



NTT CANADA TERMS AND CONDITIONS OF SALE

BY ISSUING A PURCHASE ORDER IN RESPONSE TO A VALID QUOTE FROM NTT CANADA, INC. ("NTT"), YOU ("CLIENT") AGREE TO THESE TERMS AND CONDITIONS OF SALE. THE QUOTE AND THESE TERMS AND CONDITIONS OF SALE ARE THE ENTIRE AGREEMENT ("AGREEMENT") BETWEEN NTT AND CLIENT FOR THE PURCHASE OF GOODS OR SERVICES IDENTIFIED IN THE QUOTE. IF A SIGNED AGREEMENT IS IN EFFECT BETWEEN THE PARTIES THEN THESE TERMS AND CONDITIONS OF SALE DO NOT APPLY AND SUCH PRE-EXISTING AGREEMENT WILL PREVAIL FOR THE APPLICABLE PRODUCTS OR SERVICES. CLIENT AND NTT ARE EACH A ("PARTY") AND TOGETHER ARE THE ("PARTIES") TO THIS AGREEMENT.

1. **CLIENT ORDERS.** Client may accept a NTT offer to sell the third party manufactured goods or software licenses resold by NTT ("**Products**"), maintenance services provided by a third-party and resold by NTT ("**Third-Party Maintenance**") and/or the Services (defined in section 28) as identified in a NTT Quote ("**Quote**") or Statement of Work (defined in section 30) by issuing a purchase order (each purchase order in response to a Quote or a Statement of Work ("**SOW**") constitutes a "**Client Order**"). NTT's offer to sell the items as set forth in the Quote or SOW and its obligation to perform are expressly conditional upon Client's acceptance of these terms and conditions without additional or different terms. Client shall be deemed to unconditionally accept these terms and conditions by issuing a purchase order in response to the Quote or SOW. Any terms and conditions or other provisions contained, referred to, specified or preprinted on any Client purchase order or other document in any media are hereby rejected and superseded by the terms and conditions of this Agreement unless specifically agreed to in writing by NTT. Charlotte, North Carolina, is the fulfillment location for any Client Order.

2. **PRICES; TAXES.** Quotes are valid for thirty (30) days unless otherwise specified. Invoice prices are those specified in a valid Quote accepted by Client. Unless otherwise specified, applicable taxes and freight, handling or insurance charges are additional Fees for Services and estimated expenses are as set forth in the applicable Quote or SOW. Products, Third-Party Maintenance or Services purchased for delivery outside of Canada may be subject to Value Added Tax or similar indirect sales related taxes, incurred by NTT and Client shall reimburse NTT for the total amount of any such tax. This tax is not recoverable by Client and will be specified as an international logistics fee on the applicable invoice. If Staffing Services are purchased and, after the start of such Service, any government-mandated cost (such as a required wage, minimum wage, payroll tax, insurance premium, assessment, contribution, benefit, assessable penalty, or fee) is imposed, increased, adjusted, or newly introduced with respect to Retained Personnel assigned to Client then NTT may pass such cost to Client. NTT will notify Client and add such cost, without markup or fee, to Client's invoices. Staffing Services and Retained Personnel are defined in section 31. All prices for Services are based on work being performed during normal business hours.

3. **PAYMENT; INVOICING.** Payment in full of all invoices is due thirty (30) days from date of invoice. Invoices for Products are issued upon shipment of Products from the manufacturer or distributor. Invoices for managed services and Third-Party Maintenance are issued at the commencement of the applicable service period, and invoices for all other Services are issued at the time of performance or as set forth in the applicable SOW. Upon request, NTT will cooperate with Client's third party leasing company to facilitate payment of the Client Order by the leasing company. Client will pay invoices without any offset or deduction and will identify which invoice number(s) each payment is intended to satisfy. Client will pay NTT all of the reasonable expenses, costs, and fees NTT incurs to collect overdue invoice payments from Client. Upon advance written notice NTT may adjust payment terms for undelivered sales or if there is a change in Client's credit status. Client must notify NTT of any disputed item within thirty (30) days of invoice date otherwise the invoice will be presumed correct. The Parties will work in good faith to resolve such dispute. NTT may cease the performance of Services if any undisputed invoice remains past due after notice from NTT.

4. **CANCELLATION OF ORDERS.** Orders for Services may only be terminated upon the Parties' written agreement. Client may cancel or modify an Order for Products or Third-Party Maintenance only if NTT and the applicable manufacturer have consented to such cancellation or modification. Client shall pay all costs, expenses and fees incurred by NTT from the manufacturer, distributor and/or shippers as a result of such cancellation.

5. **TERM; TERMINATION.** This Agreement will remain in effect until all Products, Third-Party Maintenance or Services have been delivered and paid for or until otherwise terminated by a Party as allowed herein. Either Party may terminate this Agreement or a SOW if the other Party fails to cure a material breach within thirty (30) days following receipt of written notice specifying the breach. Consent by either Party to extend the cure period will not be unreasonably withheld, provided that the breaching Party has commenced and pursues cure of the breach in good faith. Either Party may terminate this Agreement immediately by written notice to the other Party upon the other Party becoming insolvent, or the initiation of any proceeding by or against it under bankruptcy or insolvency laws. Termination of this Agreement will not limit either Party from pursuing any other available remedies, including injunctive relief, nor will termination relieve Client's obligation to pay for all Products or Services delivered and any actual third party charges accrued by NTT on Client's behalf prior to the termination date.

6. **WARRANTY.** All Products and Third-Party Maintenance are supplied subject to applicable manufacturer warranties which NTT hereby transfers to Client as legally permissible. Services are warranted to be performed by qualified individuals in a professional and workmanlike manner conforming to generally accepted industry standards and practices. Client's exclusive remedy and NTT's entire liability for any breach of the Service warranty shall be the re-performance of the applicable Services at no charge. All Service warranties are void if the Service is modified by any party other than NTT or its authorized agent. NTT MAKES NO WARRANTY AS TO THE RESULTS OF ANY SERVICES OR THE PERFORMANCE OF ANY PRODUCTS. NTT FURTHER MAKES NO WARRANTY THAT PRODUCTS OR SERVICES WILL DETECT OR PREVENT ANY SECURITY

VULNERABILITIES AND/OR ATTACKS OR THAT THEY WILL MEET CLIENT'S SPECIFIC SECURITY REQUIREMENTS. EXCEPT AS SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND NTT DISCLAIMS ANY OTHER WARRANTIES AND REMEDIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE AND NON-INFRINGEMENT..

7. **CONFIDENTIALITY.** "**Confidential Information**" includes all information that is labeled confidential or would reasonably be considered confidential, including but not limited to Client's and NTT's employees, organization, activities, policies, or products and including any Quotes, SOWs, written reports, findings, conclusions, recommendations, benchmark test results or reporting data and analysis prepared by NTT and provided to Client hereunder. Confidential Information will not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving Party; or (b) was in the receiving Party's lawful possession prior to the disclosure and not subject to nondisclosure requirements; or (c) was lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the receiving Party. A Party may disclose Confidential Information as required by law or governmental ruling provided that before making such disclosure it gives the other Party an adequate opportunity to interpose an objection and/or take action to assure confidential handling of such information. The Parties will not disclose Confidential Information to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement. All Confidential Information will be protected using the same degree of care that a Party uses to protect its own confidential information of a similar nature and value, but in no event less than a reasonable standard of care. The Parties will hold Confidential Information in confidence for a period of two (2) years after termination of this Agreement. NTT may include Client's name in its published lists of customers but will obtain Client's written approval for any other reference opportunities.

8. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE HEREIN, A PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO PROVEN DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNTS PAID OR COMMITTED TO BE PAID BY CLIENT UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE CAUSE OF ACTION FOR THE DAMAGE IN QUESTION IN NO EVENT WILL A PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE, LOST PROFITS, OR LOST DATA, NOR FOR EXEMPLARY OR PUNITIVE DAMAGES THESE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, DELICT, (TORT), STRICT LIABILITY, OR OTHERWISE AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES AND/OR LOSSES

9. **DATA PRIVACY.** In order to receive the Services, Client may need to grant NTT access to information that, directly or indirectly, either alone or in combination with other data, identifies or uniquely relates to an individual employed or otherwise retained by Client or Client's agents or subcontractors or contractors (hereafter "**Client Personal Data**"). The Client shall be responsible for compliance with all municipal, provincial, and federal laws or regulations in the area of protection of privacy and personal data including where the Client provides NTT with or puts at NTT's disposal the Client Personal Data. NTT Services are provided on the basis that the Client has obtained any required consents under applicable municipal, provincial and federal laws or regulations relating to data privacy legislation for collection, use, disclosure and processing to NTT of Client Personal Data. If Client gives NTT access to any Client Personal Data, NTT shall be allowed to process Client Personal Data to perform the Services, and such processing shall adhere to the data privacy legislation applicable to the Services in the jurisdiction where the processing occurs. Client warrants the transfer of Client Personal Data to NTT shall comply with all applicable laws and regulations on protection of Personal Data. If the processing of Client Personal Data by NTT is conducted in accordance with Client's instructions as agreed with NTT in writing, Client shall indemnify, defend and hold NTT harmless from and against any and all claims, liabilities, losses and reasonable expenses incurred by or asserted against NTT in connection with any third party claim related to the processing of the Client Personal Data. Client understands and accepts that Client bears sole and full responsibility for the backup and redundancy of any Client Personal Data.

10. **SOFTWARE LICENSING.** All software license terms are established directly between Client and the owner or licensor of the software. Any software delivered hereunder is subject to the license terms provided with it. Unless otherwise specified, NTT is not a party to any such software license and makes no warranties or representations related to the software.

11. **ASSIGNMENT.** Neither this Agreement nor any rights or obligations hereunder will be transferred or assigned by Client without NTT's prior written consent; provided, however, either Party may upon notice assign this Agreement to a wholly owned subsidiary or a surviving entity in connection with a merger, acquisition or consolidation.

12. **WAIVER.** The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either Party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either Party more than one (1) year after the Party discovered, or should have discovered, the basis for the cause of action.

13. **FORCE MAJEURE.** Neither Party will be in default or otherwise liable for any delay in or failure of its obligations or performance where such delay or failure arises by reason of any Act of God, or act of governmental body, acts of the common enemy, the elements, strikes or labor disputes, or other causes beyond the control of a Party; provided, however, that such events will in no case excuse either Party's payment obligations.

14. **DISPUTES AND ARBITRATION.** For any controversy or claim arising out of this Agreement, the Party raising the dispute will promptly notify the other Party in writing of the nature of the dispute and factual background. Within fifteen (15) calendar days of such notice, the parties will attempt in good faith to reach a reasonable solution to the dispute, including escalation to the vice-president of each company responsible for the subject matter of the dispute. If the dispute cannot be amicably resolved within thirty (30) calendar days of written notification, then either Party may seek to resolve said dispute by arbitration. Any such arbitration will be subject to the rules of the Canadian Arbitration Association. Nothing will preclude either party from making an application to the arbitrator, for good cause, to expedite the proceedings, nor restrict the arbitrator from granting such an application, nor shall anything in this section shall preclude a Party from bringing an action for injunctive or other equitable relief. The arbitrator is not authorized to award punitive damages. The award rendered by the arbitrator will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

15. **LAW AND CHOICE OF LANGUAGE.** This Agreement and all transactions made hereunder will be governed by and interpreted in accordance with the applicable laws of the province of Ontario, excluding any conflict of laws rules that may apply. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Client acknowledges and agrees that (i) it has the ability to access each URL referenced in any Quote and in this Agreement, and (ii) NTT may from time to time change (including by moving or deleting portions of, or adding to), the materials posted at any such URL. Client waives any claims or defenses to the validity or enforceability of this Agreement or other documents arising from any electronic submission or availability of them to Client. The Parties have each required that this Agreement and all related documents be in English. Les parties confirment qu'elles ont exigé que ce contrat et tous documents s'y rattachant soient en anglais.

16. **INSURANCE.** NTT will maintain the following minimum insurance coverage: (i) Worker's Compensation statutory coverage and employers liability; and (ii) Commercial General Liability insurance with the following limits: Bodily Injury and Property Damage \$1,000,000 per occurrence; \$1,000,000 aggregate. NTT will provide a certificate of insurance upon request.

17. **EXPORTS.** Client and NTT each agree to comply with (i) all applicable Canadian corruption of public officials and anti-bribery laws and regulations and with the anti-bribery laws and regulations of any other country having jurisdiction over the transactions contemplated hereby, and (ii) all relevant export and sanctions laws and regulations of Canada to assure that neither any software deliverable, nor any direct product thereof or any Product is (a) exported or re-exported, directly or indirectly, in violation of any export laws, or (b) intended to be used for any purposes prohibited by any export laws, including without limitation, nuclear, chemical, or biological weapons proliferation, or (c) made available to any prohibited person or entity, as such terms are defined under applicable laws and regulations administered in Canada.

18. **AFFIRMATIVE ACTION.** NTT is an equal employment opportunity employer and its employment decisions are based on merit and business needs, and not on race, color, citizenship status, national origin, ancestry, sexual orientation, age, religion, creed, mental or physical disability, medical condition, marital status or veteran status. NTT will, comply with all federal and provincial non-discrimination and hiring laws in Canada.

19. **NOTICE.** All notices related to this Agreement will be in writing and properly given when personally delivered or sent by a delivery service providing proof of delivery. Notices to Client will be sent to the address above. Notices to NTT will be sent to NTT Canada, Inc. 2680 Skymark Avenue, Suite 400, Mississauga, Ontario, Canada L4W 5L6 with a copy to NTT America Solutions, Inc., 757 Third Avenue, 14th Floor, New York, NY 10017 U.S.A. Attention: Legal Department. The date of notice will be deemed to be the date of receipt. Refusal to accept delivery of a notice will constitute actual delivery hereunder..

20. SURVIVAL. Any terms of this Agreement, including but not limited to those relating to, Warranty, Limitation of Liability, Ownership of Intellectual Property or Confidentiality, which by their nature are intended to extend beyond this Agreement's expiration or termination will remain in effect until fulfilled.

21. RELATIONSHIP. NTT is an independent contractor; nothing in this Agreement will be construed to create a partnership, joint venture, employer and employee or agency relationship between the Parties. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either NTT or any employee or agent of NTT. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as federal and provincial taxes, Canada Pension Plan and Quebec Pension Plan contributions, employment insurance premiums, and all other payroll and health taxes applicable to such personnel as employees of the applicable Party. Except for Staffing Services (as defined in section 31), Client will have no right to control the manner, means, or method by which NTT performs Services. Client will be entitled only to direct NTT with respect to the elements of Services to be performed by NTT, to inform NTT as to where and when such Services will be performed, and to assess the performance of such Services by NTT for the limited purposes of assuring that such Services have been performed in accordance with this Agreement.

22. SHIPPING; DELIVERY. All shipments are F.O.B. Destination Freight Prepaid and Added or as may be applicable under the NTT international delivery and logistics service ("**DD Logistics**") terms as defined below. Unless otherwise specified by NTT, title and risk of loss to Products passes to Client upon delivery to Client ship to location. Client acknowledges that the applicable manufacturer or distributor controls shipment, and any shipment dates provided by NTT are estimates only. NTT will not be liable for any delay in delivery or for failure to give notice of such delay. Products delivered to a NTT facility for staging Services will be shipped to Client no later than ten (10) days after completion of such staging Service, and Client agrees to accept delivery of all such Products. If delivery is refused, Client will reimburse NTT's cost for warehousing of Products. Client will accept and pay for partial shipments of Products.

23. SECURITY INTEREST. Client grants and NTT retains a purchase money security interest in all Products purchased hereunder, and such security interest is released when NTT receives payment in full.

24. SHIPMENT DISCREPANCIES; RETURN POLICY. Client must promptly notify NTT of any discrepancy in shipment quantity or type. NTT will remedy any shipment errors at its cost. If excess or incorrect Product were delivered Client will request a Return Material Authorization ("**RMA**") consistent with the manufacturer's return policies. All RMA's issued are valid for the period of time allowed by the manufacturer after which time the RMA will be cancelled. No return of Products will be accepted without an RMA. Client must ship returned Products prepaid to the specified warehouse location. Correctly delivered Products may be returned only on prior approval of the applicable manufacturer and any approved returns are subject to the manufacturer's restocking fees and other related charges. A credit for Products returned in accordance with the above requirements, less any restocking or other related charges will be entered against the original invoice for Products. Products returned due to a shipping error or in accordance with warranty terms are not subject to restocking fees. Returned Products must be in the original shipping cartons, undamaged, unused and unaltered. Opened software is not returnable. NTT will have the right to reject the return of and/or impose additional charges for Products received in a condition other than described and Client agrees to pay such charges.

25. TRADE-INS. If a Client Order includes a trade-in allowance then Client will comply with the return requirements of the manufacturer's trade in agreement. Any such trade-in goods must be received by the manufacturer on or before the date specified in the trade-in agreement or, if no such agreement exists, by the sooner of the date specified in a Quote or sixty (60) days from delivery of the replacement goods. If Client fails to return trade-in goods as required the trade-in allowance will be forfeited and Client will pay NTT the trade-in allowance amount.

26. DD LOGISTICS. Client may purchase DD Logistics for delivery of Products to locations outside of Canada or the United States for an additional fee. Delivery terms and Client requirements will be as specified by DD Logistics at the time of the Client Order.

27. EXPEDITED SOURCING. "**Expedited Sourcing**" means sourcing and shipment of Products within a time frame that is sooner than the earliest date of availability from the manufacturer. If NTT can fulfill an Expedited Sourcing request NTT will assess an Expedited Sourcing fee equal to two percent (2%) of the unit list price for the applicable Products unless otherwise specified in a Quote. Products shipped under Expedited Sourcing may have distributor part numbers that do not match the manufacturer part numbers and will be at the standard operating system revision level supplied by the distributor.

28. **THIRD-PARTY MAINTENANCE.** Third-Party Maintenance resold by NTT hereunder is subject to the service description(s), terms and conditions identified by the applicable third party provider. NTT is not a party to any such third party terms and conditions and is not responsible for delivery of the Third-Party Maintenance.

29. **DEFINITIONS AND SERVICES DESCRIPTIONS.** “**Services**” include Product staging and installation services, Time and Materials Services, Staffing Services, packaged consulting services, DD Logistics, professional services, managed services and/or other services performed by NTT but excluding cloud service which are offered subject to separate terms of service. Descriptions of NTT Services are available upon request or online at <http://www.dimensiondata.com/rgn/na/legal/Pages/Home.aspx>. NTT will comply with Client’s published reasonable standard safety and security policies when performing Services on Client’s premises.

30. **STATEMENTS OF WORK.** Services may require a Statement of Work. A SOW is an agreement between the Parties governed by this Agreement and specifying the details of a particular Service, including but not limited to deliverables, fees, scope of work, testing, objectives, and project timelines, as well as any special terms and conditions, requirements or considerations which differ from or add to the provisions of this Agreement. In the case of any conflict between the terms of this Agreement and a SOW, the terms of the SOW will control.

31. **SOW DELIVERABLES.** For any deliverable identified in a SOW and provided to Client (or a corrected version of the same), Client shall have ten (10) business days from delivery to notify NTT in writing if it fails to comply with the applicable acceptance criteria specified in that SOW (“**Acceptance Criteria**”). Such written notice shall itemize how the deliverable fails to meet the Acceptance Criteria (“**Failure**”). NTT shall use commercially reasonable efforts to promptly remedy all confirmed Failures and provide Client a corrected deliverable. If Client- or third party-modifications to a deliverable caused a Failure, such deliverable shall be deemed automatically accepted and any NTT efforts to correct such Failure shall be as agreed by the Parties. If alternate acceptance period(s) or terms are specified in a SOW then such periods or terms shall prevail for the SOW. If no Acceptance Criteria are specified in a SOW then the corresponding deliverable is deemed accepted at time of delivery.

32. **STAFFING SERVICES.** “**Staffing Service**” means the NTT service by which it will obtain and assign certain employees or contractors with the skills requested by Client to do work under Client’s operational supervision (“**Retained Personnel**”). Staffing Services are distinct from Services under NTT’s operational control. Staffing Services include Time and Materials Services (“**T&M Service**”) which are Staffing Services assignments of a short term. Client is responsible for the direction of the NTT resource(s) assigned to perform Staffing Services, and Staffing Services are considered accepted at the time of delivery. Fees for Staffing Services, performed during normal business hours (Mon.–Fri., 8:00a.m.–5:00p.m. local time,

excluding holidays) will be as set forth in the applicable Quote. Should Client utilize such resources outside of normal business hours, NTT shall invoice Client at adjusted overtime rates.

33. **T&M SERVICES REQUESTS.** A “**T&M Request Form**” is that form governed by this Agreement detailing the resources, labor rates, materials cost (if applicable) and delivery requirements of T&M Services. Any Quote for T&M Service and the corresponding T&M Request Form is an estimate for budgeting purposes and is not a commitment to complete any task within the estimated time or cost. There is a four (4) hour minimum charge for all T&M Service calls.

34. **RETAINED PERSONNEL.** NTT, directly or indirectly, will perform or will contract with staffing providers for the performance of the functions of Retained Personnel. NTT agreements will ensure that Retained Personnel have no right to participate in any Client’s employee benefit plans and that Staffing Service supplied by them will be in compliance with this Agreement. Client may review NTT’s records to confirm that NTT fulfills NTT’s agreed duties as an employer and/or manager of Retained Personnel. Any such review will be subject to non-disclosure terms acceptable to NTT, will be no more than once annually, and nothing herein shall be deemed to grant Client the right of access to confidential personnel, payroll, profit, or internal cost data of NTT. Client may use Retained Personnel only in the capacities specified on the corresponding Quote for them. At Client’s direction, NTT will remove any Retained Personnel from assignment.

35. **SCREENING.** NTT’s screening process for employees or contractors includes a criminal background check performed by a third-party. Client agrees that NTT shall apply its own adjudication criteria to the results of such background checks.

36. **THIRD PARTY SOFTWARE.** If software licensed to Client is used in the performance of Services, Client will ensure that NTT has the right to use it and NTT will use such software only in the performance of Services. If Service deliverables, as defined in any SOW, include derivative works or customizations and/or enhancements to such software then, notwithstanding terms in this Agreement or a SOW to the contrary, the rights to such derivative works, customizations and/or enhancements will be subject to the terms of the applicable third party software license and NTT makes no representations regarding their ownership, usage or other rights.

37. CLIENT OBLIGATIONS. Client's timely, complete and accurate provision of, and access to, Client equipment, services, facilities, information and/or data may be necessary for NTT to perform Services. NTT will inform Client of a Client failure to provide such goods or assistance. If NTT is unable to perform Services due to a Client failure, such inaction will be excused until the failure is cured. Any such failure may result in increased charges which will be confirmed with Client. Client will promptly notify NTT in writing of any material change in Client's system environment (software or hardware) that may impact the delivery of Products, Third-Party Maintenance or Service. If NTT owned equipment is installed at Client location(s) for delivery of Services the Client agrees that (i) such equipment will be used solely for the delivery of the Service (ii) it is responsible for any loss or damage to such equipment, (iii) NTT retains ownership of such equipment (iv) such equipment will be returned to NTT when the Service ends and (v) if not returned within ten (10) days following NTT's written request NTT may invoice Client for the then current depreciated value of such equipment and Client will pay such invoice.

38. INTELLECTUAL PROPERTY. Upon payment for the Services associated therewith all Works shall be solely owned by Client and the entire right, title and interest therein, shall be exclusively vested in Client. Such Works shall be considered works made for hire and made in the course of the Services rendered hereunder. As used herein, "**Works**" are any written or computer coded materials, systems design, disks, tapes, drawings, reports, specifications, notebooks, recommendations, data and memoranda including but not limited to any modifications to existing Client techniques, software, processes, methodologies or other intellectual property, any of which are created specifically for the Client as a result of Services supplied to Client. If title to any Works may not by operation of law vest in Client, NTT hereby irrevocably assigns the sole right, title and interest in such Works and NTT's proprietary rights therein to Client. NTT agrees to execute all papers which Client may reasonably require to secure and maintain its rights related to the Works. Notwithstanding the foregoing, NTT retains exclusive and unrestricted ownership of any NTT IP relating to the Services and/or supplied with any Works, and NTT grants Client a worldwide, perpetual (except as noted below), royalty-free, and non-exclusive right and license to use such NTT IP as part of the Works. For the avoidance of doubt, when Services are supplied based on a monthly subscription fee (e.g. telecom expense management services), the foregoing license is only applicable during the period that the Client purchases such Service. As used herein, "**NTT IP**" includes (i) "**Prior Elements**" which are pre-existing methodologies, tools, techniques, software or intellectual property elements owned by NTT, (ii) "**Enhancements**" which are modifications to Prior Elements made while performing Services hereunder, and (iii) "**Retained IP**" which are methodologies, tools, techniques, software or other intellectual property developed while performing Services and that may be used by NTT in the course of its business. In no event will Enhancements or Retained IP contain any Client-specific data, processes or information. This license grant is non-transferable unless authorized in writing by NTT. Client shall protect the NTT IP in the same manner it does its own similar intellectual property which shall be no less than a reasonable standard of protection.

39. INFRINGEMENT INDEMNITY. . NTT will indemnify and defend Client against intellectual property infringement claim(s) related to Product(s) that NTT sells to Client, to the same extent NTT receives a corresponding intellectual property indemnification in its reseller agreement with the applicable Product manufacturer or supplier. NTT will also defend and indemnify Client against a claim that information, design, specification, instruction, software, data, or material NTT furnishes as part of the Service ("**NTT Material**") and used by Client in connection with the Services infringes an intellectual property right, copyright or patent. Client will defend and indemnify NTT against a claim that information, design, specification, instruction, software, data, or material Client furnishes ("**Client Material**") and NTT uses in connection with the Services infringes an intellectual property right, copyright or patent. The above indemnifications apply provided that: (a) the indemnified Party notifies the indemnifying Party in writing within 30 days of the claim; (b) the indemnifying Party has sole control of the defense or settlement of the claim; and (c) the indemnified Party provides the indemnifying Party with the assistance, information, and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by the indemnified Party in providing such assistance will be reimbursed by the indemnifying Party. The indemnifying Party shall have no liability for any claim of infringement resulting from the indemnified Party's use of a superseded or altered release of some or all of the Product, NTT Material or Client Material if infringement would have been avoided by the use of a subsequent unaltered release of the Product or Material which is provided at no charge to the indemnified Party. If a Product or NTT Material is held or is believed to be infringing NTT may, at its expense, (a) modify the Product or NTT Material to be non-infringing; (b) obtain for Client a license to continue using the Product or NTT Material; or (c) to require return of the infringing Product or NTT Material and grant Client a refund of the fees paid for it. Any such refunded fees will be as depreciated on a 60-month straight line basis from the date of delivery of the Product or NTT Material. If Client has authorized NTT to use or has supplied NTT with Client Material that is the subject of a claim then NTT may terminate the applicable SOW(s) upon written notice to Client and Client shall pay NTT for the Services rendered through the date of such termination. This section states NTT's entire liability and Client's exclusive remedy for any infringement claim or breach of a non-infringement warranty related to the Services..

40. NO SOLICITATION. During the term that any Service is provided under a Client Order or SOW and for a period of six (6) months thereafter, neither Party shall solicit for employment or retention as an independent contractor any employee or former employee or Retained Personnel of the other Party who provided any Services pursuant to this

Agreement. "Solicit" shall not be deemed to include advertising in newspapers, web sites or trade publications available to the public.