



## **Terms and Conditions**

# **Relating to the purchase of products by NTT**

UK

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## Terms and Conditions

Relating to the purchase and supply of products to NTT

## NTT contact details

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Please quote reference {Document Reference Number} in any correspondence or order.

## Confidentiality

This document contains confidential and proprietary information of NTT Limited ('NTT'). {ClientFull} ('{Client}') may not disclose the confidential information contained herein to any third party without the written consent of NTT, save that {Client} may disclose the contents of this document to those of its agents, principals, representatives, consultants or employees who need to know its contents for the purpose of {Client}'s evaluation of the document. {Client} agrees to inform such persons of the confidential nature of this document and to obtain their agreement to preserve its confidentiality to the same extent as {Client}. As a condition of receiving this document, {Client} agrees to treat the confidential information contained herein with at least the same level of care as it takes with respect to its own confidential information, but in no event with less than reasonable care. This confidentiality statement shall be binding on the parties for a period of five (5) years from the issue date stated on the front cover unless superseded by confidentiality provisions detailed in a subsequent agreement.

## Terms and conditions

This document is valid until 11 July 2019 and, in the absence of any other written agreement between the parties, NTT and {Client} acknowledge and agree is subject to NTT's standard terms and conditions which are available on request. NTT reserves the right to vary the terms of this document in response to changes to the specifications or information made available by {Client}. Submission of this document by NTT in no way conveys any right, title, interest, or license in any intellectual property rights (including but not limited to patents, copyrights, trade secrets or trademarks) contained herein. All rights are reserved.

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All contracts with NTT will be governed by {Law} Law and be subject to the exclusive jurisdiction of the {Law} courts.





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### 1. Agreed terms

- 1.1. This Agreement shall commence from the date first written above; if no date is written above, it shall be effective from the date on which the last signature is affixed below.
  - 1.2. All schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this agreement includes the schedules.
  - 1.3. Any words following the terms 'including', 'include', 'in particular', 'for example', or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  - 1.4. **"Products"** shall mean Services, equipment or software or any other products
  - 1.5. **"Purchase Order"** shall mean NTT's written instruction to supply the Product incorporating these conditions
  - 1.6. **"Services"** shall mean the services to be provided by Supplier as described in a Purchase Order
  - 1.7. **"Supplier"** shall mean the person, firm or company who accepts the Purchase Order.
2. These conditions shall apply to and be incorporated in the Agreement and supersede and prevail over any inconsistent terms and conditions contained in or referred to in the Supplier's quotation, acceptance, invoice, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.
3. The Purchase Order constitutes an offer by NTT to purchase the Product subject to these conditions. Accordingly, only acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase of that Product on these conditions. Any counter-offer made by the Supplier to supply the Product on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of NTT. No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these conditions or any of them shall be binding on NTT unless in writing and signed by a duly authorised representative of NTT. The execution and/or acceptance of the Purchase Order by the Supplier or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these conditions by the Supplier. Where the Purchase Order is for more



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than one item, it shall be regarded as a single contract for all Product supplied pursuant to that Purchase Order.

- 4.** All prices shall be as stated in the Purchase Order, except that if the Supplier quotes or offers to a third party lower prices or better terms for Product of similar quality, quantity or description to the Product (or the items comprised in it), NTT shall be entitled to purchase the Product (or the relevant items comprised in it) on the same terms and shall be entitled to a refund of the amount of the difference in respect of all such Product supplied after whichever is the earlier of the first quotation or the first supply at the lower price or better terms (as the case may be). All prices are fixed and inclusive of import, delivery, packaging, packing, shipping, carriage, insurance and other charges and dues, and are not subject to adjustment save as specifically provided in these conditions or the Purchase Order. NTT will pay only undisputed amounts that appear on the invoice to which such fees relate from the later of forty- five (45) days after (i) receipt of a valid invoice, or (ii) NTT's acceptance of Products. Fees for renewing Services may increase only if NTT agrees in writing at the time of renewal. All prices shall be in GBP excluding VAT.
- 5.** The Supplier warrants and covenants that all Products are and will: (i) be new and will conform with this Agreement and all manufacturers specifications; (ii) be free from defects in materials, workmanship and design; (iii) be free from liens, restrictions, reservations, security interests or encumbrances; (iv) be suitable for, and perform in accordance with, the particular purposes (a) for which they were purchased by NTT and (b) for which they were designed, manufactured or constructed; and (v) will not infringe any third party intellectual property rights. Supplier warrants and covenants that all Services will be performed with reasonable skill and care, and to a standard that should reasonably be expected of a leading provider of the services in question. If Supplier does not promptly correct defects or replace non-conforming Products or Services after written notice to Supplier, NTT may make corrections or replace Products and Services and charge Supplier for the cost incurred.
- 6.** The Supplier shall deliver the Product on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Product under the Agreement and if the Supplier does not comply with its obligations in the preceding sentence, the Customer may, without prejudice to any other rights or remedies that it may have:

  - cancel the Agreement in whole or in part without incurring any liability to the Supplier;



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- refuse to accept any subsequent delivery of items comprised in the Product which the
- Supplier attempts to make;
- purchase substitute items elsewhere; and/or
- hold the Supplier accountable for any loss and additional costs incurred.

The Product shall be properly packaged and secured in such manner as to enable it to reach its destination in good condition. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials.

- 7.** The Products will be shipped carriage free to the place of delivery unless otherwise agreed in writing. Time of delivery shall be of the essence. NTT may without penalty on five (5) days' written notice: (a) cancel or delay the scheduled date for delivery of Product and/or performance of Services; (b) change the quantity of Products to be shipped, or scope of Services to be provided. No restocking fees or charges will apply.
- 8.** The Product will be at the risk of the Supplier until acceptance by NTT at the place of delivery specified in the Purchase Order, or as otherwise specified by NTT. The Supplier must off-load hardware at its own risk and cost as directed by NTT.
- 9.** Ownership of the Product will pass to NTT on completion of delivery (including off-loading) in accordance with the Purchase Order, except that if the Product is paid for before delivery ownership shall pass to NTT once payment has been made. The passing of ownership in the Product is without prejudice to any right of rejection to which NTT may be entitled under the Agreement or otherwise.
- 10.** The Supplier will indemnify, defend and hold NTT and its respective officers, employees, agents and directors harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable legal fees arising out of, connected with or resulting from a claim based on the Products and/or Services; any act or omission by Supplier under this Agreement; or any claim of infringement, misappropriation, or violation of any third party patents, copyrights, trademarks or trade secret rights or other proprietary rights. If Supplier



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cannot resolve an infringement claim, Supplier will in addition to any claim made by NTT refund all amounts paid for the applicable Products.

- 11.** Supplier must promptly disclose and assign to NTT all intellectual property generated or developed under this Agreement, including but not limited to all documentation, software and other proprietary information, resulting from this Agreement, and any resulting patents (collectively "Supplier IP"). Supplier will provide reasonable assistance to NTT to secure intellectual property protection, including assistance in the preparation and filing of any patent applications, copyright registrations, and the execution of all applications, assignments or other instruments for perfection or protection of title.
- 12.** For non-Supplier owned IP (including off-the-shelf software), Supplier grants to NTT a fully paid-up, worldwide, perpetual licence to install, execute, use, copy, test, display, perform and distribute such intellectual property for NTT's business purposes subject to the terms of the manufacturer's terms and conditions including the end-user licence agreement.
- 13.** EXCEPT FOR UNDISPUTED FEES DUE TO SUPPLIER, NTT WILL NOT BE LIABLE TO SUPPLIER FOR ANY LOST PROFITS OR INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER IN TORT, CONTRACT OR OTHERWISE. NTT'S TOTAL LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT SET OUT IN THE RELEVANT PURCHASE ORDER OR OTHER ORDERING DOCUMENT UNDER WHICH THE CLAIM OR ALLEGED CLAIM ARISES.
- 14.** NTT may terminate this Agreement or the provision of any Products or Services in whole or in part for any reason on ten (10) working days written notice, without liability (including termination fees) except for undisputed fees arising prior to the termination date. Supplier will promptly refund to NTT any prepaid fees (including prepaid recurring fees, on a pro- rata basis to the date of termination).
- 15.** NTT may disclose to Supplier proprietary, confidential or trade secret information pertaining to its business, customers or partners ("Confidential Information"). Supplier shall not disclose such Confidential Information to any third party or use such Confidential Information except to perform its obligations under this Agreement and shall upon expiration or termination of this Agreement destroy any originals and copies of such Confidential Information other than one copy held for



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archive purposes. Any personal data as defined by the Data Protection Act 1998 made available to Supplier by NTT shall be deemed Confidential Information.

- 16.** Supplier will effect and maintain adequate insurance including employer's liability insurance, professional negligence insurance, and product liability insurance in respect of persons in its employment, whether seconded to NTT or otherwise appropriate to the nature of the Goods and/or Services to be supplied; and Commercial General Liability covering claims for bodily injury, death, personal injury, or property damage with minimum limits of £10,000,000 for each occurrence, will name NTT as an additional insured, and will contain a waiver of subrogation in favour of NTT.
- 17.** NTT will have the right to receive on request a copy of insurance effected or maintained by Supplier under this Agreement prior to the delivery of Product. This insurance shall not be suspended, voided, cancelled, or be reduced in coverage or in limits except with 90 days' written notice to NTT. For any claims, Supplier's insurance will be primary, and NTT's insurance will not contribute to it.
- 18.** The parties hereto are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise created between either party and its respective employees and the other party under this Agreement
- 19.** Supplier will not make this Agreement public or identify NTT or its customer as a client or use NTT's name or trademarks (or any variation thereof), without NTT's prior written consent in each case.
- 20.** Supplier will comply at its own expense with all laws, orders, and regulations. While on the premises of NTT or in contact with NTT systems, Supplier will comply with all applicable NTT or its Affiliate's rules, regulations and security policies.
- 21.** NTT may assign this Agreement in whole or in part, without the prior written consent of Supplier, to any Affiliate or in connection with a merger or acquisition or sale of all or a portion of the assets of NTT. Supplier may not assign all or any part of this Agreement without the prior written consent of NTT.
- 22.** Supplier is an independent contractor and not an agent or employee of NTT and Supplier is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claims by Supplier's employees or contractors.



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- 23.** This Agreement shall be subject to the Laws of England and to the exclusive jurisdiction of the Courts of England.
- 24.** Supplier is responsible for all costs of collection and recycling under the WEEE Directive as applicable to England and Wales and hereby indemnifies and holds NTT harmless against any costs NTT may incur as a result of Supplier's failure to do so.
- 25.** Except for NTT's affiliates which may have rights under this Agreement, no third party shall be entitled to any rights under this Agreement and The Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 26.** NTT shall have the right to set-off any amount it owes to Supplier against any amount Supplier owes NTT.
- 27.** NTT will not be liable for any claim made by the Supplier under or by reason of this Agreement that is in excess of the relevant purchase order value under which any claim is made.
- 28.** The Supplier will at all times comply with the Bribery Act 2010 and Schedule 2 relating to Data Privacy and governing laws, the Modern Slavery Act and Schedule 1 relating to Modern Slavery. Supplier holds NTT harmless against any claims, expenses, losses or fines NTT incurs including but not limited to legal costs arising as a result of the Supplier not fully complying with the provisions of the said laws or policies.
- 29.** The Supplier will indemnify and hold NTT, its directors, officers, employees, shareholders, and agents harmless from and against any and all fines, costs, judgements, damages and assessments, including all reasonable professionals' fees and expenses incurred by NTT as a result of the Supplier's breach of these terms.
- 30.** A reference to a statute or statutory provision or policy is a reference to it as amended, extended or re-enacted from time to time. No change, amendment or modification of this Agreement will be effective unless in writing and signed by authorized representatives of NTT and Supplier. Failure by NTT to insist upon strict performance by Supplier of any of its obligations under this Agreement will not waive any subsequent or other default or failure to perform by Supplier. NTT's rights and remedies in law or equity are cumulative and may be exercised





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concurrently or separately. The invalidity, in whole or in part, of any provision of this Agreement will not affect the validity of any other provision.



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# Schedule 1 Modern Slavery

## Anti-slavery and human trafficking

### 1. Compliance with anti-slavery and human trafficking laws and policies

In performing its obligations under the agreement, the Supplier shall:

- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- b) have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance with its obligations under this schedule; and
- c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2, or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- d) ensure that each of its subcontractors and suppliers shall comply with the terms of this schedule and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.

### 2. Due Diligence

2.1. The Supplier represents and warrants that at the date of this agreement, and at the date of any subsequent response (as applicable):

- a) its responses to NTT's slavery and human trafficking due diligence questionnaire as may be provided to the Supplier from time to time are complete and accurate; and
- b) neither the Supplier nor any of its officers, employees or other persons associated with it:
  - i. have been convicted of any offence involving slavery and human trafficking; and
  - ii. so far as it is aware having made reasonable enquiries, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.



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- 2.2.** The Supplier shall implement due diligence procedures for its direct subcontractors and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## 3. Subcontracting

- 3.1.** The Supplier shall not subcontract its obligations under this agreement without the prior written consent of NTT.
- 3.2.** In order to help NTT reach a decision on a proposed subcontract, the Supplier shall provide NTT with a copy of any proposed subcontract, together with any other information that NTT may reasonably require about the proposed subcontractor.
- 3.3.** If NTT agrees that the Supplier may subcontract its obligations, the Supplier shall implement an appropriate system of due diligence, audit, and training for its subcontractors that is designed to ensure their compliance with this Schedule.

## 4. Reports

- 4.1.** The Supplier shall notify NTT as soon as it becomes aware of:
- a) any breach, or potential breach, of any applicable law; or
  - b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- 4.2.** The Supplier shall prepare and deliver to NTT, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

## 5. Record keeping and audits

### The Supplier shall:

- a) maintain a complete set of records to trace the supply chain of all Goods and Services provided to NTT in connection with this agreement; and
- b) permit NTT and its third-party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of the terms of this schedule, to have access to and take



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copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this schedule; and

- c) implement annual audits of its compliance and its subcontractors' and suppliers' compliance with its obligations under this schedule either directly or through a third-party auditor.

## 6. Training

- 6.1. The Supplier shall implement a system of training for its employees to ensure compliance with its obligations under this schedule.
- 6.2. The Supplier shall keep a record of all training offered and completed by its employees pursuant to the preceding sub clause 6.1, and shall make a copy of the record available to NTT on request.

## 7. Indemnity

The Supplier shall indemnify NTT against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against NTT as a result of any breach of the Supplier's obligations under this schedule.

## 8. Warranties

The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the terms of this schedule and all applicable law.

## 9. Termination

NTT may terminate its agreement with the Supplier with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of the terms of this schedule.



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## Addendum Data Protection Agreement

This Addendum (the “**Addendum**”) applies to and forms part of any and all agreements (each an “**Agreement**”) between NTT (UK) Limited (“**NTT**”) and the entity supplying NTT (“**Supplier**”). NTT is entering into this Addendum on behalf of itself and for the benefit of NTT Group. The Supplier is providing services to and for the benefit of NTT and NTT Group.

Any capitalised terms not defined in this Addendum shall have the respective meanings given to them in the Agreement. With respect to provisions regarding processing of NTT Data (defined below), to the extent of any conflict between the Agreement and this Addendum, the provisions of this Addendum shall prevail.

### 1. Definitions

The following definitions shall apply in this Addendum:

- a) “**Control**” means in relation to any entity: (i) holding a majority of the voting rights in it; (ii) having the right to appoint or remove a majority of its board of directors; or (iii) otherwise controlling its direction, management and policies pursuant to an agreement, and **Controls** and **Controlled** shall be construed accordingly;
- b) “**Controller**” means the natural or legal person who determines the purposes and means of Processing Personal Data;
- c) “**Data Protection Legislation**” means all laws relating to the Processing of Personal Data, privacy and security, including, without limitation, the EU General Data Protection Regulation 2016/679 and the EU Privacy and Electronic Communications Directive 2002/58/EC, as implemented in each jurisdiction, and all amendments, or all other applicable or replacement international, regional, federal or national data protection laws, regulations and regulatory guidance;
- d) “**NTT Data**” means Personal Data provided by NTT to the Supplier pursuant to the Agreement or which is otherwise Processed by the Supplier pursuant to the Agreement; and
- e) “**NTT Group**” means any and all of NTT, any company NTT Controls, any company NTT is Controlled by, and any company with which NTT is under common Control.
- f) “**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;



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- g) “**Process**” or “**Processing**” means any operation or set of operations which is performed on Personal Data whether or not by automated means;
- h) “**Processor**” means an entity that processes Personal Data on behalf of a Controller.

## 2. Obligations of the Parties

Each party shall comply with its respective obligations under applicable Data Protection Legislation.

## 3. Obligations of the Supplier

To the extent the Supplier processes NTT Data as a Processor, the Supplier shall:

- a) process NTT Data only in accordance with NTT’s documented instructions unless required by applicable law to process for other purposes, in which case the Supplier shall inform NTT of that legal requirement before Processing, unless prohibited from doing so. Upon termination or expiry of the Agreement, at NTT’s request, the Supplier shall promptly delete or return all NTT Data;
- b) implement appropriate technical and organisational measures to protect NTT Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, including ensuring personnel with access to NTT Data are subject to a binding obligation to protect the confidentiality of NTT Data;
- c) notify NTT without undue delay in writing (but in any event within 12 hours of becoming aware of it), of any data incident, including any suspected, potential or actual accidental, unlawful or unauthorised destruction, disclosure, loss, alteration or access in relation to NTT Data;
- d) provide reasonable information and assistance to NTT to assist NTT in complying with its obligations under applicable Data Protection Legislation (including referring promptly to NTT any requests, notices or other communication from individuals, third parties, relevant data protection authorities relating to NTT Data) and to demonstrate the Supplier’s compliance with this clause 3;
- e) not subcontract any Processing of NTT Data without the prior written consent of NTT and subject to imposing the same as or equivalent to/substantially the same as the obligations on the subcontractor as this clause 3 and the Supplier remaining fully liable for the acts and omissions of any such subcontractors as if they were acts and omissions of the Supplier itself;



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- f) not process and/or transfer NTT Data outside the country in which the individual to whom the NTT Data relates resides where that country has in place Data Protection Legislation that imposes data transfer restrictions (or, in the case of the individual residing in the European Economic Area (“EEA”) outside the EEA (“Country of Residence”)) without the prior written consent of NTT and subject to implementing or relying on a data transfer mechanism provided for by the applicable Data Protection Legislation to allow for the lawful Processing and/or transfer of NTT Data; and
- g) where required by applicable Data Protection Legislation and to the extent not set out in the Agreement or this Addendum, the parties shall include into the Agreement a description of the relevant Processing activities to be carried out by the Supplier pursuant to the Agreement (including the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of personal data, the categories of data subjects and the obligations and rights of NTT).

## 4. Indemnity

The Supplier shall indemnify and hold NTT and each NTT group company harmless in respect of all losses, damages, costs, charges, expenses and liabilities (including regulatory penalties imposed on NTT and each NTT group company) arising out of or in connection with a breach by the Supplier of this Addendum.