PSF S.A. and the Client shall each appoint an Account Manager of suitable experience to be its primary contact to be responsible for performance of the Agreement. The parties, including the Account Managers, will meet at mutually agreed times and locations (as and when required) to discuss issues arising in connection with performance of the Agreement. In the event there is a dispute which cannot be resolved at these review meetings, either party may request in writing that their Account Managers meet separately within ten (10) days to resolve the dispute. If the dispute has not been resolved to the mutual satisfaction of both parties within thirty (30) days’ of the meeting, then the dispute shall be referred to the NTT Luxembourg PSF S.A. Country Manager and the Client’s Manager who will have authority to settle the dispute.
- j. In the unlikely event that the dispute has not been resolved by the representatives within twenty (20) days of the referral or if the parties fail to meet within ten (10) days, as the final step in the dispute resolution process and prior to either party giving notice of termination for cause as described above, NTT Luxembourg PSF S.A. and Client will each designate a corporate executive who will meet to resolve the dispute

Soliciting Employees or Contractors

During the term of the Agreement and for 6 months after termination by either party of the Agreement, a party must not employ or solicit for employment any person who is an employee of or contractor to the other party who was involved during the most recent 6 month period of the Agreement in the matters covered by the Agreement.

This clause does not apply where:

- a person responds to an advertisement for employment by a party; or the employment is agreed to by the parties.
- Each party acknowledges that the restriction specified in this clause is in the circumstances reasonable and necessary to protect each party’s legitimate interests.

General Conditions

- a. Terms or conditions attached to or forming a part of a Purchase Order that the Client issues do not form part of this Agreement.
- b. The Agreement is governed by the laws of the Luxembourg.
- c. The Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.
- d. No variation of the Agreement is binding upon the parties unless made in writing signed by an authorised representative of each of the parties, unless provided otherwise in the Agreement. NTT Luxembourg PSF S.A.’s written acceptance of a written request (including a request made by e-mail) by the Client for a variation to the Services contained in the Record of Entitlement or this Agreement is binding on both parties. Following an agreed variation, NTT Luxembourg PSF S.A. must issue a revised or additional Record of Entitlement.
- e. Notices to or by a party, whose details are contained in the Agreement Details section above, delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee: if by post, 3 Business Days from and including the date of postage; or if by facsimile, when transmitted to the addressee provided that if transmission is on a day which is not a Business Day or is after 5.00 PM (addressee’s time), on the Next Business Day.

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- f. Any provision or the application of any provision of the Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- g. A waiver of a breach of the Agreement or of any right, power, authority, discretion or remedy arising upon a breach of or default under the Agreement must be in writing and signed by the party granting the waiver.
- h. A Client may only assign the Agreement and any rights under the Agreement with the prior written consent of NTT Luxembourg PSF S.A.
- i. Due to changes in technology and NTT Luxembourg PSF S.A.'s desire to maintain the highest possible quality of the Service, it may be necessary to make adjustments or add enhancements to the Service Management System or the Service during the Term. NTT Luxembourg PSF S.A. will provide advance notice of any such changes, if possible. If the standard scope of the Service is necessarily improved or extended as a result of the enhancements, they will be offered to the Client for the remainder of the then current Term at no additional cost, provided that no claim is made for a reduction in the Service Charges for minor reductions in scope as a result of the enhancements.
- j. Neither party is liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond its reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike, labour problems and riots.
- k. The Client acknowledges that all intellectual property rights arising out of the provision of the Services by NTT Luxembourg PSF S.A. (including without limitation any intellectual property rights in any software written by or on behalf of NTT Luxembourg PSF S.A. and any discoveries, inventions, patents, designs or other rights arising directly or indirectly out of or in the performance of this Agreement) will remain the property of NTT Luxembourg PSF S.A. or such other person as NTT Luxembourg PSF S.A. may nominate."

These Uptime and Services Terms and Conditions were last updated on 27 february 2020