



# GENERAL TERMS AND CONDITIONS NTT NETHERLANDS B.V.

## Contents

CHAPTER 1: GENERAL PROVISIONS .....	2
1 Definitions .....	2
2 Applicability .....	6
3 Order Formation .....	7
4 Restrictions on use .....	7
5 Intellectual Property and Rights Reserved .....	8
6 Warranties .....	8
7 Client's obligations .....	8
8 Insurance .....	8
9 Compliance with Laws .....	9
10 Prices, Payment and Taxes .....	9
11 Delivery .....	10
12 Transfer of ownership and risk .....	11
13 Confidentiality .....	11
14 Client Data .....	12
15 Personal Data .....	12
16 Order Term and termination .....	13
17 Suspension .....	14
18 Modification or Discontinuance of Services .....	14
19 Indemnities .....	15
20 Liability .....	16
21 Cloud storage .....	16
22 Force Majeure .....	17
23 Applicable law and dispute resolution .....	17
CHAPTER II: DELIVERY OF PRODUCTS .....	17
24 Applicability .....	17
25 Defects .....	17
26 Returns .....	18
27 Vendor Branded Resale .....	18
28 Miscellaneous .....	18
CHAPTER III: PROFESSIONAL AND CONSULTING SERVICES .....	18
29 Applicability .....	18
30 Scope and performance of Services .....	18
31 Extra Work .....	18
32 Standard rates and conditions .....	18
CHAPTER IV: SUPPORT SERVICES .....	20
33 Applicability .....	20
34 Scope and performance of Services .....	20
35 Installed base .....	20
36 Client's equipment .....	20
37 Client's obligations .....	21
38 Conditions of Service .....	21
CHAPTER V: MANAGED SERVICES .....	21
39 Applicability .....	21
40 Scope and performance of Services .....	21
CHAPTER VI: CLOUD SERVICES .....	21
41 Applicability .....	21
42 Scope and performance of Services .....	21
CHAPTER VII: WAN SERVICES .....	21
43 Applicability .....	21
44 Scope and performance of Services .....	21
CHAPTER VIII: SD-WAN SERVICES .....	22
45 Applicability .....	22
46 Scope and performance of Services .....	22
CHAPTER IX: THIRD PARTY SERVICES .....	22
47 Applicability .....	22

## CHAPTER 1: GENERAL PROVISIONS

### 1 Definitions

1.1 This article defines a number of terms that are capitalised in the General Terms and Conditions. The definitions used have the same meaning in the singular as well as in the plural unless the context shows otherwise.

Affiliate	means a legal entity that controls, is controlled by, or that is under common control with either Client or NTT Ltd. For purposes of this definition, 'control' means ownership of more than 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.
Agreement(s)	means a document laying down the Parties' mutual rights and obligations with respect to the Performance to be delivered, , and any and all additional contract materials expressly incorporated into any of the foregoing.
Bankruptcy Event	means the occurrence of a party whose bankruptcy and/or any other insolvency proceedings has been filed, being adjudicated as bankrupt, making an assignment for the benefit of creditors, invoking any provision of law for general relief from its debtors, initiating any proceeding seeking general protection from its creditors or being removed or delisted from a trading exchange.
Charges	means all amounts to be paid by Client for the provision of the Products and Services, as set out more particularly in each Order (including, as applicable, the Specific Terms).
Client	means the legal entity identified in the Agreement, Quote and/or Order purchasing Products and/or Services from NTT.
Client Data	means any data of Client that is (a) directly managed or controlled by NTT in the course of performing the Services or (b) stored in physical or virtual systems managed or controlled by NTT as a result of the Services, and expressly excludes (i) data transmitted through either NTT's or Client's network, systems or equipment as a result of or in connection with Client's use of the Services, but over which NTT does not exert any direct management or control (provided that such transmitted data will be considered Client Material, as defined below); and (ii) customer relationship management ('CRM') and other business administration data (including contact information for Client's relevant personnel, User credentials, etc.).
Client Material	means Client Data and any other materials, equipment, software, data, documentation and information owned, developed, or licensed by or for Client; and either (a) used, transmitted, installed, stored, or processed by Client in connection with its use of the Services, or (b) provided by Client to NTT for use, transmission, installation, storage or processing in connection with the provision of the Services.
Client Trade-Compliance Terms	means NTT's then-current trade compliance terms applicable to Client's performance under the Agreement, which is made available at <a href="https://services.global.ntt">https://services.global.ntt</a> (or successor site) and as may be updated by NTT from time-to-time (effective upon publication).
Contract Year	means the 12 month period commencing on the date on which a binding Agreement is formed (as set out in clause 16.1 and each subsequent 12 month period commencing on the anniversary of such date during the Order Term.

<b>Affiliate</b>	<p>means a legal entity that controls, is controlled by, or that is under common control with either Client or NTT Ltd. For purposes of this definition, 'control' means ownership of more than 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.</p>
<b>Early Termination Fees</b>	<p>means the Charges for the remaining duration of the Order Term, plus any third-party costs or charges that NTT incurs as a result of such early termination (unless, with respect to any specific type of early termination, a different method of calculation is set out in the applicable Order).</p>
<b>Force Majeure Event</b>	<p>means a circumstance which is beyond the reasonable control of NTT or Client or an unexpected and disruptive event, which results in NTT or Client being unable, delayed or otherwise hindered in its ability to observe or perform an obligation under any Order and such circumstances include, but are not limited to the following examples:</p> <ul style="list-style-type: none"> <li>(a) acts of God, earthquakes, or any natural disasters;</li> <li>(b) changes in applicable laws;</li> <li>(c) applicable trade or banking sanctions, acts of sovereign states, blockade, embargo, public disorder, acts of war or public enemy, or terrorism;</li> <li>(d) epidemics and pandemics (or a lesser spread of disease that causes interruption or delay), including COVID19, and/or government measures imposed by national and/or international governments due to the epidemic and/or pandemic;</li> <li>(e) shortages of materials or labor;</li> <li>(f) cable cuts or power outage;</li> <li>(g) cybercrime or other forms of cyber or physical sabotage; and</li> <li>(h) non-performance of any third party or failure of any third-party system, infrastructure, software or application (in each case, only to the extent such third party or third-party system, infrastructure, software or application is outside the control and management of the impacted party or its subcontractor).</li> </ul>
<b>General Terms and Conditions</b>	<p>means these general terms and conditions, which may be amended from time to time.</p>
<b>Hosted Data</b>	<p>means Client's data that NTT is hosting as part of the delivered Cloud Services.</p>
<b>Intellectual Property Rights</b>	<p>means any of the following rights anywhere in the world, whether registered or unregistered: trade secrets, patents and application for patents, trademark rights, service mark rights and domain name rights and applications for the same, rights in unregistered trademarks and rights in trade names and business names, copyright (including copyright in software and databases), database rights, rights in designs and rights in inventions, and any rights of similar effect or nature as any of the foregoing.</p>
<b>Incident</b>	<p>means an unscheduled disruption or reduction of quality related to one or more Products in the Installed Base under an Order or Agreement.</p>

<b>Affiliate</b>	means a legal entity that controls, is controlled by, or that is under common control with either Client or NTT Ltd. For purposes of this definition, 'control' means ownership of more than 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.
<b>Initial Term</b>	means the initial duration of an Agreement or Order as specified in an Agreement and/or Order.
<b>Installed Base</b>	means the hardware and/or software on which NTT provides Support and/or Managed Services.
<b>MACD</b>	means Moves, Adds, Changes & Deletions.
<b>NTT</b>	means NTT Netherlands B.V., with its registered office at Veemweg 23-25, 3771 MT Barneveld, the Netherlands, listed in the commercial register of the Chamber of Commerce under number 08051702, and its legal successors.
<b>NTT Material</b>	means (a) the Services and associated documentation (but expressly excluding any Third-Party Services and associated documentation); (b) equipment (including associated firmware, software, parts and components) leased, rented, or licensed by or on behalf of NTT in order for Client to receive and use any Services, regardless of physical location; (c) know-how, methodologies, processes, and/or Intellectual Property Rights used by NTT to provide any Services; (d) all materials, software, data, and information provided by NTT under an Order, including any identifiers, passcodes, or access keys used to access the Services; and (e) any modifications, upgrades, derivative works, and improvements to any of the foregoing.
<b>NTT Software</b>	means all software owned by NTT.
<b>OEM</b>	means the original equipment manufacturer of a relevant Product.
<b>Order</b>	means a binding Agreement in the form of a valid order form, statement of work or other ordering instrument (in a format reasonably determined by NTT) setting out the particulars of a transaction for Products or Services, and includes any and all additional contract materials expressly incorporated in or attached to such instrument.
<b>Order term</b>	defined in clause 16.1.
<b>Party/Parties</b>	means NTT and Client jointly. Individually referred to as 'Party'.
<b>Personal Data</b>	means any information relating to an identified or identifiable person or other similar definition under any applicable laws governing treatment of personal information or data.
<b>Performance</b>	means the total of the Products and/or Services supplied or to be supplied by NTT.
<b>Privacy Statement</b>	means the then-current privacy statement describing NTT's treatment of Personal Data in its general business administration, management, and operations, which is made available at <a href="https://services.global.ntt">services.global.ntt</a> (or successor site) and as may be updated by NTT from time-to-time (effective upon publication).

<b>Affiliate</b>	means a legal entity that controls, is controlled by, or that is under common control with either Client or NTT Ltd. For purposes of this definition, 'control' means ownership of more than 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.
<b>Products</b>	means hardware or software supplied or to be supplied by NTT to Client, as set out in the relevant Order.
<b>Quote</b>	means a document that references these General Terms and Conditions and is issued to Client by NTT as an offer to sell Products or Services according to the terms set out herein.
<b>Remote Access</b>	means the gaining of remote access to Client's network and/or environment.
<b>Renewal Date</b>	means the End date of the Initial Term or Renewal Period.
<b>Renewal Period</b>	means the duration of the renewal following the Renewal Date.
<b>Services</b>	means the services to be provisioned, or Third-Party Services to be procured, by NTT for the Client, as set out in the relevant Order and more particularly detailed in the applicable Service Description (or, in the case of Third-Party Services, the Third-Party Terms).
<b>Service Activation</b>	means when the Services are first activated or made available to Client, as may be more specifically set out in the Order or Specific Terms (including, where expressly stated in the Order or Specific Terms, any applicable acceptance procedures to which determination of Service Activation is subject).
<b>Service Description</b>	means the terms of an Order (or accompanying document incorporated therein) describing the features, specifications, limitations, and functions of the ordered Services.
<b>Service Level Agreement</b>	means the anticipated level of Services, as measured by availability, speed, accuracy, capacity, throughput, or other relevant metrics associated with the Services, as set forth in or incorporated into the applicable Order (whether by physical attachment or through reference to a URL maintained by NTT ('SLA Website')). Unless a superseding SLA is expressly agreed by the parties and physically attached to an applicable Order, the SLA (if any) set forth on the SLA Website will apply to the relevant Services set out therein.
<b>Set-up Time</b>	means the time required by NTT to set up the Support and/or Managed Services.
<b>Spare Part</b>	means a component which is used to replace a defective component.
<b>Specific Terms</b>	means the supplemental product-specific or service-specific terms (including, where applicable, any Third-Party Terms) additionally applicable to any ordered Products or Services, as incorporated in the relevant Order (whether through physical attachment or by reference to materials published at a URL)
<b>Standard Rates</b>	means the rates as included in Chapter III, clause 32 of the General Terms and Conditions.

Affiliate	means a legal entity that controls, is controlled by, or that is under common control with either Client or NTT Ltd. For purposes of this definition, 'control' means ownership of more than 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.
Statement of Work	means a document setting out the scope, details and description of the Services and additional rights and obligations of the Parties.
Supplier	means a Supplier of NTT supplying Products and/or Services to NTT for the purpose of an Order.
Third Party Material	means Software and related documentation, including manuals and technical documentation which is supplied, used or made available for the purpose of the Services, but which is not the property of NTT or Client.
Third Party Services	means, as procured through NTT, services provisioned directly from a third-party service provider (other than as a subcontractor of NTT) for Client's access and use, as set out more particularly in an Order and subject to any applicable Third-Party Terms
Third-Party Terms	means end user agreements or other terms imposed by the relevant third-party OEM, licensor, or service provider and incorporated into an Order.
Users	means any person Client permit to use any Products or Services.
Works	means any software, websites, data files, equipment or other materials such as analyses, designs, documentation, reports, Offers and the preparatory materials in respect thereof, as developed or made available on the basis of an Order.
Working Days	are Mondays to Fridays, with the exception of public holidays.

## 2 Applicability

- 2.1 The General Terms and Conditions contain the basic rules that the Parties must follow. The General Terms and Conditions are divided into the following Chapters:
- **Chapter I: General Provisions This chapter applies at all times;**
  - **Chapter II: Delivery of Products;**
  - **Chapter III: Professional and Consulting Services**
  - **Chapter IV: Support Services**
  - **Chapter V: Managed Services**
  - **Chapter VI: Cloud Services**
  - **Chapter VII: WAN Services**
  - **Chapter VIII: SD-WAN Services**
  - **Chapter IX: Third Party Services**
- 2.2 The General Terms and Conditions apply to all of NTT's Quotes and Orders. If the provisions of the General Terms and Conditions are derogated from, this will be agreed with Client separately in an Agreement and/or Order.
- 2.3 Notwithstanding anything to the contrary, any terms additional to or different from those in the Agreement that appear in Client's Order are expressly excluded and will not apply as between the Parties.
- 2.4 If any provision of the General Terms and Conditions is wholly or partially void or voided, the remaining provisions of the General Terms and Conditions will continue to apply in full. In consultation with Client, NTT will agree on new provisions that will replace the void or voided provisions, taking account of the object and purport of the original provision as much as possible.

- 2.5 NTT may at its sole discretion change or supplement the General Terms and Conditions.
- 2.6 In the event of any conflict between the provisions of an Agreement and/or Order and the General Terms and Conditions, the provisions of the Agreement and/or Order will prevail, unless explicitly agreed otherwise.
- 2.7 NTT reserves the right at all times not to use the clauses contained in the Terms.
- 2.8 If these General Terms and Conditions already applied several times to Agreements entered into between the Parties and NTT has therefore made these General Terms and Conditions available to Client several times, there is a continuing business relationship. NTT does not have to provide the General Terms and Conditions each time in order for them to apply to subsequent Agreements.

### 3 Order Formation

- 3.1 NTT and Client may agree for the delivery of Products or provision of Services by NTT to Client as set out in an Order Each Order will specify the details of the applicable Products or Services to be delivered or provisioned, and will, unless agreed otherwise, be subject to these General Terms and Conditions, as supplemented or modified by any applicable Specific Terms (based on the Products or Services ordered).

#### Order Acceptance

- 3.2 As applicable based on the ordering process made available to Client by NTT, a Quote will be deemed accepted (and a binding Agreement c.q. Order is formed) upon the earlier to occur of:
  - (a) The Parties mutually executing a proposed Order or Statement of Work (by either physical or electronic signature);
  - (b) NTT's actual receipt of a signed Quote (with the valid signed Quote forming the Order, subject to clause 3.3 below);
  - (c) NTT's actual receipt of an acceptable Order issued by Client against a valid Quote for the Products or Services (with the valid Quote and acceptable Order forming the Agreement, subject to clause 3.3 below);
  - (d) Client's successful completion of any electronic or online ordering process made available by NTT (with the completed electronic or online submission by Client constituting the Order, subject to any additional terms that may apply to Client's use of such ordering system); or
  - (e) NTT beginning, as applicable, the provision of any Services or the procurement or shipping of any Products set out in the Quote or Statement of Work.
- 3.3 Notwithstanding anything to the contrary, any terms additional to or different from those in the Agreement that appear in a Client's purchase order are expressly excluded and will not apply as between the parties.
- 3.4 A Quote from NTT is based on the information Client provided to NTT, such as the requirements and specifications of the Performance to be delivered.
- 3.5 Quotes will be valid for the period expressly stated therein. If no period is stated, the validity period for any Quote will be 30 days from the date of issue, and with the ending of this period the Quote automatically is expired.

### 4 Restrictions on use

- 4.1 In addition to any more specific restrictions applicable to ordered Products or Services (as set out in the relevant Specific Terms), Client may not (and will ensure that Client's Users do not):
  - (a) use any Products, Services, or NTT Material in any manner that violates applicable laws or the terms of the Order (including, in respect of Products or Third-Party Services, Client's violation of any incorporated terms or restrictions imposed by the third-party OEM, licensor, or service provider), or the reputation of NTT;
  - (b) distribute, resell, sublicense or otherwise transfer (both without and against payment) the Products, Services, or NTT Material (including any IP Rights therein) or permit others to do the same;
  - (c) copy, modify, translate, disassemble, reverse engineer or make any derivative of the Products, Services, or NTT Material;
  - (d) remove, obscure or alter any trademarks or other proprietary notices appearing on or contained within the Products, Services, or NTT Material; and
  - (e) use documentation for any purpose other than as strictly necessary for Client to receive the intended benefit of the Products or Services.
- 4.2 Without limiting the generality of the obligations set out in this clause 4.1 (and consistent with the requirements of (a) above), Client acknowledge that certain Products or Services (or specific parts, components or features thereof) may be subject to Third-Party Terms. Client must fully comply (and ensure Client's Users fully comply) with any such applicable Third-Party Terms in connection with its use of the corresponding Products or Services.
- 4.3 For the avoidance of doubt, using the Products or Services as underlying technology to support or enable Client's business operations or commercial offerings is permitted hereunder, as long as such use does not otherwise constitute a violation of any general restriction set out in clause 4.1 above and is not prohibited by a more specific restriction set out in any applicable Specific Terms.



## 5 Intellectual Property and Rights Reserved

- 5.1 Unless expressly stated otherwise in an Order, no intellectual property rights (hereinafter named "IP Rights") are intended to be transferred under the Agreement. Except for those rights expressly granted in the Agreement, all rights, title, and interest (including IP Rights) in any:
- (a) NTT Material remains vested in NTT or, in the case of Products or Third-Party Services, the relevant third-party OEM, licensor, or service provider (as applicable); and
  - (b) Client Material remains vested in Client.
- 5.2 In the event Client elect to communicate to NTT any suggestions for improvement to any NTT Material, NTT will, to the extent permitted by applicable law, be entitled to use such suggestions without restriction or compensation to Client.

## 6 Warranties

### General

- 6.1 Each party warrants that it has the full capacity and authority to enter into the Agreement and grant any rights, licenses, permits, consents and authorizations hereunder.

### Services

- 6.2 With the exception of any Third-Party Services (which will be subject to the applicable warranties (if any) set out in the relevant Third-Party Terms), NTT warrants that the Services provided under an Order will be performed:
- (a) by suitably experienced individuals in a proper, workmanlike, and professional manner; and
  - (b) in accordance with the applicable specifications set out in the Order (including any Service Description included or incorporated therein).

The warranty set out in (b) above will be void in the event any failure of the Services is (i) due to any misuse, modification, or other unauthorized changes to the Services (or any other relevant NTT Material used in connection therewith) by Client or any third party acting on Client's behalf or (ii) results from an error in the information provided by Client to NTT and used by NTT in the performance of the Agreement.

### Products

- 6.3 NTT will, to the extent legally and contractually permissible, pass on or assign to Client any third-party warranties (subject to all applicable exclusions and other conditions) offered by the applicable OEM or licensor of any Products provided under an Order.

### Disclaimer

- 6.4 EXCEPT FOR THOSE WARRANTIES EXPRESSLY SET OUT IN THE ORDER, NTT DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND UNDERTAKINGS (WHETHER EXPRESS, IMPLIED, ARISING UNDER STATUTE OR OTHERWISE) RELATING TO THE PRODUCTS AND SERVICES, INCLUDING ANY WARRANTIES:
- (a) OF PERFORMANCE, MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR SATISFACTORY QUALITY; AND
  - (b) THAT THE PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS OR WILL BE TIMELY, UNINTERRUPTED, ERROR FREE OR ENTIRELY SECURE FROM INTRUSION.
- 6.5 ALL SUCH REPRESENTATIONS, WARRANTIES, CONDITIONS, AND UNDERTAKINGS ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, EXCLUDED FROM THE TERMS AND CONDITIONS OF THE AGREEMENT.
- 6.6 EXCEPT FOR THE TERMS AND CONDITIONS SPECIFICALLY SET OUT IN THE AGREEMENT, NO STATEMENTS OR INFORMATION OBTAINED BY CLIENT FROM (OR ON BEHALF OF) NTT IN CONNECTION WITH THE PRODUCTS AND SERVICES WILL CREATE ANY WARRANTY, CONDITION OR OBLIGATION ON NTT, AND CLIENT ACKNOWLEDGES AND AGREES THAT IT HAS NOT RELIED ON ANY SUCH STATEMENTS OR INFORMATION.

## 7 Client's obligations

- 7.1 Client offers NTT the access, support, information and cooperation reasonably required to allow NTT to perform its obligations under the Agreement.
- 7.2 Client will follow reasonable instructions given by NTT related to NTT's Performance under the Agreement.

## 8 Insurance

- 8.1 Each party will take out and maintain at its own expense adequate insurance cover with a reputable insurer, in respect of its risks under the Agreement, and will, on reasonable written request, provide evidence of such insurance to the other party.

## 9 Compliance with Laws

### General Compliance

- 9.1 Each party warrants that it will comply with Applicable Laws in connection with its performance under the Agreement, including those relating to:
- (a) export controls, economic sanctions, customs and restrictions on international trade and investment ('Trade Compliance Laws'); and
  - (b) prevention of bribery or corruption ('ABAC Laws').

### Trade Compliance

- 9.2 Without limiting the generality of the obligations set out in clause 0 above, Client agrees to comply with NTT's then-current Client Trade Compliance Terms, the breach of which by Client will be a material breach of the Agreement.
- 9.3 Client will have the sole responsibility for obtaining any permit, license, exemption, or other government authorization, including any export or re-export authorization, required under any Trade Compliance Laws for the provision of any Product or Service by NTT to Client (or any Affiliate of Client) pursuant to this Agreement.

### Disclaimer

- 9.4 NTT assumes no responsibility for, and will not be liable for any costs incurred or loss resulting from, Client's violation of Applicable Laws in connection with Client's performance of the Agreement, including Client's failure to obtain any permit, license, exemption, or other government authorization pursuant to clause 12.3 above. Without limiting any other suspension or termination rights reserved by NTT under the Agreement, in the event NTT is prevented from timely performing any obligation as a result of the denial, delay, cancellation, withdrawal, or non-renewal of any permit, license, exemption, or other government authorization required for NTT's performance under any Applicable Laws, NTT's failure to perform will be excused for as long as Client's non-compliance persists, plus a reasonable period of time for NTT, in its sole discretion, to account for any resulting impacts to delivery or provisioning estimates or milestones for the impacted Products or Services. NTT may, following any period of excused performance under this clause, condition the resumption of its performance on Client's written certification of compliance or production of supporting documentation, as requested by NTT.

## 10 Prices, Payment and Taxes

### Invoicing

- 10.1 One-time or non-recurring Charges will be invoiced as set out in the applicable Order, provided that if the Order does not expressly address the timing of any such invoices, the parties agree that NTT may invoice the Client for the applicable one-time or non-recurring Charges upon acceptance of the Order (as set out in clause 3.2 above).
- 10.2 Unless otherwise set out in the Order (including any applicable Specific Terms):
- (a) fixed recurring Charges will begin on Service Activation and be invoiced in advance at the start of the billing period in which such Charges arise, based on the pricing, quantities and billing frequency set out in the Order; and
  - (b) usage-based Charges will begin on Service Activation and be invoiced in arrears, with NTT issuing the invoice following the completion of the billing period in which such Charges arise, based on the pricing and billing frequency set out in the Order, as applied to the actual volumes extracted by NTT for the relevant billing period.

### Price Adjustments

- 10.3 NTT is entitled to pass on price changes to Client, in the particular event that NTT has submitted an Order to Client, but prior to actual delivery by NTT, any circumstances arise which affect the cost price (to wit changes to the prices of Products or Services, to wages, to exchange rates, to import duties, to VAT)
- 10.4 Unless otherwise set out in an Order (or for a specific Service comprising part of an Order), NTT reserves the right, upon each anniversary of the relevant Service Activation date, to proportionately adjust any and all Charges applicable to ongoing Services (excluding Third-Party Services, which will remain subject to clause 10.5 below) to account for any fluctuation to NTT's costs to provide the relevant Services to Client, including inflation, cost-of-living-adjustments (COLA), CBS price index for monthly negotiated wages for business services (reference year 2010 =100), foreign currency exchange rates, and costs of arranging, operating or procuring underlying utilities, services or technology.

### Currency and Foreign Exchange Adjustment

- 10.5 Charges will be billed in the currency specified in the applicable Order ('**Invoicing Currency**'). Client acknowledges that:
- (a) in respect of Products and Third-Party Services ordered by Client, NTT may incur costs in a currency different from the Invoicing Currency ('**Cost Currency**'). Where this is the case, Client will bear the ongoing benefit or risk associated with foreign exchange fluctuations between the Cost Currency and the Invoicing

Currency, with the Charges (or impacted portion thereof) being subject to a proportional adjustment based on any variation to the applicable foreign exchange rates between the date the relevant binding Order was formed and the date the relevant invoice is issued; and

- (b) in respect of Services ordered by Client, Invoicing Currency may be different from NTT's local currency ('Local Currency'). Where this is the case, Client will bear the ongoing benefit or risk associated with foreign exchange fluctuations between the Local Currency and the Invoicing Currency, with the Charges for such Services being subject to a proportional adjustment based on any variation to the applicable foreign exchange rates upon each anniversary of the relevant Service Activation date;
- (c) With regard to Services for which variable billing applies (e.g. consumption/usage/cloud/calling plans services), NTT is entitled to calculate the actual prices against the applicable day rate of the last day of the reporting month taking in account the foreign exchange fluctuations.

in each case, as determined by reference to the rates published by NTT's reasonably selected reputable and independent provider of financial market data (e.g., Bloomberg, Refinitiv).

#### **Payment**

- 10.6 Client will pay, in the currency set out in the Order, all Charges for the Products and Services within 30 days of the invoice date (unless a different period is specified in the Order). All amounts due must be paid in full without any set-off, counterclaim, deduction, or withholding.
- 10.7 Notwithstanding anything else to the contrary in the Agreement, if Client has failed to pay when due and payable any amounts owing under the Agreement, NTT may require Client to pay interest at a daily rate equal to interest at the current statutory (commercial) rate applicable in the Netherlands pursuant to Section 6:119a of the Dutch Civil Code plus a surcharge of 6% per annum on any overdue amounts not paid; and pursue any and all legally available remedies against Client, including the initiation of legal proceedings. NTT has the right to recover from Client its expenses (including reasonable attorneys' fees) incurred in collecting such amounts.

#### **Payment Disputes**

- 10.8 If Client disputes, in good faith, any amount due and payable pursuant to an invoice, Client, within 30 days of the date of the invoice, may request in writing that NTT make an appropriate adjustment by providing a detailed explanation for the requested adjustment. Notwithstanding the submission of any such request, Client must pay in full all undisputed amounts then due and payable to NTT. Either party may use, if necessary, the procedures in clauses 20.3 and 20.4 to resolve the dispute. Any amounts that are determined to be in error or not in compliance with the applicable terms of the Agreement will be adjusted on the following invoice. Any disputed amounts which are deemed to be correct as billed and in compliance with the applicable terms of the Agreement will be due and payable by Client within 30 days of any such determination by NTT.

#### **Taxes**

- 10.9 The Charges do not include applicable taxes or other governmental charges or fees levied on the Products or Services in accordance with applicable laws ('Taxes'), which, unless Client provides NTT with a valid exemption certification, must be paid or reimbursed by Client (excluding taxes based on NTT's income). If, following delivery of any Products or Services, Taxes are later assessed against NTT on the provision of such Products or Services due to a change to applicable laws, NTT will invoice, and Client will pay, such Taxes as set out in this clause.
- 10.10 In the event any deductions or withholdings are required by applicable laws to be made from any of the Charges payable, Client will gross up the payment due to NTT to ensure NTT receives the amount it would have received had such withholding not applied and Client will then remit payment of such Taxes directly to the applicable taxing authority.

### **11 Delivery**

- 11.1 NTT shall deliver Products within the Netherlands DDP (Incoterms 2010) to the client premises specified on the Order. NTT is entitled to deconsolidate shipments of Client's Order and ship the Products in a deconsolidated manner in accordance with the instructions provided on the Order. For the avoidance of doubt, NTT is entitled to invoice Client for the Products delivered as set forth in clause 10.1.
- 11.2 All lead times are determined to the best of NTT's knowledge based on the information known to NTT at the time of concluding the Agreement. NTT will make reasonable efforts to realise a timely delivery. If NTT determines that a timely delivery is no longer possible, NTT will inform Client of this as soon as possible. In that case, NTT will agree on a new delivery date together with Client.
- 11.3 NTT will only be in default of delivery if Client has given NTT written notice of default, offering it a reasonable period in which to effect delivery, and NTT has not effected delivery before expiry of this reasonably determined new delivery date.  
NTT is not bound by delivery periods if the late delivery is caused:
  - (a) by a circumstance that is beyond NTT's control;
  - (b) by a circumstance that arises after the conclusion of the Agreement; or
  - (c) by a change to the content and/or scope of the Agreement as agreed between Client and NTT.

## 12 Transfer of ownership and risk

- 12.1 All Products delivered by NTT will remain the property of NTT until Client has paid NTT all applicable Charges.
- 12.2 NTT may retain any items received or developed, including products, data, documents, data files and intermediate or final results of the Services provided by NTT until Client has paid all Charges to NTT. If NTT has agreed with Client to surrender these items, NTT shall do this once all Charges have been paid.
- 12.3 The risk of loss, theft, damage, deterioration or destruction of Products will pass to Client as soon as NTT has fulfilled her obligations:
- (a) to deliver the Products following the applicable Incoterms specified on the Quote.
  - (b) to deliver the Products into NTT's storage as result of Client's specific request in accordance with clause 28.4 of these General Terms and Conditions.

## 13 Confidentiality

- 13.1 '**Confidential Information**' means all non-public information (whether marked as confidential or which may reasonably be supposed to be confidential by its nature) that is disclosed before, on or after the effective date by a party ("Discloser") to the other party ("Recipient") in connection with, or in furtherance of its performance under, this Agreement, including its financial and business information, plans or strategy, the terms of the Quote and any non-public information regarding the Products, Services, NTT Material and Client's material (including any associated trade-secrets, know-how, operations, processes or documentation)
- 13.2 Under Confidential Information is explicitly not understood (and the terms of this clause will not apply to):
- Client Data and Personal Data, which will be treated in accordance with clauses 14 and 15 of these General Terms and Conditions; and
  - information that can be shown to Discloser's reasonable satisfaction was:
    - (i) in the public domain at the time of disclosure or becomes available to the general public afterwards other than by Recipient's breach of this Agreement;
    - (ii) rightfully known by, or later becomes available to, Recipient on a non-confidential basis from a source other than Discloser that is not prohibited from disclosing such information to Recipient; and
    - (iii) independently developed by Recipient without use or reference to Discloser's Confidential Information;
- 13.3 The Parties are required to:
- keep confidential any Confidential Information they receive;
  - use Confidential Information they receive only for the purpose of the execution of the Agreement.
  - use reasonable endeavours to ensure that Confidential Information is only disclosed to Parties who would have a need to access it and who are aware of the confidentiality obligations, provided that such Parties are bound by general confidentiality undertakings no less stringent than those contained in the Agreement between Client and NTT.
- 13.4 Confidential Information is understood to be all non-public information (whether marked as confidential or not). With respect to Discloser's Confidential Information, Recipient will:
- (a) only use it for the performance or administration of Recipient's obligations and responsibilities under the Agreement;
  - (b) disclose it to Recipient's (or, if applicable, Recipient's Affiliates') directors, officers, professional advisors, employees, contractors, and, in the case of NTT as Recipient, to any relevant subcontractor or third-party OEM, licensor, or service provider used in the performance or administration of the Agreement, on a need-to-know basis only and subject to sufficient obligations of confidentiality with such parties (and Recipient will remain fully liable for a breach of this clause 13 by any entity or individual to which it transfers the Confidential Information as set out herein); and
  - (c) protect it using the same level of care (but no less than reasonable care) Recipient uses to protect its own Confidential Information.
- 13.5 Recipient may disclose Discloser's Confidential Information to the extent required by law or any governmental or other regulatory authority (including by a court or other authority of competent jurisdiction) (a 'Disclosure Order'), provided that:
- (a) Recipient's disclosure of such Confidential Information is limited to the minimum amount necessary to comply; and
  - (b) to the extent permitted by law, the Recipient:
    - (i) gives the Discloser prior written notice of the Disclosure Order as soon as is practical;
    - (ii) provides the Discloser with a reasonable opportunity to make representations to the relevant authority to oppose the Disclosure Order; and

- (iii) reasonably cooperates with Discloser to oppose or limit the Disclosure Order or otherwise obtain the maximum possible continuing protection for such Confidential Information.
- 13.6 The parties acknowledge and agree that damages may be inadequate compensation in the event of a breach by Recipient of any confidentiality obligation, and, subject to the court's discretion, the Discloser may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will constitute a breach.
- 13.7 Upon termination of the Agreement, Recipient will promptly return or destroy (as reasonably directed by the Discloser) any Confidential Information in its possession, provided that nothing in this clause obliges either party to return or destroy any document or information incorporated into or annexed to anything that:
  - (a) must be retained for compliance purposes (including any accounting standard or the rules of any stock exchange) or as required by applicable laws; or
  - (b) is contained in backups or other systems such that the information cannot be reasonably and practicably located and deleted.
- 13.8 These confidentiality obligations will remain valid for a period of 3 years after the expiry or termination of the Agreement, provided that such obligations will continue:
  - (a) in respect of any Confidential Information retained pursuant to clause 13.7 above, for as long as such information remains in the possession of Recipient; and
  - (b) in respect of any Confidential Information constituting a trade secret, in perpetuity.
- 13.9 During the term of the Agreement and up to 1 year after termination of the Agreement, the Parties will not employ any staff members of the other Party or have these staff members work for them. This provision only applies to staff members who were directly involved in the performance of the Agreement. If a Party violates the provisions of this (anti-recruitment) clause, that Party will owe the other Party an immediately payable penalty of EUR 50,000 per event. This will not affect the right to claim full compensation and/or compliance with this clause.

## 14 Client Data

- 14.1 Client acknowledges that NTT's service obligations (if any) with respect to Client Data are entirely dependent on the specific functions of the ordered Services (as set out in the relevant Service Description). To the extent applicable based on any Services to be provided under the Order, and subject to any more specific provisions set out in the Order (including the relevant Specific Terms), NTT will:
  - (a) limit access to Client Data to only authorized NTT personnel (including, as applicable, the personnel of any Affiliate or subcontractor of NTT) that need it to provide or support the Services;
  - (b) permit authorized NTT personnel (including, as applicable, the personnel of any Affiliate or subcontractor of NTT) to access and use Client Data only as necessary to carry out NTT's obligations under the Order; and
  - (c) with respect specifically to any:
    - functions performed on such Client Data by NTT (or any Affiliate or subcontractor of NTT) as a component or feature of the Services; or
    - physical or virtual systems which store, transfer, or permit access to Client Data and are subject to the management and control of NTT (or any Affiliate or subcontractor of NTT) as a component or feature of the Services; and

maintain reasonable and appropriate technical and organizational measures designed to protect Client Data from unauthorized or unlawful access, acquisition, processing, disclosure, or alteration.
- 14.2 Notwithstanding NTT's obligations set out in clause 14.1, Client remains responsible for assessing the suitability of the Services for its business requirements and ensuring its proper use of the Services. Subject to any specific obligations that may apply to a particular Service (as set out in the relevant Order), Client must, in connection with any functions performed by Client, or any component or feature of the Service within its management or control, implement its own measures to maintain the appropriate security, protection, and backup of Client Data, as determined by Client based on its business needs and associated risks. Client remains solely responsible for the content of Client Data.

## 15 Personal Data

- 15.1 Client acknowledges and accept, without the need for further notification or consent (unless required by applicable laws), that NTT may transfer (both domestically and cross-border) and disclose Client's customer relationship management ('CRM') and other business administration data (including contact information for Client's relevant personnel, User credentials, etc.) to NTT's (and its Affiliates') personnel, subcontractors, and third-party service providers that have a need-to-know such information for the purposes of servicing the accounts with Client and otherwise administering the performance of the Agreement. NTT will process and maintain such CRM and other business administration data, including any Personal Data contained therein, in accordance with its Privacy Statement and applicable laws, provided that Client remain solely responsible for obtaining any individual consents or authorizations that may be required in connection with the contemplated processing activities set out in this clause 15.1.

- 15.2 To the extent NTT's provision of any Services under an Agreement contemplates the processing of Personal Data on Client's behalf, Parties will prior to commencing such Services, or, as applicable, transfer or processing of Personal Data, enter into a data processing agreement.
- 15.3 In the absence of a signed data processing agreement between the Parties, any personal data processing to be carried out by NTT pursuant to the specific Quote and/or Order will be governed by the data processing agreement available at <https://services.global.ntt/en-us/legal/data-privacy-and-protection> ("DPA").
- 15.4 Client indemnifies NTT against all third-party claims against NTT if the processing of Personal Data constitutes:
- (a) a violation of the General Data Protection Regulation ((EU) 2016/679) ("GDPR") and/or other legislation which is not accountable to NTT;
  - (b) a violation of the statutory retention periods.
- 15.5 Any limitation of liability as set out in clause 16.8, will apply to a breach of any obligation from GDPR other than to the extent such limitation (a) limits the liability of the Parties to data subjects or (b) is not permitted by applicable law.
- 15.6 Clause 15.4 and 15.5 will continue to apply after termination of the Agreement, for whatever reason.
- 15.7 If Client Data contains Personal Data and NTT has access to this Personal Data, the provisions of clause 15 will apply mutatis mutandis.

## 16 Order Term and termination

- 16.1 Each Order will have the initial term set out therein ('Order Initial Term') and, unless otherwise set out in such Order or applicable Specific Terms will:
- (a) begin on the date of Service Activation; and
  - (b) automatically extend for additional periods of 12 months (each an 'Order Renewal Term') unless a Party gives no less than 90 days' prior written notice of its intent to terminate the Order upon expiration of the Order Initial Term or then-current Order Renewal Term (as applicable).
- The Order Initial Term, any Order Renewal Terms and, to the extent applicable, any Transition-In Period or Transition-Out Period are collectively referred to as the 'Order Term'.
- 16.2 In addition to any further termination rights set out in in the relevant Quote or applicable Specific Terms, either Party may terminate an Order and/or Agreement immediately upon delivery of written notice if the other Party:
- (a) commits a material breach that cannot be remedied;
  - (b) commits a material breach (including, for the avoidance of doubt, Client's failure to pay Charges when due) that can be remedied but fails to do so within 30 days after receiving prior written notice detailing the breach; or
  - (c) becomes subject to a Bankruptcy Event.
- 16.3 If an Order is terminated for any reason prior to the scheduled expiration of the Order Term (other than due to NTT's material breach or insolvency pursuant to clause 16.2 above), the Client must pay the applicable Early Termination Fees. NTT will calculate the Early Termination Fees and deliver a corresponding invoice to Client, which Client will then pay in accordance with clause 10 of these General Terms and Conditions.
- 16.4 Upon termination of an Order and/or Agreement for any reason:
- (a) NTT will cease providing the Products or Services and Client's right to procure further Products or access or use the Services under the Order will immediately stop;
  - (b) all applicable Charges up to the date of termination and any applicable Early Termination Fees will become immediately due;
  - (c) Client will return any and all NTT Material (or, in the specific case of any Third-Party Services, Documentation or other materials related to such Third-Party Services) in its possession (as reasonably directed by NTT);
  - (d) each Party will return or destroy Personal Data as set out in the DPA (if applicable); and
  - (e) unless otherwise set out more specifically in the Order or applicable Specific Terms (or otherwise agreed by the Parties in writing as part of Services to be performed during the transition-out period), NTT will destroy any Client Data stored on NTT managed or controlled systems or equipment in connection with the terminated Services (if applicable), except to the extent any Client Data is also Personal Data, in which case the applicable terms of the DPA will take precedence.
- 16.5 In the event any Order and/or Agreement is terminated by Client due to NTT's material breach or insolvency (pursuant to clause 16.2 above), NTT will (to the extent applicable) promptly refund to Client the portion of any pre-paid amounts corresponding to Products or Services that were intended to be delivered after the effective date of termination and will no longer be delivered as a result of termination.
- 16.6 NTT retains the right (in its sole discretion) to co-terminate an Agreement with Client in its entirety, upon the termination of a separate Agreement between NTT and Client, without any further rights being derived by Client

and/or any further obligations for NTT arising from the co-termination, unless such further rights and obligations are laid down in the (co-)terminated Agreement,

- 16.7 In the event Client has requested a finance arrangement for an Order terminated in accordance with this clause, all payment instalments relating to the financing arrangement become immediately due. For the avoidance of doubt, the related payment obligation will not be subject to termination.

#### **Survival**

- 16.8 Unless otherwise stated herein, the termination of the Agreement will be without prejudice to the accrued rights and liabilities of the Parties. The terms of the Agreement that are either stated to survive expiration or termination or contemplated by their nature or context to survive, will remain in full force and effect after the date of expiry or termination.

## **17 Suspension**

- 17.1 In addition to any more specific suspension rights applicable to particular Services, as set out in the Specific Terms (including, for the avoidance of doubt, any rights reserved by NTT in connection with relevant maintenance procedures), and without prejudice to any other rights or remedies of NTT under the Agreement, NTT may, upon delivery of written notice, suspend the provision of Products and Services if:

- (a) client fails to pay any past due Charges within 30 days after receiving prior written notice detailing the non-payment;
- (b) client commits any other material breach under the Agreement, including:
  - (i) in respect of Products, Client's violation of any incorporated terms or restrictions imposed by the OEM or licensor (as applicable); or
  - (ii) in respect of Services, Client's failure to comply with the terms of an applicable acceptable use policy or similar limitations or restrictions on use (as set out more specifically in the Order or applicable Specific Terms);
- (c) it is necessary, in NTT's reasonable opinion:
  - (i) due to a health or safety risk to on-site personnel performing the Services at Client's premises (or any other location that is not under the management or control of NTT); or
  - (ii) to prevent or mitigate a threat to the integrity or security of the Services or any NTT Material (including NTT equipment, networks or systems), or any equipment, networks or systems of any other NTT partner or client; or
- (d) required by Applicable Laws or by order of a relevant regulator or law enforcement agency;

with such suspension lasting for as long as the applicable breach or condition giving rise to it continues, plus the reasonable amount of time required for re-activation after the same is addressed ('**Suspension Period**').

- 17.2 NTT will not be liable for any loss or inconvenience suffered by Client as a result of NTT rightfully exercising its suspension rights under the Agreement.

- 17.3 Charges will not be suspended during the Suspension Period.

- 17.4 NTT may charge Client a reasonable re-activation fee in the event of a suspension under clause 17.1(a) through (c), provided that Client will not be charged a re-activation fee under 17.1(c) if it was not responsible for the risk or threat giving rise to the suspension.

## **18 Modification or Discontinuance of Services**

### **Service Delivery and Management Locations**

- 18.1 Unless expressly agreed otherwise in this Agreement, NTT has the sole discretion to determine the service delivery and management locations, resources, and personnel it uses to provision any remotely-delivered Services ('**Remote Delivery Model**'). NTT may modify any aspect of the Remote Delivery Model at any time, provided that such modification does not materially diminish the overall level of performance of the Services.

### **Service Enhancements and Modifications**

- 18.2 NTT reserves the right, in its sole discretion and at any time, to:
- (a) add to or enhance the Services through the implementation of a new or updated feature or component (a '**Service Enhancement**') and, if applicable, make a corresponding adjustment to the applicable Charges for the enhanced Services; and
  - (b) modify, replace or decommission any part, feature or component of the Services (a '**Service Modification**').

For any Service Enhancement resulting in a corresponding adjustment to the applicable Charges, NTT will deliver reasonable prior notice to Client, which will specify (at a minimum) the effective date of such enhancement and the details of any corresponding adjustment to the associated Charges for the impacted Services. If Client objects to the Charges adjustment corresponding with any Service Enhancement or reasonably believes that a Service Modification will materially diminish Client's ability to use the impacted

Services, Client must notify NTT in writing within 15 business days of either, as applicable, receipt of NTT's prior written notice (in the specific case of any adjustment to Charges accompanying a Service Enhancement) or the effective date of the Service Modification ('**Client Objection**'). Upon receipt of a Client Objection, the parties will use reasonable, good faith efforts to resolve the matter, provided that NTT is not obligated to agree to any accommodation that is not commercially practicable (without a corresponding adjustment to Charges) or technically feasible.

#### **Discontinuance of Services**

- 18.3 Without limiting any other termination rights reserved by NTT under the Agreement, NTT may, in its sole discretion and at any time, discontinue any Services in their entirety, provided that NTT will:
- (a) give Client no less than 6 months prior written notice of such discontinuance (with the stated or inferred date being referred to as the '**Discontinuance Date**'); and
  - (b) use reasonable commercial efforts to offer a replacement service with a substantially similar purpose or function to Client.
- 18.4 To the extent the discontinued Services are subject to any Transition-Out Period (or similar extension rights or options reserved by Client), NTT's obligation to provide the relevant Services beyond the Discontinuance Date due to any such transition commitments may, at NTT's discretion, be subject to and contingent upon a modification to the applicable Charges for such Services. Any modification to the Charges pursuant to this clause will be effective from the Discontinuance Date and be determined by Client's proportionate share of any extended or increased costs to NTT to continue the provision of the discontinued Services for such period. For the avoidance of doubt, nothing in this clause requires NTT to provide any transition services that are not otherwise expressly agreed in the Agreement, nor extend any Services beyond the duration of any relevant Transition-Out Period (where applicable).
- 18.5 If Client objects to the terms of any notice of discontinuance issued by NTT, Client must provide a written objection to NTT within 20 business days of receiving such notice ('**Discontinuance Objection**'). NTT will review any Discontinuance Objection in good faith and, within 20 business days from receipt, determine whether any exception or accommodation can be made regarding the discontinuance of the relevant Services. If no exception or accommodation can be made or Client does not agree with the accommodation proposed by NTT, the Services directly subject to the discontinuance will terminate on the earlier to occur of (i) the Discontinuance Date (unless extended pursuant to clause 18.4 above) or (ii) 30 days from delivery of a written termination notice to NTT from Client.

#### **Disclaimer**

- 18.6 NTT will not be liable for any cost incurred or loss or inconvenience suffered by Client due to NTT exercising the rights reserved under clauses 18.1 through 18.5 above. For the avoidance of doubt, in the event of any termination due to NTT's discontinuance of Services, all Charges accrued up to the effective date of termination will still be owed by Client as set out in the Agreement.

## **19 Indemnities**

### **NTT Indemnity**

- 19.1 NTT will defend and indemnify Client (and its directors, officers, and employees) from and against all third-party claims alleging that Client's authorized use of any NTT Material infringes the Intellectual Property Rights of such third-party. NTT will have no obligation under this clause for any infringement arising from:
- (a) the combination of any NTT Material with other products not supplied or specifically approved by NTT;
  - (b) an act or omission of or attributable to the Client, such as (without limitation) the use of a non-current release of any NTT Material as provided or instructed by NTT;
  - (c) the modification of any NTT Material by any party other than NTT (unless approved expressly by NTT);
  - (d) the use of any free and open source software;
  - (e) possession or use of NTT Material (or any part thereof) by Client (or its Users) other than in accordance with the terms of its license and instructions, as set out in the Agreement;
  - (f) any Client Material or, without limiting the generality of the foregoing, the content of Client Data or other information, data, software, or material transmitted by or through Client; and
  - (g) the failure to use replacement items or resources provided to Client by NTT to avoid infringement or misappropriation.
- The indemnification obligation set out in this clause (and further qualified by clauses 19.4 and 19.5 below) represents NTT's entire liability and Client's sole remedy for any covered third-party claim of infringement related to the NTT Material.
- 19.2 Upon becoming aware of (or reasonably suspecting) an infringement claim that threatens Client's continued use of the NTT Material, NTT will be entitled, at its own expense and option to:
- (a) obtain for Client a license for the continued use of the infringing material;



- (b) replace the infringing material with non-infringing material that is substantially equivalent in functionality;
- (c) repair or make those modifications to the infringing material that may be necessary to remove the alleged infringement; or
- (d) if there is no way of remedying the infringement, terminate the impacted Services, in whole or in part, with termination effective on written notice to Client, and Client will be entitled to a pro-rata refund of any part of the Charges it has pre-paid for the impacted Services intended to be supplied after the effective date of termination and will no longer be delivered as a result of termination.

#### **Client Indemnity**

- 19.3 Client will defend and indemnify NTT (and its directors, officers, employees, and Affiliates) from and against all third-party claims arising out of or in relation to any:
- (a) Client Material transmitted, stored, or used by, through, or on behalf of Client in connection with any Services; and
  - (b) breach by Client (or its Users) of clause 4.1 above.

#### **Indemnification Procedures**

- 19.4 A party seeking indemnity under either clause 19.1 or 19.3 must provide the indemnifying party with prompt notice of the claim; reasonably mitigate its losses in connection with the claim; give the indemnifying party sole control of the defense and settlement of the claim; and cooperate with the indemnifying party, at the indemnifying party's expense, in defending or settling the claim.

#### **Amounts Recoverable**

- 19.5 The indemnification obligations set out in clauses 19.1 and 19.3 will be limited to the amount of all proved damages and expenses awarded by a court or finally agreed by the indemnifying party in a settlement of the claim (as applicable under the circumstances), in addition to the reasonable costs incurred for the indemnified party's cooperation, as described in clause 19.4 above.

## **20 Liability**

- 20.1 To the fullest extent permitted by applicable laws (and subject to any specific exceptions set out in the Agreement), neither Party will, in connection with any claim arising under or in relation to the Agreement, be liable (in contract, tort (delict) or otherwise) for any indirect, incidental, consequential, special, punitive, or exemplary damages; or for any loss of use, business interruption loss, loss or corruption of data, loss of anticipated or actual profits, revenue, income, or savings, or loss of goodwill, reputation, bargain, or business opportunities, each of which the parties agree are not direct damages in terms of the Agreement.
- 20.2 To the fullest extent permitted by applicable laws (and subject to any specific exceptions set out in the Agreement), each Party's total aggregate liability to the other for all causes of action or claims (whether in contract, tort (delict) or otherwise) arising out of or related to a Party's performance under any Order and/or Agreement, will be limited on a per Contract Year basis to the Charges payable by Client under such Order and/or Agreement in the relevant Contract Year in which the events, acts, or omissions giving rise to the causes of action or claims first occurred. In no event shall either Party's total cumulative liability under an Agreement exceed EUR 500,000 (in words: five hundred thousand euros) per Contract Year.
- 20.3 The damages and liabilities limited by clauses 20.1 and 20.2 apply to liability for negligence; even if a Party has been advised of the possibility of the damages in question or even if such damages were foreseeable; and even if a Party's remedies fail of their essential purpose. If applicable laws limit the application of clauses 20.1 or 20.2, the parties' liability will be limited to the maximum extent permitted by applicable laws.
- 20.4 The damage exclusions and liability caps set out in clauses 20.1 and 20.2 will not apply to:
- (a) either Party's indemnification obligations set out in clauses 19.1 and 19.3 which will be limited as more specifically set out in clause 19.5 above; and
  - (b) Client's breach of clauses 4 (Restrictions on Use) and 10 (Prices, Payment and Taxes).
- 20.5 Proven direct damages resulting from either party's breach of clause 13(Confidentiality) will not be subject to the liability caps set out in clause 20.2.
- 20.6 Notwithstanding anything to the contrary, if any unavailability, defect, impairment, or other fault in any Service is covered by a Service Level Agreement, Client's sole and exclusive remedies for such unavailability, defects, impairments, or faults will, to the maximum extent permitted by applicable laws, be limited to those stated in the applicable Service Level Agreement. Such remedies are in lieu of all other remedies.
- 20.7 This clause will continue to apply after termination of the Agreement, for whatever reason.

## **21 Cloud storage**

- 21.1 If, at Client's request, NTT stores data in a cloud solution specified by Client, it will do so at Client's risk and expense. Client will be fully responsible and liable for the specified cloud solution. Client indemnifies NTT against any and all (third-party) claims with respect to the storage in the cloud solution specified by Client.

## 22 Force Majeure

- 22.1 Except for Client's payment obligations under any Order (which will not be subject to the terms set out in this clause 19 or otherwise afforded treatment under Force Majeure), neither party will be liable for any delay or failure to perform its obligations under the Agreement (including any Order) if such delay is due to Force Majeure. Without limiting the generality of the foregoing, NTT will be entitled to an equitable extension of time to deliver or perform its obligations if the delivery or performance of its suppliers or subcontractors is in any way delayed, hindered or otherwise affected by the COVID-19 pandemic (which, for the purposes of this clause, will additionally include any future variants or strains of COVID-19).
- 22.2 The affected party will provide prompt notice to the other party of any such Force Majeure.
- 22.3 If a delay or failure to perform a party's obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended until the Force Majeure has abated. Each party will continue to meet the obligations that are not affected by Force Majeure.
- 22.4 If a party cannot perform a material part of its obligations under any Order for more than 30 days because of Force Majeure, either party may terminate the impacted Order (or affected part thereof) without liability upon providing a written notice of termination to the other party.
- 22.5 If an Order (or affected part thereof) is terminated in accordance with clause 22.4:
- (a) Client will pay all Charges accrued up to the date of termination; and
  - (b) to the extent any Charges for the terminated Products or Services were pre-paid, NTT will refund the portion of the pre-paid Charges covering the period following the termination date, provided that if NTT incurred any unrecoverable third-party costs for such undelivered Products or Services prior to the date of termination, NTT may reduce the total amount refunded to Client under this clause 22.5 by the corresponding amount of such costs.

## 23 Applicable law and dispute resolution

- 23.1 The General Terms and Conditions, Agreements, Orders and Quotes will be exclusively governed by and construed in accordance with Dutch law, in all cases without regard to conflict of law principles. For the avoidance of doubt, any reference in this General Terms and Conditions to applicable law shall mean Dutch law.
- 23.2 The applicability of the 1980 Vienna Convention on Contracts for the International Sale of Products to the General Terms and Conditions, Agreements, Orders and Quote shall be excluded.
- 23.3 If a dispute arises between the Parties, the appropriate senior executives of both Parties will attempt in good faith to resolve the dispute within 14 (fourteen) days.
- 23.4 If the senior executives are unable to successfully resolve the dispute as stated in clause 23.3, then the matter may be referred for resolution by mediation administered by the relevant body in the jurisdiction before having recourse to arbitration in accordance with clause 23.5 below, provided that in such a case neither Party is precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator(s). Alternatively, the matter may be referred to adjudication by the courts in accordance with clause 23.6 below.
- 23.5 In the event the matter is referred to arbitration either Party may submit the dispute to the Netherlands Arbitration Institute where such dispute will be finally settled under the rules of such forum (or such other rules as may be agreed between the Parties) by one or more appointed arbitrators. For each arbitration, unless otherwise specified in the Agreement and/or Order the place of arbitration will be Utrecht (Netherlands) and the language of arbitration will be English. The law governing the arbitration will be Dutch Law.
- 23.6 Any dispute or claim arising out of or in connection with this General Terms and Conditions, Agreements, Orders and Quotes (including any interim injunction), as well as any non-contractual disputes or claims so arising, will be submitted by the competent judge of the court Midden-Nederland (Netherlands).

## CHAPTER II: DELIVERY OF PRODUCTS

### 24 Applicability

- 24.1 The provisions of this chapter apply – in addition to the General Provisions – to deliveries of Products.

### 25 Defects

- 25.1 NTT will make every effort to repair any defects in the material of, and/or manufacturing defects in, Products delivered by NTT free of charge within a reasonable period of time, provided that the defect is reported under the warranty conditions and within the warranty period of the OEM, subject to the provisions of clause 6.
- 25.2 In the event the defect is not covered with warranty by the OEM, any repair costs and repair work will be charged to Client in accordance with the Standard Rates and Conditions as included in clause 30.

## 26 Returns

- 26.1 Before any Products are returned to NTT or the OEM, Client will at all times ensure that all information, including Confidential Information and personal details, has been fully deleted and/or removed from the relevant Product(s).
- 26.2 If Client fails to comply with the obligation of clause 26.1, Client will indemnify NTT against all claims, court proceedings, damage, injuries, liability, losses, costs and expenses which are suffered or incurred by NTT or are invoked against NTT.

## 27 Vendor Branded Resale

- 27.1 In case of vendor branded resale, NTT resells support Services of the OEM. Client shall report any incidents directly to the OEM from the effective date. NTT is not responsible for the OEM's performance, therefore any and all liability of NTT, to the fullest extent permitted by applicable laws, shall be excluded.

## 28 Miscellaneous

- 28.1 NTT uses sustainable packaging material as much as possible and ensures, as far as possible, that packaging materials are disposed of in an environmentally friendly manner.
- 28.2 If NTT, the OEM and/or the Supplier of hardware and/or software sets specific requirements on Client's environment, Client must comply with those requirements. If there are no specific provisions, the standard environmental requirements are as follows:
- (a) Ambient temperature between 15 °C and 32 °C, with a maximum temperature change of 5 °C per hour;
  - (b) Relative humidity between 20% and 80%, with a maximum humidity change of 20% per hour;
  - (c) Maximum permissible voltage variations (spikes) are set at +/- 2%;
  - (d) Magnetic fields and static electricity must be avoided.
- 28.3 Charges for the trade-in of Products (hereinafter: "Trade-In") are only paid to Client if NTT and Client have agreed on this and after the OEM has confirmed receipt of the Trade-In. NTT is not required to pay any Trade-In fees if the equipment to be traded in has not been delivered to the warehouse of NTT within 60 days of receipt of the newly ordered Products.
- 28.4 From time to time, at Client's request, the agreed delivery date of the Order may be extended under a bill and hold arrangement as more fully set forth below. For each such batch of stored Product, Client agrees that:
- (a) Client has made a fixed commitment to purchase the Product(s);
  - (b) The risk of loss for such Product passes to Client upon placement into NTT storage;
  - (c) Such Product shall be on a bill and hold basis for legitimate business purposes;
  - (d) Client shall identify a fixed delivery date for the Product(s);
  - (e) Client shall agree to be invoiced upon placement into NTT's storage;
  - (f) Client shall pay such invoice in accordance with the payment terms set forth in Clause 6 of this General Terms and Conditions.
- Upon making a request for a bill and hold arrangement, Client shall provide NTT with a letter confirming items (a) through (f) of this Clause 28.4 for each batch of stored Products.

## CHAPTER III: PROFESSIONAL AND CONSULTING SERVICES

### 29 Applicability

- 29.1 The provisions of this chapter apply - in addition to the General Provisions - if NTT provides Professional and/or Consultancy Services to Client.

### 30 Scope and performance of Services

- 30.1 In case of a project, NTT will draw up a Statement of Work, which includes the nature, scope and responsibilities.
- 30.2 In case of a temporary deployment of IT specialists, an Agreement will be drawn up, including Specific Terms. Where these General Terms and Conditions do not apply to this Agreement, this will be specified as such in the Agreement.

### 31 Extra Work

- 31.1 In the event additional work -being work not included in the scope of the Order- needs to be performed, Client will be charged for this based on the Standard Rates and Conditions, as included in clause 32.

### 32 Standard rates and conditions

- 32.1 The Standard Rates are:

Function/Roles	
Function	Hourly rates FY23
Project Coordinator	€ 110
Project Manager	€ 170
Senior Project Manager	€ 210
Transition Manager	€ 210
Associate service Delivery manager	€ 130
Service Delivery Manager	€ 160
Senior Service Delivery Manager	€ 190
Operations Manager	€ 180
Change Coordinator	€ 120
Change Manager	€ 160
Contract Manager	€ 110
Problem Manager	€ 180
Associate Engineer	€ 80
Engineer	€ 100
Senior/Pro-active Engineer	€ 150
Technical Consultant	€ 190
Senior Technical Consultant	€ 220
(Service) Architect	€ 240
Travel Time	€ 80

- 32.2 If staff is deployed for more than 8 consecutive hours or outside office hours, the following surcharges on the Standard Rates will apply:
- Between 8:00 a.m. and 6:00 p.m. 0%
  - Between 6:00 p.m. and midnight 50%
  - Between midnight and 8:00 a.m. 100%
  - Weekends and public holidays 100%
- 32.3 NTT is entitled to charge EUR 100 (one hundred euros) per day if:
- A NTT expert is deployed for less than 8 consecutive hours; or
  - the distance from the NTT office location is more than 100 kilometres.
- 32.4 The hourly rate is based on a minimum of 4 consecutive hours. 1 hour traveling time will be added.
- 32.5 The deployment is always rounded to whole hours.
- 32.6 If the scheduled work is cancelled less than 2 Working Days before the start of the work, NTT will be entitled to charge 50% of the scheduled hours, with a minimum of 4 hours.
- 32.7 If the scheduled work is cancelled on the day itself, NTT will be entitled to charge 100% of the scheduled hours, with a minimum of 4 hours.

## CHAPTER IV: SUPPORT SERVICES

### 33 Applicability

- 33.1 The provisions of this chapter apply - in addition to the General Provisions - if NTT provides Support Services to Client.

### 34 Scope and performance of Services

- 34.1 Support Services comprise Uptime Services and 10 proactive Support Service features, namely:

- Asset Tracking & Analytics
- Availability & Capacity Monitoring
- Third Party Incident Coordination
- Configuration Archive
- Proactive Problem Support
- Technical Account Manager
- Service Delivery Assurance
- IT Service Integration
- MACDs
- Annual Version Updates

- 34.2 Service Level Targets cannot be lowered during the term of an Agreement.

### 35 Installed base

- 35.1 In order to provide Support Services, NTT must have access to a complete and correct overview of Installed Base. Unless described otherwise in the Order, Client is solely responsible for correctness of the Installed Base.
- 35.2 Relevant details with respect to Products delivered by NTT are gathered and recorded by NTT in the NTT service management application. If any Products have not been delivered by NTT, NTT will, in consultation with Client, determine who gathers the relevant details with respect to the hardware and software in scope.
- 35.3 Client is allowed to adjust (or have a third party adjust) the Installed Base at Client's own expense only after having consulted NTT. In this case, Client must send NTT a current overview containing the relevant changes to the Installed Base. Client may be charged for Incidents caused by changes to the Installed Base based on the Standard Rates and Conditions of clause 32.

### 36 Client's equipment

- 36.1 Client guarantees that Client's equipment, network or systems linked to the Products falling under the Agreement are technically suitable, are connected and are used in accordance with all instructions and/or safety and security procedures applicable to Client's hardware and software.
- 36.2 NTT is not liable for a failure to achieve a Service Level Target or to meet any obligation under the Agreement, if the failure is (partial) attributable to Client.
- 36.3 NTT gives no guarantees with respect to interoperability between Products and Client's equipment, network and/or systems.

## **37 Client's obligations**

- 37.1 In addition to clause 7 of the General Provisions, as well as additional obligations specified in a Statement of Work and/or Service Level Agreement, Client must grant NTT Remote Access in order to provide the Services.
- 37.2 Client will conform to the OEM's lifecycle management policy.

## **38 Conditions of Service**

- 38.1 If the Support Services that NTT provides to Client includes Uptime Services, the following applies:
- (a) In case of an Incident, NTT will provide Client with replacement (revised) Products of equal quality and functionality. If the quality or functionality of the replacement Products are not the same as the quality or functionality of the defective Products, NTT may place back the repaired Products at a later time during the term of the Agreement.
  - (b) Defective Products becomes the property of NTT after having been replaced. If Client do not return the defective Products to NTT within 4 Working Days, NTT will be entitled to charge Client for the replacement Products at the gross price.
  - (c) Client is solely responsible for making and providing operational and current back-ups of the system configuration in time.
- 38.2 If the Support Services that NTT provides to Client includes MACD Services, this means that NTT will provide flexible services to Client and will perform operational management work based on a service points system. Upon termination of the Agreement with respect to Support Services other than MACD, Client's MACD Agreement will co-terminate. As a consequence, the remaining service points will expire on the termination date.
- 38.3 NTT Support Services may have their own or additional terms and conditions. If applicable, these terms and conditions will be shared with Client in a Service Description. Unless explicitly agreed otherwise, such Service Descriptions are governed by these General Terms and Conditions.
- 38.4 A Set-up Time of 6 weeks applies to the set-up of Support Services. During this period, Spare Parts will be bought, Remote Access will be set up and Client's Installed Base and the applicable Support Services will be recorded in our systems.

## **CHAPTER V: MANAGED SERVICES**

### **39 Applicability**

- 39.1 NTT Managed Services are subject to Specific Terms, the details of which will be provided where applicable. Where the Specific Terms constitute the entire agreement between the parties which supersedes and extinguishes all previous drafts, agreements, arrangements, communications, and understandings between them, this will be set out as such in the Order.

### **40 Scope and performance of Services**

- 40.1 The details with respect to the Services to be provided are included in an Agreement.

## **CHAPTER VI: CLOUD SERVICES**

### **41 Applicability**

- 41.1 Cloud Services are subject to Specific Terms, which will be provided to Client where applicable. Where the Specific Terms constitute the entire agreement between the parties which supersedes and extinguishes all previous drafts, agreements, arrangements, communications, and understandings between them, this will be set out as such in the Agreement.

### **42 Scope and performance of Services**

- 42.1 The details with respect to the Services to be provided, are included in the Agreement.

## **CHAPTER VII: WAN SERVICES**

### **43 Applicability**

- 43.1 WAN-Services are subject to Specific Terms, which will be provided to Client where applicable. Where the Specific Terms constitute the entire agreement between the parties which supersedes and extinguishes all previous drafts, agreements, arrangements, communications, and understandings between them, this will be set out as such in the Agreement.

### **44 Scope and performance of Services**

- 44.1 The details with respect to the Services to be provided, are included in the Agreement.

## CHAPTER VIII: SD-WAN SERVICES

### 45 Applicability

- 45.1 SD-WAN Services are subject to Specific Terms, which, where applicable will be provided to Client. Where the Specific Terms constitute the entire agreement between the parties which supersedes and extinguishes all previous drafts, agreements, arrangements, communications, and understandings between them, this will be set out as such in the Agreement.

### 46 Scope and performance of Services

- 46.1 The details with respect to the Services to be provided, are included in the Agreement.

## CHAPTER IX: THIRD PARTY SERVICES

### 47 Applicability

- 47.1 Third Party Services mean, as procured through NTT, services provisioned directly from a third-party service provider (other than as a subcontractor of NTT) for Client's access and use, as set out more particularly in an Order and subject to any applicable Third-Party Terms.

Access to and use of Third Party Services are covered by terms and conditions contained in an End User Agreement or Third Party Product License Agreement, which will be provided to Client where applicable. Where the agreement mentioned above constitutes the entire agreement between the parties which supersedes and extinguishes all previous drafts, agreements, arrangements, communications, and understandings between them, this will be set out as such in the Agreement