



Uptime

Maintenance and Support Services Agreement

Table of Contents

SCOPE OF SERVICE	5
1. DEFINITIONS AND INTERPRETATION	5
SERVICE SUMMARY	9
2. GENERAL OBLIGATIONS	9
NTT'S OBLIGATIONS	9
CLIENT TAKE-ON	11
3. PROVISION OF INFORMATION	11
THE CLIENT'S OBLIGATIONS	11
4. SECURE REMOTE CONNECTION TO THE CLIENT SITE.....	11
NTT'S OBLIGATIONS	11
THE CLIENT'S OBLIGATIONS	11
5. UPTIME MONITORING – HARDWARE FAILURE MONITORING.....	12
NTT'S OBLIGATIONS	12
THE CLIENT'S OBLIGATIONS	12
EXCLUSION	12
6. REMOTE ALERTS OPTION ESTABLISHMENT (CISCO CONFIGURATION ITEMS ONLY).....	12
NTT'S OBLIGATIONS	12
THE CLIENT'S OBLIGATIONS	12
EXCLUSION	12
7. ASSET DATABASE ESTABLISHMENT (OPTION).....	13
NTT'S OBLIGATIONS	13
THE CLIENT'S OBLIGATIONS	13
8. SERVICE COMMENCEMENT	13
NTT'S OBLIGATIONS	13
MAINTENANCE SERVICES	14
9. INCIDENT MANAGEMENT	14
NTT'S OBLIGATIONS	14
NTT'S OBLIGATIONS	14
THE CLIENT'S OBLIGATIONS	14
NTT'S OBLIGATIONS	14
THE CLIENT'S OBLIGATIONS	15
NTT'S OBLIGATIONS	15
THE CLIENT'S OBLIGATIONS	15
10. UPTIME MONITORING - HARDWARE FAILURE MONITORING (OPTION).....	15
NTT'S OBLIGATIONS	15
NTT'S OBLIGATIONS	16
NTT'S OBLIGATIONS	16
NTT'S OBLIGATIONS	16
THE CLIENT'S OBLIGATIONS	17
NTT'S OBLIGATIONS	17
THE CLIENT'S OBLIGATIONS	17
NTT'S OBLIGATIONS	17
THE CLIENT'S OBLIGATIONS	17
11. UPTIME MONITORING - CONFIGURATION FILE ARCHIVING (OPTION).....	17
NTT'S OBLIGATIONS	17
THE CLIENT'S OBLIGATIONS	18
12. UPTIME MONITORING - REMOTE ALERTS (OPTION)	18
NTT'S OBLIGATIONS	18
THE CLIENT'S OBLIGATIONS	18
13. SERVICE LEVELS	18
NTT'S OBLIGATIONS	18
NTT'S OBLIGATIONS	20

THE CLIENT'S OBLIGATIONS	20
THE CLIENT'S OBLIGATIONS	21
14. PARTS TO SITE	21
NTT'S OBLIGATIONS	21
THE CLIENT'S OBLIGATIONS	21
15. ENGINEER TO SITE	22
NTT'S OBLIGATIONS	22
THE CLIENT'S OBLIGATIONS	22
16. SUBSCRIPTION SERVICES (OPTION)	22
NTT'S OBLIGATIONS	22
THE CLIENT'S OBLIGATIONS	23
EXCLUSIONS.....	23
17. SERVICE PORTAL.....	23
THE CLIENT'S OBLIGATIONS	23
18. ASSET DATABASE (OPTION).....	23
NTT'S OBLIGATIONS	23
THE CLIENT'S AUTHORITIES	24
NTT'S OBLIGATIONS	24
NTT'S OBLIGATIONS	24
THE CLIENT'S OBLIGATIONS	24
19. LICENCE RENEWAL REMINDERS (OPTION).....	24
NTT'S OBLIGATIONS	24
THE CLIENT'S OBLIGATIONS	25
EXCLUSION	25
20. CONFIGURATION MACDs (OPTION).....	25
NTT'S OBLIGATIONS	25
THE CLIENT'S OBLIGATIONS	26
EXCLUSIONS.....	26
21. CONSULTANT ON CALL (OPTION).....	26
NTT'S OBLIGATIONS	27
22. SITE BASED SERVICES.....	27
NTT'S OBLIGATIONS	27
THE CLIENT'S OBLIGATIONS	28
EXCLUSION	28
NTT'S OBLIGATIONS	28
THE CLIENT'S OBLIGATIONS	28
EXCLUSION	29
23. ASSESSMENTS (OPTION)	29
NTT'S OBLIGATIONS	29
24. SERVICE LEVEL MANAGEMENT (OPTION).....	29
NTT'S OBLIGATIONS	29
NTT'S OBLIGATIONS	29
NTT'S OBLIGATIONS	30
25. STANDARD SERVICE DESK INTEGRATION (OPTIONAL)	30
SERVICE MAINTENANCE	31
GENERAL PROVISIONS	32
26. CLIENT'S GENERAL OBLIGATIONS.....	32
27. END-OF-LIFE CONFIGURATION ITEMS.....	32
28. MODIFICATION OF CONFIGURATION ITEMS.....	33
29. EXCLUSIONS.....	33
TERMS OF SERVICE	35
30. TERM.....	35
31. SERVICES.....	35
32. SERVICE CHARGES AND PAYMENT TERMS.....	35
33. TAXES.....	36
34. INSURANCE	36

35. WARRANTIES	36
36. THE CLIENT'S OBLIGATIONS.....	36
37. SUBCONTRACTORS.....	37
38. CONFIDENTIALITY	37
39. LIMITATIONS ON LIABILITY.....	37
40. TERMINATION.....	38
41. SOLICITING EMPLOYEES OR CONTRACTORS.....	39
42. GENERAL CONDITIONS.....	39

Scope of Service

1. Definitions and Interpretation

1.1 For the purposes of this Agreement, unless the context requires otherwise:

“**Additional Charge**” means a charge payable by the Client to NTT for the supply of any goods or services other than the Service, made at NTT’s then current standard prices and rates unless otherwise agreed in writing between the parties.

“**Agreement**” means this document, the relevant Record(s) of Entitlement and agreed variations of them.

“**Agreement Details**” means the details set out in the section of this Agreement so named.

“**Business Continuity Level**” means the level of service required by the Client to ensure business continuity which may include Remote Support, Ship, Remediate, Reconfigure or Restore activities as specified in the Record of Entitlement for the applicable Configuration Item.

“**Business Day**” means a day other than a Saturday, Sunday or a public holiday in the state or territory in which the Service is to be supplied.

“**Business Hours**” means the hours between 08:00 to 18:00 on Business Days. All services are delivered during Business Hours unless otherwise stated.

“**Client**” means the party specified as such in the Agreement Details.

“**Commencement Date**” means the date specified in the Agreement Details for the commencement of the Initial Term.

“**Commitment Level**” means either the Response Commitment or the Result Commitment as the context requires.

“**Confidential Information**” means any confidential business and financial information of a party including, without limitation, information concerning the business operations and methods of a party or technical information acquired either directly or indirectly by the other party but excludes information which is or becomes publicly known through no wrongful act of the receiving party and for the removal of doubt includes this Scope(s) of Service.

“**Configuration Item**” means any item of hardware or software listed in the Record of Entitlement unless identified as a Spare.

“**Configuration MACD**” (move, add, change, delete) means a move of, addition to, change of, removal of, or deletion of a Configuration Item or a part thereof performed by NTT upon receipt of a request from the Client.

“**Consultant on Call**” means the consultation service that provides technical support to the Client in relation to a Configuration Item as described in clause 21 by telephone.

“**End User**” means an employee of the Client.

“**End-of-Life**” means the relevant Configuration Item is no longer manufactured or supported, as determined by NTT, based on any end-of-life or end-of-service announcements made by the manufacturer.

“Escalation Manager” means a NTT nominated individual responsible for managing escalations of Incidents and Requests.

“Event” means a condition or situation detected by the NTT Management System which indicates that something has happened in relation to a Configuration Item.

“Good Operating Condition” means the state in which a Configuration Item functions in accordance with the manufacturer’s specifications and successfully completes all usual diagnostic tests performed by NTT.

“Governing Law State” means the state or territory specified as such in the Agreement Details.

“GST” means the goods and services tax as defined in “A New Tax System (Goods and Services Tax) Act 1999”.

“Incident” means the occurrence of an Event in a Configuration Item that prevents it from being in Good Operating Condition.

“Incident Diagnosis” means the performance of an investigation (not remediation) by NTT into the possible causes of an Incident.

“Incident Record” means a record in NTT’s Management System generated by the Client or NTT that records and tracks a request related to an Incident.

“Initial Diagnosis” means the performance of an investigation by the Client into the possible causes of an Incident (including for example, power failure, reconfiguration or failure of a connected device or system).

“Initial Term” means the first term of the Agreement, being the period specified as such in the Agreement Details.

“Management System” means the system used by NTT to record information relating to the supply of the Service.

“Minor Feature Release” means a software release that provides minor additional functionality or refinements to the existing functionality of the relevant software, e.g. moving from version 2.1 to version 2.2.

“Next Business Day” means the same time on the next Business Day as the Client logged the relevant Incident Request, Change Request or Service Request on a Business Day.

“NTT” means NTT Australia Pty Ltd ABN 65 003 371 239.

“NTT Management System” means the system used by NTT in connection with the supply of the Service.

“Part” means a component used to resolve an Incident on a Configuration Item.

“Patch” means a maintenance software release issued by the manufacturer to correct an error in its software.

“Permanent Resolution” means the action taken to resolve the root cause of an Incident or problem.

“Reconfigure” means to apply a backup configuration to a Configuration Item in order to return it to Good Operating Condition.

“Record of Entitlement” means the document issued by NTT from time to time which sets out details of the Configuration Items, Service Calendar, Service Levels, Service Charges, options and other relevant details.

“Remediate” means to either repair or replace a faulty component of a Configuration Item to resolve an Incident as described in clauses 13.7 to 13.9.

“Remote Alert Notification” means the manufacturer's remote call home alerts generated by Configuration Items.

“Remote Support” means use of telephone, email or a VPN to facilitate the resolution of an Incident or Request as described in clause 13.3.

“Request” means a request relating to the supply of the Service or the modification of the Service.

“Request Record” means a record in NTT's management system generated by the Client or by NTT that records and tracks a Request.

“Response Commitment” means the time specified in the Record of Entitlement within which NTT must commence or initiate the supply of the service in accordance with the Business Continuity Level and Service Calendar, measured from the time at which an Incident is logged for the applicable Configuration Item.

“Restore” means to restore a Configuration Item to Good Operating Condition or to apply a Workaround.

“Result Commitment” means the time specified in the Record of Entitlement within which NTT must complete the supply of the service in accordance with the Business Continuity Level and Service Calendar, measured from the time at which an Incident is logged for the applicable Configuration Item.

“Security Technology Category” means the group of Configuration Item that are used to protect the Client's information systems from unauthorised access, use, disclosure, disruption, modification, perusal, inspection, recording or destruction, with the ultimate goal of maintaining the confidentiality, integrity and availability of information.

“Service” means the service described in this Agreement.

“Service Administration MACD” means a request from the client to make changes to the Configuration Item information in the Record of Entitlement and in the NTT Management System.

“Service Calendar” means the hours and days specified in the Record of Entitlement during which the Service for the applicable Configuration Item is available.

“Service Charges” means the charges for the Service set out in the Agreement Details, an invoice issued by NTT and/or as detailed in the Record of Entitlement.

“Service Desk” means the NTT technical support group that acts as a single point of contact between NTT and the Client to manage all Incidents, Requests, communications and escalations with the Client.

“Service Element” means an element of the Service as listed in the table contained in clause 2.3.

“Service Level” means the combination of Service Calendar, Business Continuity Level and Response Commitment or Result Commitment as specified in the Record of Entitlement and described in clause 13.

“Service Unit” means a pre-paid unit of value that is used to pay for *Configuration MACDs* and *Consultant on Call* services the number and value of which is specified in the Record of Entitlement.

“Services Portal” means the internet portal created and configured by NTT for access by the Client’s designated staff.

“Set-Up Fee” means the fee (if any) described as such in the Agreement Details, payable on the Commencement Date.

“Ship” means to send a replacement Part to a Site after initial Remote Support as described in clauses 13.4 to 13.5.

“Site” means the premises specified in the Record of Entitlement at which a Configuration Item is located.

“Software” means software listed in the Record of Entitlement or which forms an integral part of a Configuration Item but does not include any software installed on the hardware by the Client unless it is listed in the Record of Entitlement.

“Spares” means components or units owned by the Client which may be used by NTT for the resolution of Incidents.

“Term” means the Initial Term and any extension of it.

“Update” means Patches, Minor Feature Releases, security profile updates and Upgrades as the context requires.

“Upgrade” means software releases that make major changes to the applicable Software e.g. moving from version 2.0 to version 3.0.

“VPN” means a virtual private network and provides a secure communications mechanism for data and other information transmitted between two end points.

“Workaround” means a set of actions that reduce or eliminate the effect of an Incident or problem for which a Permanent Resolution is not yet available.

Service Summary

2. General obligations

NTT's obligations

- 2.1 NTT must, for the purpose of supplying the Service, provide the package of Service Elements selected by the Client and specified in the Record of Entitlement.
- 2.2 The Service Elements listed in the table in clause 2.3 are described in further detail in clauses 9 to 23 inclusive.
- 2.3 Table of Service Elements and activities:

Clause Ref.	Service Elements / activities	Uptime Support Services
Maintenance Services		
9	Incident Management	✓
	• Service Desk	
	• Resolution of Incidents	
	• Escalation Management	
	• Secure Remote Connection to the Client Site	
10	Uptime Monitoring - Hardware Failure Monitoring	✓
	• Availability Monitoring and SNMP Trap Event Monitoring	
11	Uptime Monitoring - Configuration File Archiving	✓
	• Backup of Configuration Files on Service Portal	
12	Uptime Monitoring - Remote Alerts	✓
	• Proactive Incident Management for High Priority Alerts	
13	Service Levels	✓
14	Parts to Site	✓
	• Parts Dispatch and Collection of Replaced Component	
15	Engineer to Site	✓
	• Engineer Dispatched to Client Site	
16	Subscription Services	✓
	• Patches and Minor Feature Releases	
	• Upgrades	
	• Patches and Minor Feature Releases and Upgrades	
	• Security Profile Updates	
17	Services Portal	✓
	• On-line self-service Incident and Request Logging	
	• Configuration MACD Recording	
	• On-line Access to Incident and Request Reports	
	• On-line Access to Asset Database Reports	
Support Services		
18	Asset Database (Cisco devices only)	✓
	• Asset discovery and inventory	

	<ul style="list-style-type: none"> Asset database reporting 	
	<ul style="list-style-type: none"> Asset database maintenance 	
19	License Renewal Reminders	✓
	<ul style="list-style-type: none"> Notification to Client of Upcoming License Renewals 	
20	Configuration MACDs	✓
	<ul style="list-style-type: none"> Normal and Urgent Configuration MACDs 	
	<ul style="list-style-type: none"> Management of Service Units 	
	<ul style="list-style-type: none"> Quarterly Service Unit Usage Report 	
21	Consultant on Call	✓
	<ul style="list-style-type: none"> Telephone Based Consultation 	
22	Site Based Services	✓
	<ul style="list-style-type: none"> Engineer Situated at a Site 	
	<ul style="list-style-type: none"> Spares Situated at a Site 	
23	Assessments	✓
	<ul style="list-style-type: none"> Discovery, Analysis and Recommendation Tasks 	
24	Service Level Management	✓
	<ul style="list-style-type: none"> Service Management Reports 	
	<ul style="list-style-type: none"> Service Management Reviews 	
	<ul style="list-style-type: none"> Awareness Training 	
	<ul style="list-style-type: none"> Mobile Service Centre Application 	
24	Standard Service Desk Integration	✓

- 2.4 Additional manufacturer specific clauses may apply. When particular manufacturers are specified in the Record of Entitlement, the additional terms for each make of Configuration Item can be found at <https://hello.global.ntt/en-us/legal/terms-and-conditions>.
- 2.5 In the event of a conflict between a manufacturer specific clause and this document, the manufacturer specific clause will prevail.

Client Take-on

3. Provision of information

The Client's obligations

- 3.1 The Client must:
- (a) promptly complete and provide documents reasonably required for the establishment of the Service; and
 - (b) provide NTT with documentation that describes the Configuration Item installation and usage in terms of architecture, interfaces, modules, design, build, business function and call flows.

4. Secure remote connection to the Client Site

- 4.1 The secure remote connection to the Client site described in this clause 4 only applies if the Client selects the following optional Service Elements:

- (a) Trap Event Notification; and/or
- (b) Asset Database.

Site to Site VPN connection

- 4.2 Compliance with the service levels will always be subject to the availability and bandwidth of the VPN internet connection.

NTT's obligations

- 4.3 NTT must conduct a requirements gathering exercise with the Client and determine and document the most suitable connectivity design. The approach and timeframes and costs for connectivity for implementation are also determined and agreed at this stage.
- 4.4 To establish a **Site to Site VPN connection**, NTT must provide an engineer with required skills to install a fully configured Cisco® ASA VPN device at the Client's Site. The provisioning lead time for the **Site to Site VPN Connection** is 20 Business Days.

The Client's obligations

- 4.5 To establish a **Site to Site VPN connection**, the Client must:
- (a) provide NTT with information required for the *Client Connectivity Design* document;
 - (b) have access to the Internet at its Site;
 - (c) allocate a public IP address for the VPN device that NTT provides preconfigured and resides on the Site for the duration of the Service;
 - (d) provide adequate rack space and power for the VPN device;
 - (e) ensure adequate firewall rules are in place to allow NTT access to the Configuration Items as outlined in the *Client Connectivity Design* document; and
 - (f) allocate an engineer to assist NTT configure the VPN device, and install the device if it chooses.
- 4.6 The Client must protect the NTT owned VPN device from loss or damage and return it to NTT at the end of the Term.
- 4.7 If requested by the Client, the Client's own VPN device can be used however, the Client must provide NTT with the device hardware specifications so that NTT can assess and approve its suitability. The Client must also agree to make configuration changes to the Client's own VPN device as recommended by NTT.

- 4.8 If the Client has a security policy or support process that it expects NTT to adhere to, then NTT reserves the right to review the policy or process and:
- (a) if NTT is able to comply with it, NTT may make an Additional Charge; or
 - (b) if not, NTT will not be required to adhere to the policy or process.

5. Uptime Monitoring – Hardware Failure Monitoring

NTT's obligations

- 5.1 NTT must configure the NTT Management System to provide the *Hardware Failure Monitoring* Service Element on the Configuration Items.

The Client's obligations

- 5.2 The Client must enable and configure SNMP trap Events to be sent to the NTT Management System based on instructions provided by NTT.

Exclusion

- 5.3 NTT is not responsible for any failure of the Configuration Items or the Client's systems to support *Hardware Failure Monitoring*. If such a failure occurs and NTT does not receive any SNMP trap Events and/or ICMP/SNMP polling, no action will be taken by NTT.

6. Remote Alerts Option Establishment (Cisco Configuration Items Only)

NTT's obligations

- 6.1 NTT must:

- (a) provide the Client with guidelines on the configuration requirements; and
- (b) if requested, assist with the configuration of the Cisco Smart Call Home feature with the NTT GSC email address on new or existing Configuration Items at an Additional Charge.

The Client's obligations

- 6.2 The Client must:

- (a) provide NTT with additional administration or supervisor access rights for the purpose of Incident Diagnosis for the duration of the Service;
- (b) configure Cisco Configuration Items:
 - (i) to send Remote Alert Notifications to the NTT GSC email address; and
 - (ii) to have security settings that facilitate administration or supervisor access from the GSC; and
- (c) configure its SMTP mail gateways or equivalent to forward Remote Alert Notifications.

- 6.3 If the Client fails to correctly configure its Cisco Configuration Items and NTT receives excessive Remote Alert Notifications, NTT may disable the Smart Call Home feature or render an Additional Charge.

Exclusion

- 6.4 NTT is not responsible for any failure of the Configuration Items or the Client's associated systems (e.g. mail gateway) to send Remote Alert Notifications. If such a failure occurs and NTT does not receive any Remote Alert Notifications, no action will be taken by NTT.

7. Asset Database Establishment (Option)

NTT's obligations

- 7.1 NTT must install and configure an asset database collector in the NTT Management System to perform an automated discovery of the Client's devices that are enabled with the correct SNMP community strings.

The Client's obligations

- 7.2 The Client must provide NTT with:
- (a) specific IP addresses or one or more ranges of IP addresses; and
 - (b) access information required including SNMP community strings and administrator logins and passwords.
- 7.3 If an existing VPN link is established between NTT and the Client, this link will be utilized to deliver the *Asset Database* service element. If no such link is in place, the establishment of a new VPN link will be required.

8. Service Commencement

NTT's obligations

- 8.1 NTT will commence supply of the Service upon:
- (a) receipt from the Client of a purchase order which covers the Service Charges for the Initial Term and any Set-up Fees, as set out in the Agreement Details;
 - (b) receipt from the Client of all required documents or forms;
 - (c) any required service establishment activities being completed; and
 - (d) the detailed version of the Record of Entitlement being issued.

Maintenance Services

9. Incident Management

Service Desk

- 9.1 NTT must receive reports of Incidents and Requests 24 hours a day, seven days a week, regardless of the Business Continuity Level.

NTT's obligations

- 9.2 During the Service Calendar, NTT must:
- (a) consult with the Client to confirm the impact and urgency of the Incident or Request which will result in the allocation of a default priority to the Incident Record or Request Record;
 - (b) create Incident Records and Request Records in the NTT Management System and coordinate the response to them in accordance with the relevant Business Continuity Levels;
 - (c) allocate a unique reference number for tracking and follow-up of the Incident Record or Request Record;
 - (d) contact the Client to make the necessary arrangements if access to a Site is required to address the Incident Record or Request Record; and
 - (e) keep the Client updated on the status of the Incident Record or Request Record.

Resolution of Incidents

NTT's obligations

- 9.3 Upon notification of an Incident or receipt of a Request from the Client or upon receipt of a Remote Alert Notification from a Cisco Configuration Item, NTT must initiate the *Incident Management* process and:
- (a) if required, the Service Desk will route the details of the Incident or Request to an engineer to assist with further diagnosis;
 - (b) allocate an engineer to determine the cause of the Incident and recommend a course of action to resolve it based on the information provided, together with information gathered through a secure remote connection (if available); and
 - (c) if required, escalate the Incident or Request to the relevant management and/or technical specialist for resolution, in line with the Business Continuity Levels.

The Client's obligations

- 9.4 The Client must:
- (a) perform an Initial Diagnosis before reporting an Incident;
 - (b) ensure that an Incident Record is raised by an appropriately skilled engineer when engaging NTT for telephone support and to assist NTT with Incident Diagnosis, level 1 technical support and provide error messages and log files; and
 - (c) provide NTT's support engineers with access to a Site, during the Service Calendar.

Escalation Management

NTT's obligations

- 9.5 If an Incident or Request is escalated, NTT must assign an Escalation Manager who is responsible for:
- (a) monitoring escalated matters through to resolution;

- (b) maintaining an action plan for each escalation;
- (c) making any decisions appropriate to the resolution of the matter;
- (d) managing escalation meetings and/or phone conferences (as appropriate) between the Client, NTT and third parties;
- (e) regularly communicating the relevant status of escalated matters to the Client;
- (f) regularly updating and seeking the advice and support of NTT management; and
- (g) for the duration of an escalation, ensuring that all appropriate personnel are available to support the agreed action plan.

9.6 NTT may downgrade an escalated Incident or Request if:

- (a) the Incident or Request is being managed to a scheduled timeframe; or
- (b) the Incident has been resolved and is in the process of being tested.

9.7 If a Commitment Level for an Incident is not met, NTT will normally notify the Client within one Business Day.

The Client's obligations

9.8 If the Client wishes to escalate an Incident, or Request, the Client may telephone the Service Desk (quoting the reference number), and ask to speak to the Escalation Manager at any time.

Secure Remote Connection to the Client Site

NTT's obligations

9.9 If NTT is of the view that an Incident can be resolved remotely, NTT will:

- (a) connect to the Configuration Item via a secure VPN; and
- (b) ensure that security risk management processes are adhered to.

The Client's obligations

9.10 If requested by NTT, the Client must provide remote electronic access to or any documentation in connection to a Configuration Item for the purpose of Incident Diagnosis or the implementation of a Workaround or Permanent Resolution. Until the Client supplies the requested remote access or documentation, NTT will have no liability for any delays in the provision of the Service.

10. Uptime Monitoring - Hardware Failure Monitoring (Option)

10.1 This clause 10 only applies if the Client has selected the *Hardware Failure Monitoring* option.

10.2 The *Hardware Failure Monitoring* option requires a secure remote connection to the Client Site as described in clause 4.

10.3 The *Hardware Failure Monitoring* option is available for a maximum of 1,000 Configuration Items.

Availability Monitoring

NTT's obligations

10.4 NTT must:

- (a) monitor Configuration Items via a secure remote connection between the NTT and the Configuration Items;
- (b) use ICMP and SNMP polling for the availability (up/down) status of the Configuration Items; and

- (c) receive notification of Events from Configuration Items for a change of the availability status.

SNMP Trap Event Monitoring

NTT's obligations

10.5 NTT must:

- (a) receive SNMP trap Event notifications triggered by hardware component failures defined within the table below; and
- (b) receive SNMP trap Event notifications via a secure remote connection between the NTT and the Configuration Items.

Hardware Component	Event
Power on self-test failures	
Chassis	<ul style="list-style-type: none"> • Chassis temperature critical • Chassis failure
Power supply	<ul style="list-style-type: none"> • Power supply temperature critical • Power supply failure • Power supply redundancy lost
Fan	<ul style="list-style-type: none"> • Fan failure • Fan redundancy lost
CPU	<ul style="list-style-type: none"> • CPU temperature critical • CPU failure
Memory	<ul style="list-style-type: none"> • Memory failure

Event Correlation

NTT's obligations

10.6 NTT must:

- (a) using the NTT Management System, groups related Events into a single root cause with parent/child relationships;
- (b) display details of the Events on the Service Portal; and
- (c) create Incident Records for the availability and SNMP trap Events.

Client Notification

NTT's obligations

10.7 NTT must:

- (a) notify up to two nominated Client contacts of Incidents and their status via telephone;
- (b) send an email to a nominated email address and/or an SMS to a nominated mobile number as a written record of the notification;
- (c) notify the Client within a 24x7 Service Calendar; and
- (d) action Incidents according the Service Calendar and Business Continuity Level assigned to the Configuration Item as described in Incident Management clause 9.

Out of Scope Incidents

10.8 NTT must receive reports of Incidents and Requests 24 hours a day, seven days a week, regardless of the Business Continuity Level.

The Client's obligations

10.9 The Client must:

- (a) resolve Incidents that are outside the scope of the Service, e.g. Configuration Items that have gone down due to a general power failure, air-conditioning problem or other environmental factor controlled by the Client; and
- (b) notify NTT upon resolution of out of scope Incidents.

Schedule Outage Notifications

NTT's obligations

10.10 NTT must record Client network outage details in the NTT Management System to ensure that it does not raise Incidents for the outage and that it appropriately schedules changes around the outage windows.

The Client's obligations

10.11 The Client must:

- (a) notify NTT of outages scheduled to occur on its network by raising a Service Request or using the online form on the Service Portal; and
- (b) if the change window is scheduled for less than four hours in advance, notify NTT by telephone.

Event baseline

NTT's obligations

10.12 NTT must perform an Event baseline review after the Service has been active for four weeks to highlight Configuration Items that are experiencing Events consistently in an unusually frequent manner due to previously unresolved problems.

The Client's obligations

10.13 The Client must rectify the problems identified as causing the Events identified in clause 10.11. Failure to do so may lead to NTT removing the Configuration Item from the *Hardware Failure Monitoring* Service Element. The Client can, if desired, engage NTT to perform the work required to address these deficiencies or problems at an Additional Charge.

11. Uptime Monitoring - Configuration File Archiving (Option)

11.1 This clause 11 only applies if the Client has selected the *Configuration File Archiving* option.

11.2 The *Configuration File Archiving* option requires a secure remote connection to the Client Site as described in clause 4.

11.3 The *Configuration File Archiving* option is available for a maximum of 1,000 Configuration Items.

NTT's obligations

11.4 NTT must:

- (a) keep backup copies of all Configuration Item configuration files, where possible (this feature is Configuration Item and manufacturer dependent);

- (b) automatically detect saved edits to the configuration files as well as save the old and new configurations;
- (c) store up to the last three different configuration files;
- (d) make configuration files available on the Service Portal; and
- (e) when advised of a change that impacts on the successful retrieval of configuration files, manage the tasks required to continue the availability of this Service Element.

The Client's obligations

11.5 The Client must notify NTT of all changes to configuration files that will affect Configuration Items and the configuration file backup, including changes to the credentials, via a Service Request, no less than two Business Days prior to implementing the change.

12. Uptime Monitoring - Remote Alerts (Option)

12.1 Clauses 11 only apply if the Client has selected the *Remote Alerts* option.

12.2 The *Remote Alerts* option only applies to Configuration Items which are capable of supporting the manufacturer's remote call home feature.

12.3 The *Remote Alerts* option is available for up to a maximum of 1,000 Configuration Items.

NTT's obligations

12.4 NTT must:

- (a) upon receipt of a Remote Alert Notification from a Configuration Item, assign a suitably qualified engineer to proactively log an Incident and proceed to perform Incident Diagnosis;
- (b) perform Incident Diagnosis on the Remote Alert Notifications that have the priority levels of 'critical' and above as defined and activated by the various hardware platforms and as set up in the Configuration Item; and
- (c) respond to all Incidents that are within the scope of Service as part of the Incident management process and according to the Service Level and Service Calendar assigned to the Configuration Item involved.

12.5 NTT may change the priority levels defined in clause 12.4b to align to the manufacturer's changed priority levels and to reduce excessive alerts dependent on the hardware platform.

The Client's obligations

12.6 The Client is responsible for the resolution of Incidents resulting from Remote Alert Notifications that are outside the scope of the Service.

13. Service Levels

NTT's obligations

13.1 NTT must perform the applicable Service Elements listed in the following table to meet the corresponding Business Continuity Level and Commitment Level.

Service Elements	Business Continuity Level and Commitment Level				
	Remote Support (Response ONLY)	Ship (Response or Result)	Remediate (Response or Result)	Reconfigure (Response or Result)	Restore (Response or Result)
Incident Management	✓	✓	✓	✓	✓
Parts to Site	X	✓	✓	✓	✓

Engineer to Site (hardware remediation)	X	X	✓	✓	✓
Engineer to Site (software configuration reload)	X	X	X	✓	✓
Engineer to Site (device restoration)	X	X	X	X	✓

13.2 The Business Continuity Levels are cumulative. All Incident Records will be addressed firstly by the Remote Support. If Remote Support does not resolve the Incident, the next relevant Business Continuity Level will apply if the Configuration Item is covered by that Business Continuity Level as described in clauses 13.3 to 13.12 inclusive.

Remote Support

13.3 The **Remote Support** Business Continuity Level:

- (a) is available with a Response Commitment only (indicating the time within which an engineer will have commenced the Remote Support session);
- (b) provides for an engineer giving support through any combination of telephone, email or secure connection to the Configuration Item; and
- (c) may include the supply of an Update to the Client.

Ship

13.4 The **Ship** Business Continuity Level:

- (a) provides for the delivery of a replacement Part to the Site if necessary; and
- (b) is available with either a Response Commitment or a Result Commitment (indicating either the time within which the shipment process of the Parts to the Site will commence from the NTT warehouse (the Response Commitment) or the time within which it will arrive at the Site (the Result Commitment) if necessary for the resolution of the Incident).

13.5 NTT's obligations relating to despatching Parts are specified under the *Parts to Site* Service Element as described in clause 14.

13.6 NTT may make Updates available for the relevant Configuration Item, to the Client:

- (a) by email containing an attachment of the release or a URL link to where the files and release notes can be downloaded; or
 - (b) on CD, if the size of the release requires it;
- provided the Client is entitled to them under its licence agreement or under clause 16.

Remediate

13.7 The **Remediate** Business Continuity Level:

- (a) means that to the extent necessary to return the Configuration Item to Good Operating Condition:
 - (i) the faulty component of a Configuration Item will be repaired or replaced; or
 - (ii) if NTT so decides, a Configuration Item will be replaced.
- (b) is available with either a Response Commitment or a Result Commitment (indicating either the time within which an engineer will arrive at the Site to commence the remediation (the Response Commitment) or alternatively the time within which these actions will be completed (the Result Commitment) to return the Configuration Item to Good Operating Condition and replicate its factory settings, for the resolution of an Incident);

- (c) where an on Site attendance is not required and where a secure remote connection has been set up to the Client's IT environment, the Commitment indicates the time within which the engineer will have commenced or completed the remediation remotely); and
- (d) does not include any reconfiguration and restoration as described in clauses 13.10 to 13.12 inclusive.

NTT's obligations

- 13.8** NTT's obligations relating to an engineer attending the Site are specified under the *Engineer to Site Service Element* in clause 15.
- 13.9** As a Workaround, NTT may replace a faulty Configuration Item or component with a functional equivalent rather than an exact replacement at NTT's discretion. For the Remediate and Reconfigure Business Continuity Levels, NTT will ensure that the Configuration Item is appropriately configured, should the back-up configuration not be compliant with the functional equivalent.

Reconfigure

13.10 The ***Reconfigure*** Business Continuity Level:

- (a) to the extent necessary, provides for the reconfiguration of the Configuration Item by the re-installation of the Software to return it to Good Operating Condition and then loading a backup configuration;
- (b) is available with either a Response Commitment or a Result Commitment (indicating either the time within which an engineer will arrive on Site to commence the loading of the backup configuration (Response Commitment) or the time within which these actions will be completed (the Result Commitment) if necessary for the resolution of the Incident);
- (c) if an on Site response is not required and where a secure remote connection exists, the Commitment indicates the time within which the engineer will have commenced or completed these actions remotely); and
- (d) does not include any restoration as contemplated by clause 13.12.

The Client's obligations

- 13.11** The Client must keep backup copies of the latest software and the configuration files for Configuration Items and to provide these to NTT (where applicable and if requested). Any work required by NTT as a result of the Client failing to provide the backup configuration files will be at an Additional Charge.

Restore

13.12 The ***Restore*** Business Continuity Level:

- (a) to the extent necessary, provides for NTT to Restore the faulty Configuration Item by the re-installation of Software or the installation of an Update, if necessary;
- (b) the loading of a backup configuration, if necessary, and any additional Workarounds or Permanent Resolutions will be effected in order to restore the functionality associated with the Configuration Item or Software;
- (c) is available with either a Response Commitment or a Result Commitment (indicating either the time within which the engineer will arrive on Site to commence restoration (Response Commitment) or the time within which the engineer will have completed all actions required to Restore the functionality (Result Commitment), alternatively, where an on Site response is not required and where a secure remote connection has been set up to the Client's IT environment, the Commitment indicates the time within which the engineer will have commenced or completed these actions remotely if necessary for the resolution of the Incident); and

- (d) provides for the Configuration Item being returned to performing the function that it performed prior to the Incident.

The Client's obligations

13.13 The Client must maintain the Software at the current major version and immediately preceding major version. NTT is not required to supply services for older versions of the Software unless requested by the Client at an Additional Charge.

14. Parts to Site

NTT's obligations

14.1 If a ***Ship, Remediate, Reconfigure or Restore*** Business Continuity Level applies to the Configuration Item and there is an Incident relating to that Configuration Item which requires Parts to be shipped to the Site, NTT must at its cost:

- (a) dispatch the required Parts to the Site in accordance with the applicable Service Level;
- (b) arrange for the collection of any replaced components from the Site within an agreed timeframe; and
- (c) if necessary, implement a Workaround by replacing a faulty component or Configuration Item on a temporary basis while the Incident associated with it is being resolved.

14.2 Where a next Business Day Commitment Level applies, and the identification of hardware failure is confirmed before 15:00 on a Business Day, NTT will dispatch Parts to Site before the end of the next Business Day.

The Client's obligations

14.3 The Client must within 5 Business Days or within an agreed timeframe:

- (a) make any temporary component or Part provided as a Workaround under clause 14.1c available for collection by NTT; and
- (b) from receipt of a replacement Part, package up and return the faulty Part to NTT or the relevant manufacturer, as directed by NTT.

14.4 If a ***Ship*** Business Continuity Level applies to the Configuration Item:

- (a) NTT has no obligations other than those set out in clause 13; and
- (b) if requested by the Client, NTT will perform tasks associated with the Remediate, Reconfigure or Restore Business Continuity Levels at an Additional Charge.

14.5 Title in:

- (a) a replacement Part passes to the Client only after:
 - (i) installation of the Part; and
 - (ii) return of the faulty component to NTT;
- (b) any Part purchased by the Client passes to the Client upon payment for that Part in full and risk in such additional Part passes to the Client on delivery;
- (c) a replaced component passes to NTT:
 - (i) on removal by NTT; or
 - (ii) where the Client removes the component and returns it to NTT, on receipt of the component by NTT; and
- (d) a component which has been installed at a Site temporarily does not pass to the Client.

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

15. Engineer to Site

NTT's obligations

- 15.1 If a **Remediate, Reconfigure or Restore** Business Continuity Level applies to a Configuration Item and there is an Incident relating to that Configuration Item that cannot be resolved remotely, NTT must send an engineer to the Site to Remediate, Reconfigure or Restore the Configuration Item in accordance with the applicable Business Continuity Level.

The Client's obligations

- 15.2 If a **Remediate** or **Reconfigure** Business Continuity Level applies to the Configuration Item, the Client must perform any tasks associated with the **Restore** Business Continuity Level or may request NTT to do so at an Additional Charge.
- 15.3 If a **Remediate** Business Continuity Level applies to the Configuration Item, the Client must perform any tasks associated with the **Reconfigure** or **Restore** Business Continuity Levels or may request NTT to do so at an Additional Charge.

16. Subscription Services (Option)

- 16.1 This clause 16 only applies if the Client has purchased the *Subscription Services* option which only applies to a Configuration Item that is Software.
- 16.2 The only available Business Continuity Level for this option is Remote Support.

NTT's obligations

- 16.3 NTT must:
- (a) procure the right to obtain the relevant Updates from the manufacturer and make the Updates available to the Client upon receipt of a Request; and
 - (b) if the manufacturer allows NTT to do so, provide the Client with the manufacturer's support access information.
- 16.4 If requested by the Client, NTT will install any Updates either as a Configuration MACD using Service Units as provided in clause 20 or at an Additional Charge.

Subscription Services Options

- 16.5 Within the *Subscription Services* Option, the Client may choose from the following (subject to availability from the manufacturer):
- (a) the *Patches and Minor Feature Releases* option, NTT must provide the Client with the latest Patches and Minor Feature Releases for the Configuration Items on request;
 - (b) the *Upgrades* option, NTT must provide the Client with the latest Upgrades for the Configuration Items on request;
 - (c) the *Patches and Minor Feature Releases and Upgrades* option, NTT must provide the Client with the latest Patches, Minor Feature Releases and Upgrades for the Configuration Items on request; or
 - (d) the *Security Profile Updates* option, NTT must provide the Client with the latest signature files for the Configuration Items on request.

The Client's obligations

- 16.6** The Client is responsible for the installation of any software Updates or signature files provided under this clause 16.

Exclusions

- 16.7** The Service does not include:NTT must:

17. Service Portal

- 17.1** This clause 17 only applies if the Client has purchased the Services Portal option.

- 17.2** NTT must:

- (a) provide the Client with access to a *Services Portal*, accessible via the Internet, which provides an ability to generate reports (including standard *Asset Database Reports*), generate Incident Records and Request Records and view Configuration Item details;
- (b) add and delete End User accounts from the *Services Portal* within two Business Days of receipt of a Request to do so; and
- (c) provide an introductory video demonstration of the *Services Portal* for any End User issued with a login (as advised by the Client for End User access).

The Client's obligations

- 17.3** If an End User with access to the *Services Portal* leaves his or her employment, the Client must instruct NTT to remove or disable the relevant logins to the *Services Portal* without delay. NTT will remove or disable such logins without unreasonable delay and, provided it does so, shall not be liable for any loss, expense or damage suffered by the Client in connection with or arising from the failure to act on a request under this clause.

18. Asset Database (Option)

- 18.1** This clause 18 only applies if the Client has selected the *Asset Database* option.

- 18.2** The *Asset Database Reporting* is limited to 1,000 Cisco devices.

- 18.3** The *Asset Database* option will discover Cisco and non-Cisco devices, however, no additional information will be provided for non-Cisco devices other than the IP address.

Asset discovery and inventory

NTT's obligations

- 18.4** NTT must:

- (a) using an automated asset database collector in the NTT Management System, access the Client's network to discover devices based on:
 - (i) specific IP addresses provided by the Client; or
 - (ii) one or more ranges of IP addresses provided by the Client.
- (b) compile an inventory of discovered Cisco devices;
- (c) mask sensitive configuration information, then encrypt all information in the inventory and send it to Cisco for correlation with security alert field notices and End-of-Life announcements (including end-of-sale and end-of-support notices);
- (d) upload the data to the Services Portal so that the Client can access the following:
 - (i) device name/ID;
 - (ii) hostname;
 - (iii) IP address;

- (iv) serial number;
- (v) location of device; and
- (vi) hardware and software product codes,

The Client's authorities

18.5 The Client hereby authorises NTT to:

- (a) run the asset database collector on the Client's network in whole or in part;
- (b) collect and collate the data produced by the discovery; and
- (c) encrypt and send the data to Cisco.

18.6 All information collected by NTT will be treated as the Client's Confidential Information.

Asset Database Reporting

NTT's obligations

18.7 NTT must make *Asset Database Reports* available on the Services Portal for review and download that include:

- (a) Cisco device details as defined in section 18.4d above;
- (b) Cisco device End-of-Life (including end-of-sale and end-of-support) dates;
- (c) Cisco device security alerts relevant to the Configuration Items; and
- (d) IP address and other accessible information for non-Cisco device where the Client has agreed to an automated discovery of devices.

Asset database maintenance

NTT's obligations

18.8 NTT must:

- (a) perform an automated discovery of devices for the purpose of populating the asset database every six months or at a frequency agreed with the Client;
- (b) oversee operation and management of the asset database collector and the generation of reports; and
- (c) maintain the configuration of the collector in the NTT Management System based on notification of required updates from the Client.

The Client's obligations

18.9 The Client must:

- (a) advise NTT of any changes to the IP address ranges used for the discovery and inventory; and
- (b) notify NTT of updates to required access information including SNMP community strings and administrator logins and passwords.

19. Licence Renewal Reminders (Option)

19.1 This clause 19 only applies if the Client has purchased the *License Renewal Reminders* option.

NTT's obligations

19.2 NTT must send an email reminder to the Client at least 30 days prior to any renewable 'right-of-use' license being due for renewal.

The Client's obligations

19.3 The Client must:

- (a) procure and activate the licence using the information provided by NTT, or the Client can request that licence activation be performed as Configuration MACDs; and
- (b) provide the initial information required to set up the Client's licence renewal calendar, unless it is agreed that NTT will gather the information as part of the *Assessment Service Element*.

Exclusion

19.4 The *Licence Renewal Reminders Service Element* does not include the implementation or administration of licence management software in the Client's IT environment.

20. Configuration MACDs (Option)

20.1 This clause 20 only applies if the Client has purchased the *Configuration MACDs* option.

Performance of Configuration MACDs

20.2 A task will only be a Configuration MACD if the task:

- (a) is pre-approved by the Client;
- (b) relates directly to a Configuration Item;
- (c) is not associated with resolving an Incident;
- (d) does not require any scoping or project management;
- (e) is a single task and will not take more than 4 hours for one engineer to perform; and
- (f) is a multiple task and will not take more than 16 hours for one engineer to perform.

20.3 The standard Service Calendar for Configuration MACDs is "Business Hours".

20.4 If the performance of any Configuration MACD could lead to instability in the Client's IT infrastructure, NTT can request that the Client perform precautionary or preliminary work prior to implementation of the relevant Configuration MACD task.

20.5 If requested by the Client, NTT will perform any precautionary or preliminary work on the Client's behalf at an Additional Charge.

20.6 Configuration MACD tasks that are expected to take longer than 16 hours or those that do not meet the definition of a Configuration MACD in clause 20.2 will be scoped and charged as a separate engagement.

20.7 Service Units expire 12 months from date of purchase.

NTT's obligations

20.8 NTT must:

- (a) perform the Configuration MACD in accordance with this Agreement;
- (b) charge the Client for the Configuration MACD using Service Units the number of which will be:
 - (i) making any decisions appropriate to the resolution of the matter;
 - (ii) dependent on the complexity of the activity, time of execution, engineering skills level, technology and urgency;
 - (iii) generally in accordance with the Service Unit calculator provided to the Client during service establishment; and
 - (iv) discussed with the Client at the time the Request is logged; and

- (c) endeavour to commence:
 - (i) regularly communicating the relevant status of escalated matters to the Client;
 - (ii) a normal Configuration MACD within 2 Business Days if the requested task can be performed remotely;
 - (iii) a normal Configuration MACD within 5 Business Days if the requested task requires an engineer to attend the Site;
 - (iv) an urgent Configuration MACD within 4 Business Hours if the requested task can be performed remotely; and
 - (v) an urgent Configuration MACD within 2 Business Days if the requested task requires an engineer to attend the Site.

20.9 If the Client requests that a Configuration MACD be performed out of Business Hours, then the target commencement times specified in clause 20.8c will not apply.

20.10 NTT must also provide the Client with a quarterly report that states available Service Units and usage history and notify the Client if the balance of available Service Units drops below an agreed threshold.

The Client's obligations

20.11 The Client must:

- (a) log urgent Configuration MACDs with the Service Desk by telephone only;
- (b) advise NTT of the nominated Client contacts with the authority to request Configuration MACDs;
- (c) pay for any Service Units in advance;
- (d) assess and accept all risks associated with a proposed Configuration MACD;
- (e) perform any precautionary or preliminary work prior to implementation of the relevant Configuration MACD task;
- (f) pre-approve all Configuration MACD tasks;
- (g) advise NTT of the urgency level of any Configuration MACD tasks;
- (h) accept that limitations caused by third party manufacturers may affect any Configuration MACD task commencement and delivery times; and
- (i) arrange freight and insurance, as well as other internal Client change management controls and approvals, if required.

Exclusions

20.12 The *Configuration MACDs* option described in this clause 20 is not available for the Security Technology Category or the Customer Interactive Solutions Technology Category.

20.13 NTT has no responsibility for any risks associated with the performance of Configuration MACDs.

20.14 The Configuration MACD Service Element cannot be used for the installation of a new product that is of a different type to those already on the Record of Entitlement.

20.15 Where a requested Configuration MACD will result in a change to the Service Level of a Configuration Item (e.g. a Configuration MACD that requires a Configuration Item be moved to a remote Site where NTT cannot offer the currently Service Level), the task will be performed at an Additional Charge.

21. Consultant on Call (Option)

21.1 This clause 21 only applies if the Client has purchased the *Consultant on Call* option.

21.2 The Service Calendar for the *Consultant on Call* option is Business Hours.

NTT's obligations

21.3 NTT must:

- (a) allow the Client to request a consultation by telephone with an engineer for advice and support on non-Incident related issues; and
- (b) charge the Client for the consultation using Service Units the number of which will be:
 - (i) allocate a unique reference number for tracking and follow-up of the Incident Record or Request Record;
 - (ii) dependent on the complexity of the activity, time of execution, engineering skills level, technology and urgency;
 - (iii) generally in accordance with the Service Unit calculator provided to the Client during service establishment; and
 - (iv) discussed with the Client at the time the Request is logged.

21.4 Requests for consultation with an engineer are not subject to Service Levels and are scheduled and responded to on a best efforts basis.

21.5 NTT may limit an engineer's consultation with the Client to 2 hours in duration. Consultations that are expected to exceed 2 hours in duration will be quoted and scoped at an Additional Charge.

21.6 The *Consultant on Call* option described in this clause 21 is not available for the Security Technology Category or the Customer Interactive Solutions Technology Category.

22. Site Based Services

Engineer Situated at a Site (Option)

22.1 This clause 22 only applies if the Client has purchased the *Engineer Situated at a Site* option.

22.2 The Service Calendar for the *Engineer Situated at a Site* option is 09:00 to 17:00 on Business Days (with standard NTT meal breaks).

22.3 The minimum period for the *Engineer Situated at a Site* option is 12 months.

NTT's obligations

22.4 If the Client chooses the *Engineer Situated at a Site* option, NTT must supply an engineer to attend at an agreed Site to perform Incident Diagnosis and execute tasks required to resolve Incidents. The engineer will perform a range of pre-determined tasks, as agreed between NTT and the Client. Pre-determined tasks to be performed by the engineer will have secondary priority to the diagnosis and resolution of Incidents. Work performed outside of Service Calendar will be at an Additional Charge.

22.5 NTT may, in consultation with the Client, replace the engineer to:

- (a) ensure skills refresh;
- (b) support retention of staff;
- (c) increase the available knowledge of the Client's IT environment through a greater number of people;
- (d) accommodate engineers' annual leave requirements; and
- (e) allow engineering staff to gain greater experience in the market to bring the latest knowledge and best practices back in to the Client.

22.6 The Client may on reasonable grounds, by written notice to NTT request that NTT replace the engineer.

22.7 If NTT receives a notice from the Client under clause 22.6, it must endeavour to replace the person concerned with another suitably qualified person without undue delay.

The Client's obligations

22.8 The Client must:

- (a) give the engineer access to the Site during the Service Calendar for purpose of providing the Service;
- (b) provide suitable workstation facilities on the Site as may be reasonably required by the engineer, including, but not limited to desk, telephone, internet access and VPN access; and
- (c) provide a safe working environment for the engineer.

22.9 The Client acknowledges that the engineer is required, from time to time, to attend NTT's offices for the purposes of management meetings, team building and business updates. NTT and the Client will agree in advance on a suitable time for these meetings and arrange for the supply of a suitable temporary replacement engineer.

Exclusion

22.10 Actions taken by the engineer that are at the express direction of the Client but have not been agreed with NTT will, for the purposes of this Agreement, be regarded as having been performed by the Client.

Spares Situated at a Site (Option)

22.11 Clauses 22.11 to 22.17 only apply if the Client has purchased the *Spares Situated at a Site option*.

22.12 The *Spares Situated at a Site* option is only available in conjunction with the *Engineer Situated at a Site option*.

NTT's obligations

22.13 NTT must:

- (a) advise the Client of the number and type of Spares to be purchased by the Client and stored at the Site based on the types and frequency of expected Incidents;
- (b) if requested by the Client, keep records of the usage of the Spares situated at the Site; and
- (c) specify the pre-determined tasks related to Spares management to be performed by the engineer provided under clauses 22.1 to 22.10 inclusive.

The Client's obligations

22.14 The Client must:

- (a) purchase the recommended number and type of Spares, to be stored at a Site;
- (b) facilitate the performance of the pre-determined tasks related to Spares management to be performed by the engineer provided under clauses 22.1 to 22.10 inclusive;
- (c) provide and manage the facilities used for the storage of the Spares;
- (d) allow NTT to use the Spares to perform the Services if necessary to meet a Service Level; and
- (e) maintain the recommended number and types of Spares.

22.15 NTT may use a Spare for either of the following purposes:

- (a) the permanent replacement of a Configuration Item; or
- (b) as a Workaround.

22.16 If NTT uses a Spare as a permanent replacement it will ship a replacement for the Spare to the Client as soon as may be practicable. If NTT uses a Spare as a Workaround, it will replace that Spare with a permanent replacement and return the Spare to the Client.

Exclusion

22.17 If the Client fails to perform its obligations under clause 22.13c, NTT will have no liability for its failure to comply with the Service Levels applicable to the affected Configuration Items.

23. Assessments (Option)

23.1 This clause 23 only applies if the Client has purchased the *Assessments* option.

23.2 Further terms and conditions and details of the Services to be provided by NTT for the *Assessments* option are set out at <https://hello.global.ntt/en-us/legal/terms-and-conditions>.

23.3 The documents referred to in this clause 23.2 form part of this Agreement.

NTT's obligations

23.4 NTT must:

- (a) perform the specific type of Assessment set out in the Record of Entitlement; and
- (b) perform the Assessment at the frequency set out in the Record of Entitlement.

24. Service Level Management (Option)

24.1 This clause 17 only applies if the Client has purchased the *Service Level Management* option.

Service Management Reports and Service Management Reviews

NTT's obligations

24.2 NTT must, at the frequency set out in the Record of Entitlement:

- (a) provide *Service Management Reports* to the Client that contain detailed information regarding the supply of the Service that covers such things as:
 - (i) summary and detailed Incident and Requests;
 - (ii) Service Level performance;
 - (iii) updated Configuration Item information provided by the Client;
 - (iv) assessments performed (if procured);
 - (v) Configuration Items that are no longer supported by the vendor (End-of-Life reporting);
 - (vi) Service Unit usage (if Configuration MACD/Consultant on Call procured);
 - (vii) Licence Renewal Reminders reporting (if procured); and
 - (viii) recommendations based on information contained in the report; and
- (b) schedule and attend *Service Management Review* meetings with the Client.

Awareness Training

NTT's obligations

24.3 NTT must provide an introductory video demonstration of the Service Portal for any end user issued with a login (as advised by the Client for end user access).

Mobile Service Centre Application

NTT's obligations

24.4 NTT must:

- (a) make a Mobile Service Centre Application available to the Client:
 - (i) for smartphones and tablets running Android version 2.3 Gingerbread or above and Apple iOS version 4.x or above;
 - (ii) that uses the Client's Service Portal user accounts; and
 - (iii) that provides the following information on Configuration Items:
 - (A) indices that provide a summary view of the Client's operational status;
 - (B) service level performance dashboards;
 - (C) a view of contracts due to expire (or have expired); and
 - (D) a view of Incidents logged;
- (b) make a *Mobile Service Centre Application* user guide available to the Client; and
- (c) respond to *Mobile Service Centre Application* queries and bugs.

25. Standard Service Desk Integration (Optional)

25.1 This clause 25 only applies if the Client has purchased the *Standard Service Desk Integration* option.

25.2 Further terms and conditions and details of the Services to be provided by NTT for the *Standard Service Desk Integration* option are set out at <https://hello.global.ntt/en-us/legal/terms-and-conditions>.

25.3 The documents referred to in this clause 25 form part of this Agreement.

25.4 NTT must implement the *Standard Service Desk Integration* as set out in the Record of Entitlement.

Service Maintenance

- 25.5** The Client must promptly notify and provide NTT with all relevant information for any Service Administration MACDs.
- 25.6** NTT requires up to 45 days from the date of this Agreement (or the date of any agreed addition or relocation of a Configuration Item to a Site where a like Configuration Item is not then being maintained under this Agreement) to obtain and distribute spare Parts required to perform the Service. Until the 45 day period has expired, the Client is not entitled to make a claim for any delay in NTT providing the Service which is caused by a lack or shortage of or delay in obtaining required replacement Parts.
- 25.7** If the Client moves any Configuration Item without both giving NTT the required notice and obtaining NTT's agreement to such a move, NTT may render an Additional Charge for any requested Service in relation to that Configuration Item. Further, the Response Commitment for the moved Configuration Item will not apply until NTT's agreement to the move has been given.
- 25.8** NTT requires 90 days' advance notice of any requested deletion of a Configuration Item from this Agreement.
- 25.9** If the parties have agreed in writing to the addition, replacement or removal of any Configuration Item from the operation of this Agreement or to changes to the Service Calendar, Site, Commitment Level or Service Level, NTT will amend the Service Charges and the Record of Entitlement accordingly.

General Provisions

26. Client's General Obligations

26.1 The Client must:

- (a) keep an up to date copy of configuration files or other relevant information for all Configuration Items and provide a copy to NTT when requested;
- (b) keep an up-to-date copy of any Software and provide a copy to NTT when requested;
- (c) provide NTT with access to the Site and the Configuration Items where and when needed in relation to an Incident or Request; and
- (d) advise NTT of changes to any of the Client's nominated escalation contacts within 48 hours of such changes.

26.2 As part of its Service improvement process, NTT may conduct client satisfaction surveys with Client contacts upon resolution of an Incident or other issue as NTT considers necessary.

26.3 If requested, the Client must provide NTT with reasonable evidence that the Client has adequate, published guidelines and procedures for Occupation Health and Safety purposes in respect of each Site, and that the Client has satisfactory public liability insurance cover.

27. End-of-Life Configuration Items

27.1 If NTT is, in its reasonable opinion, unable to continue to provide effective Service on an End-of-Life Configuration Item, NTT may, by giving the Client at least 90 days' prior written notice, remove the End-of-Life Configuration Item from the operation of this Agreement. Upon removal, NTT must make a pro rata adjustment in respect of the Service Charges and the parties must amend this Agreement accordingly.

27.2 If no equivalent replacement Parts are available, NTT will, if requested by the Client, make reasonable commercial endeavours to temporarily replace a faulty End-of-Life Configuration Item with an upgraded or alternative product (which may be new or used) as a Workaround.

27.3 If NTT has installed a temporary replacement product for a faulty End-of-Life Configuration Item in accordance with clause 27.2, the Client must, within 10 Business Days after the temporary replacement product is installed, notify NTT whether it wishes to purchase a new replacement product. If the Client does not notify NTT within that time or decides not to purchase a new replacement product, NTT may withdraw the Service for the relevant End-of-Life Configuration Item, remove its details from this Agreement and, after giving the Client 14 days' notice, retrieve the temporary replacement product from the Site. NTT may make an Additional Charge for engineering services that NTT performs to remove the temporary replacement product from the Site.

27.4 If the Client notifies NTT within the time required by clause 27.3 that it wishes to purchase a new replacement product, NTT will, at a time agreed between the parties, remove the temporary replacement product and replace it permanently with the new replacement product.

27.5 The Client's purchase of any new replacement Configuration Item, as required by clause 27.3, must be effected pursuant to a separate order between the parties.

27.6 Until the temporary replacement Configuration Item is returned to NTT, the risk of loss, destruction or damage to it is with the Client. Title in the temporary replacement ways remains with NTT.

28. Modification of Configuration Items

28.1 NTT may make modifications to any Configuration Item as it reasonably determines for the purpose of improving or maintaining its serviceability or reliability. NTT must inform and obtain approval from the Client of such a proposed modification prior to commencing any work and ensure that modifications are of the same or improved specifications as the existing Configuration Item. If the Client refuses to permit the modification, NTT may remove the Configuration Item from the operation of this Agreement and if removed, NTT must make an appropriate pro rata adjustment of the Service Charges and the Record of Entitlement.

29. Exclusions

29.1 NTT is not obliged, without the payment of an Additional Charge, to supply any software, Parts or services to rectify a problem, fault or Incident arising from, or repair or replace a Configuration Item which fails or develops an error due to:

- (a) external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power failure, power surge or power spike;
- (b) use of the Configuration Item for other than its intended purpose or contrary to its specifications;
- (c) performance of maintenance or attempted repair of the Configuration Item by persons other than NTT or as authorised by NTT;
- (d) use with or connection of the Configuration Item to items not maintained or approved by NTT;
- (e) relocation of the Configuration Item by the Client;
- (f) insufficient capacity of the Configuration Item caused by the Client's relevant system; or
- (g) Configuration Items not maintained according to clause 13.13.

29.2 The Service does not include:

- (a) repair or replacement of any Configuration Item that fails due to a design defect, the existence of which was not known to NTT at the date coverage for that Configuration Item commences under this Agreement;
- (b) repair or replacement of accessories, attachments or any other devices (including Configuration Item components) not listed in the Record of Entitlement;
- (c) repairs or replacements necessitated by unauthorised changes, modifications or alterations of or to any Configuration Item;
- (d) provision of optional accessories or consumable supplies;
- (e) installation and configuration of Minor Feature Releases, Updates, Patches or other software releases other than for the purpose of the implementation of Workaround or Permanent Resolution on a Configuration Item which is covered by the Restore Business Continuity Level;
- (f) services to detect or to rectify any fault connected with the inability of any Configuration Item to correctly deal with a date;
- (g) preventative maintenance;
- (h) support, diagnosis, repair or replacement of device cables, cable assemblies, or cabling reticulation systems;
- (i) freight and/or taxes associated with field notices or product recalls issued by the manufacturer of a Configuration Item;

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- (j) repair or replacement of Configuration Items while being used for testing of the Configuration Items; or
 - (k) configuration or reconfiguration of Configuration Item which are in Good Operating Condition.

29.3 NTT may, if requested by the Client, perform any of the services set out in clause 29.2 for an Additional Charge.

Terms of Service

30. Term

- 30.1** The Initial Term of this Agreement commences on the Commencement Date and continues for the Initial Term specified in the Agreement Details.
- 30.2** After the Initial Term (or any renewed Term), this Agreement continues for a further Term of 12 months, unless either party gives the other party written notice not to renew this Agreement at least 90 days prior to the end of the Initial Term (or the renewed Term), as the case may be.
- 30.3** The Service Charges payable for a renewed Term must be the same amount as was payable immediately before expiry of the prior Term, unless varied pursuant to clause 33.4.

31. Services

- 31.1** During the Term NTT must supply the Services to the Client and the Client must pay the Service Charges and any Additional Charges.

32. Service Charges and Payment Terms

Invoices

- 32.1** NTT will issue invoices for the Service Charges as otherwise defined in the Agreement Details and must send each invoice to the address specified in the Agreement Details or as the Client may otherwise specify in writing. If applicable the invoice for the Set-Up Fee will be rendered at the commencement of the Term. Where agreed changes are made to the Record of Entitlement, NTT must invoice the Service Charges for the adjustments pro rata to the end of the then current Term. If the Client disputes an invoice in part, it may defer payment of only that disputed part pending resolution of the dispute.
- 32.2** NTT must issue invoices for any Additional Charges when it has done the relevant work, supplied the goods or incurred the expenses.

Payment Terms

- 32.3** The Client must pay the Service Charges, any applicable Set-Up Fees and any Additional Charges within 30 days after the date on which NTT's invoice is rendered.

Variation of the Service Charges

- 32.4** NTT may, by giving at least 30 days' written notice of the variation to the Client, vary the Service Charges:
- (a) at any time after the Initial Term expires;
 - (b) at the end of a renewed term; or
 - (c) at any time after the first 12 months of the Term, if the Initial Term exceeds 12 months and NTT has, with the Client's consent sub-contracted the Services to a third party which has supplied its services for a price expressed in a currency other than Australian dollars, but
 - (d) not more than once in a 12 month period.
- 32.5** If the Client and NTT fail to agree on the varied Service Charges within 30 days of NTT's notice, either party may terminate this Agreement by giving 30 days written notice to the other party.

Failure to pay

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

Special charges

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

33. Taxes

33.1 The Service Charges are exclusive of taxes, duties and charges imposed or levied in Australia in connection with the supply of the Services, and GST. The Client is liable for any new or altered taxes, duties or charges imposed after the Commencement Date in respect of the supply of the Services.

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

34. Insurance

34.1 During the Term, NTT must:

- (a) comply with all workers' compensation or similar legislation in respect of its employees and shall obtain and maintain all insurances under and pay all amounts required by that legislation;
- (b) effect and maintain at its own expense:
 - (i) a public liability insurance policy, until 3 months following the expiration of the Term, for not less than \$10 million for each claim;
 - (ii) a professional indemnity insurance policy, which covers the carrying out of the Services under this Agreement for an amount of not less than \$10 million for each claim and in the aggregate, and NTT must ensure that every subcontractor has professional indemnity insurance for each and every claim; and
 - (iii) upon request from the Client provide evidence of each insurance specified in this clause 34.

35. Warranties

35.1 NTT warrants that it will provide the Services in a proper and professional manner and will ensure that the Services are performed by personnel who are suitably qualified to perform the Services.

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

36. The Client's Obligations

36.1 The Client must:

- (a) provide NTT with reasonable assistance and information to assist it to provide the Services;
- (b) supply all communications interfaces NTT requires to enable provision of the Services, except those that NTT keeps on its own premises or installs at a Site for use in providing the Services;

- (c) ensure that NTT's information and materials in the custody of the Client for the purposes of this Agreement are protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- (d) give NTT access to a Site when required for the purpose of providing the Services;
- (e) if requested, provide secure facilities at a Site for NTT to store tools, Parts and other items necessary for it to perform its obligations under this Agreement;
- (f) keep such records relating to use and performance of the Configuration Items which are the subject of the Services as NTT may reasonably request and ensure that NTT's personnel have access to such records at all reasonable times;
- (g) comply with the Client's obligations set out in this Agreement; and
- (h) carry out and maintain restorable backup copies of all relevant software licensed by the Client, whether operating systems, discrete applications or configurations and where NTT requires them to supply the Services, make the same available to NTT upon request.

36.2 If the Client fails to promptly comply with any of the Client's obligations set out in this Agreement, NTT may, in its absolute discretion, suspend performance of any or all of the Services affected as a result of the Client's failure or refusal until the Client has complied with its obligations.

37. Subcontractors

37.1 NTT may subcontract parts of the Services to such persons as it, in its discretion, considers necessary to enable it to fulfil its obligations under this Agreement.

38. Confidentiality

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

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

38.3 The operation of this clause 38 survives the expiry or earlier termination of this Agreement.

39. Limitations on liability

39.1 Other than in respect of its liability for death, personal injury, damage to tangible property, or claims for breach of third party intellectual rights, NTT's aggregate liability, whether arising from breach of contract, negligence or any other tort, breach of warranty under and indemnity or statute, in equity or otherwise is limited to an amount equal to the annual Service Charges paid by the Client at the date such liability is proven to have arisen.

39.2 If NTT admits a liability to the Client for a claim for a breach of this Agreement and the Client has elected not to, (or has no right to) terminate this Agreement on the grounds of the breach, NTT may, at its option, elect to apply the whole or part of any amount agreed to be paid to the Client as the result of such breach as a credit to future Service Charges payable by the Client.

39.3 NTT has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract,

negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not NTT was aware of the possibility of such loss or damage.

- 39.4** To the fullest extent permitted by law, the parties agree to exclude all express or implied warranties, representations, statements, terms and conditions relating to NTT or the provision of the Services under these terms, not expressly set out in these terms, are excluded from the agreement between the parties.
- 39.5** Notwithstanding the other provisions of this clause 39, NTT's liability for a breach of a condition or warranty implied into the Agreement by the *Competition and Consumer Act 2010 (Cth)* (other than by Schedule 2 section 51 of the Act or where any limitation is otherwise prohibited) is limited, at NTT's option:
- (a) if the breach relates to goods: to the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods (or of acquiring equivalent goods); or to the payment of the cost of having the goods repaired; and
 - (b) if the breach relates to services: to the payment of the cost of having the services supplied again or the supply of the services again.
- 39.6** NTT will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of any action by or the failure of the Client to comply with this Agreement.

40. Termination

- 40.1** If a party breaches any provision of this Agreement, the other party may:
- (a) suspend provision of the Services or payment of any amounts otherwise due (as the case may be) until the breach is remedied by the party in breach; and
 - (b) terminate this Agreement, if the party in breach remains in breach of any such provision after receiving at least 30 days' notice in writing from the other party identifying the breach and requesting its remedy.
- 40.2** Either party may terminate this Agreement immediately if the other party:
- (a) enters into any arrangement between itself and its (or any class of its) creditors;
 - (b) ceases to be able to pay its debts as they become due;
 - (c) ceases to carry on business;
 - (d) has a mortgagee enter into possession or disposes of the whole or any part of its assets or business;
 - (e) enters into liquidation or any form of insolvency administration; or
 - (f) has a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.
- 40.3** If NTT terminates this Agreement, the Client must immediately pay to NTT the total of all amounts then due to NTT pursuant to this Agreement.
- 40.4** If NTT terminates this Agreement on any of the grounds set out in clauses 40.1 or 40.2 the Client is not entitled to a refund or adjustment of any applicable Set-Up Fee or of any Service Charges paid to NTT.
- 40.5** If the Client terminates this Agreement on any of the grounds set out in clauses 40.1 or 40.2, the Client is entitled to a pro-rata refund of any part of the Service Charges it has paid for Services to be supplied after the date of termination.
- 40.6** Termination of this Agreement (for whatever cause) does not affect any right or cause of action which has accrued to the party which terminates this Agreement at or prior to the date of termination.

41. Soliciting Employees or Contractors

- 41.1 During the term of this Agreement and for 6 months after termination by either party of this Agreement, a party must not employ or solicit for employment any person who is an employee of or contractor to the other party who was involved during the most recent 6 month period of this Agreement in the matters covered by this Agreement.
- 41.2 This clause does not apply where:
- (a) a person responds to an advertisement for employment by a party; or
 - (b) the employment is agreed to by the parties.
- 41.3 Each party acknowledges that the restriction specified in this clause 41 is in the circumstances reasonable and necessary to protect each party's legitimate interests.

42. General Conditions

Other terms

- 42.1 Terms or conditions attached to or forming a part of a purchase order that the Client issues do not form part of this Agreement.

Out of scope work

- 42.2 The provision of services which are the subject of an Additional Charge or are otherwise not within the scope of this Agreement will be governed by the terms and conditions set out at: <https://hello.global.ntt/-/media/ntt/global/legal/australia/terms-and-conditions-additional-charge-services.pdf>

Governing law

- 42.3 This Agreement is governed by the laws of the Governing Law State.

Prior agreements

- 42.4 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.

Variations

- 42.5 No variation of this Agreement is binding upon the parties unless made in writing signed by an authorised representative of each of the parties, unless provided otherwise in this Agreement. NTT's written acceptance of a written request (including a request made by e-mail) by the Client for a variation to the Record of Entitlement is binding on both parties. Following an agreed variation, NTT must issue a revised Record of Entitlement.

Notices

- 42.6 Notices to or by a party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee: if by post, 3 Business Days from and including the date of postage; or if by facsimile, when successfully transmitted to the addressee provided that if transmission is on a day which is not a Business Day or is after 5.00 PM (addressee's time), on the next Business Day.

Illegality

- 42.7 Any provision or the application of any provision of this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Waiver

- 42.8** A waiver of a breach of this Agreement or of any right, power, authority, discretion or remedy arising upon a breach of or default under this Agreement must be in writing and signed by the party granting the waiver.

NTT Management System

- 42.9** Due to changes in technology and NTT's desire to maintain the highest possible quality of the Services, it may be necessary to make adjustments or add enhancements to the NTT Management System during the Term. NTT will provide advance notice of any such changes, if possible. If the standard scope of the Services is necessarily improved or extended as a result of the enhancements, they will be offered to the Client for the remainder of the then current Term at no additional cost, provided that NTT will expect that no claim is made for a reduction in the Service Charges for minor reductions in scope as a result of the enhancements.

Force majeure

- 42.10** Neither party is liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond its reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike, labour problems and riots.