



General Terms and Conditions for the Recurrent Provision of Services for Communications and Data Systems as well as other Systems ("System") of NTT Germany AG & Co. KG, Horexstraße 7, 61352 Bad Homburg v. d. Höhe, Germany ("NTT")

1. Commencement of services and contractual term

1.1. Unless a specific time has been agreed at which the services are to commence, the provision of services for the respective System to be serviced ("Commencement of Services") shall begin at the following time:

1.1.1. Upon operational readiness, insofar as NTT is to perform installation or other (partial) services for the System;

1.1.2. On the day of delivery, insofar as delivery has been commissioned from NTT and no installation or other services are to be performed for the System by NTT;

1.1.3. Upon conclusion of the contract, insofar as installation or other services are to be performed for the System by NTT and NTT has not been commissioned with delivery of the System.

1.2. Termination pursuant to Section 648 German Civil Code (*BGB - Bürgerliches Gesetzbuch*) is hereby precluded.

2 Subject matter of the contract and scope

2.1. The subject matter of the service agreement consists of the provision of services for the aforementioned System of the customer by NTT in the context of its business dealings with entrepreneurs, legal entities under public law, and special assets (*Sondervermögen*) under public law during the service periods confirmed by NTT. The scope of services has been defined in the specifications attached hereto as an annex, which the customer shall receive upon conclusion of the contract. Insofar as it is to deliver spare parts, respectively replacement parts, NTT shall be entitled to deliver refurbished parts rather than brand new ones. Insofar as a reaction time has been agreed, this shall govern as regards the time frame within which NTT must take troubleshooting measures. Systems or portions thereof that have not been installed by NTT but which are to be serviced on the basis of the present service agreement shall be subjected to a preliminary examination, evaluation and, if required, overhaul by NTT ("inspection prior to acceptance of the contract"); these measures shall be billed separately.

2.2. The provisions of the service agreement shall also apply to any quantity increases, extensions or modifications of the System, as well as to any other services performed by NTT in connection with the System.

3. Preconditions for services

3.1. The software deployed by the customer and covered by the service agreement must be in a manufacturer-supported condition at all times. If this is not the case, it may be impossible to provide software-maintenance services, or possible only subject to restrictions. In such event, NTT's obligation shall be limited to resolving the malfunction, to the extent possible, by means of bug fixes already developed in the past (patches, updates) or by means of a reasonable workaround solution that restores the essential functionality of the System. As a general rule, the development of new software corrections is precluded in such cases.

3.2. The customer may instruct NTT to perform a for-charge update to achieve compliance with the condition described in Clause 3.1, or it may perform the upgrade itself in coordination with NTT. The contractually agreed terms shall determine whether or not the new software (object code) shall be subject to charge. The services associated with the implementation and any required provision of such hardware shall be charged on a time & expense basis. Once the update is completed, NTT shall resume its provision of services in full.

3.3. The hardware covered by the service agreement must also be supported by the manufacturer, particularly so as to ensure that spare parts and replacement components can be procured. The customer shall periodically confirm that this is the case with the components' manufacturer. Insofar as the hardware deployed by the customer and covered by service has attained "end of life" status according to the manufacturer-defined life cycle, NTT shall continue to supply spare parts or replacement components to the extent made possible by the manufacturer, whereby this shall be either for charge or free of charge, depending on the terms contractually agreed. If procuring spare parts is no longer possible, the performance obligation on the part of NTT shall be reduced accordingly. In this case, NTT shall be responsible for restoring the essential functionality of the System, to the extent this is possible and reasonable, by means of a workaround solution. In such case, however, there shall be no obligation to provide replacement hardware, particularly next-generation products. Upon request, NTT shall present the customer with an offer for an update of the affected components, respectively Systems.

3.4. If and insofar as manufacturer modifications to the Systems or the services require the services to be adjusted, NTT shall notify the customer and shall accordingly adjust its services (including their specifications, if required), to the extent this is reasonable for the customer.

3.5. The customer shall be under obligation to provide NTT with the serial numbers of the hardware to be maintained at the time the contract is concluded, and to promptly report any corresponding updates whenever the hardware to be maintained is replaced or extended. NTT reserves the right to refuse to provide the contractual services until such time as the customer designates the serial numbers of the hardware components to be serviced, insofar as the failure to do so makes it unreasonably difficult for NTT to perform its services.

4. Out-of-scope services

Unless otherwise agreed, the services described below shall be deemed out of the service agreement's scope, in addition to those services already expressly excluded in the specifications; these services may be ordered from NTT in return for separate remuneration, however:

4.1. Activities at the agreed System location that exceed the scope of work defined in the specification(s).

4.2. Services for Systems or portions thereof that have been out of operation for more than one year, unless NTT decides otherwise at its free discretion.

4.3. Service requirements, electrical work, replacement of parts or repair measures that are attributable to culpable conduct, misuse or improper handling on the part of the customer, or that result from the fact that persons other than NTT's authorised representatives have deployed the System or software outside of normal operating conditions, respectively have attempted to make repairs, attempted repairs or modifications.

4.4. Functional modifications to the System, respectively the software, including changes to user data, insofar as this would result in a deviation from the contractually agreed specifications.

4.5. Replacement of depleted batteries, accumulators or other consumables.

4.6. Correction of malfunctions resulting from tampering by third parties or from malware such as computer viruses, worms or Trojan horses.

4.7. Services to be performed at a location other than the one agreed.

4.8. The addition, removal or maintenance of any and all products, accessories, attachment parts, cabling or other equipment that does not fall within the defined scope of the System/software or is not part of the inspection prior to acceptance of the contract.

4.9. Services for the System or software that serve to correct customary malfunctions which are not the fault of NTT, e.g. malfunctions caused by natural disasters, fire, accidents, lack of proper care, misuse, vandalism, excessive voltage, lightning strike, power outage, humidity, water, use of supplemental customer hardware or software not pre-approved by NTT, or the installation location's failure to meet the respectively relevant prerequisites defined by NTT.

4.10. Work on Systems from which the reference codes and number tags, etc. originally supplied by the manufacturer, respectively by NTT, have been removed.

4.11. Adjustments made to the System upon the customer's request as well as adjustments that become necessary due to requirements stipulated by law, by a regulatory authority or public agency, or pursuant to a public ordinance.

5. Usage rights

Insofar as NTT makes any software, patches, bug-fixes, updates, upgrades or releases ("Software") available to the customer as part of its services, the customer, in return for payment of the corresponding remuneration, shall be granted the right to use said Software for the contractually agreed purpose within the framework of the service agreement and in keeping with the licensing terms of the software manufacturer, whereby said usage right shall be non-exclusive and non-transferable (except as provided for in Clause 12).

6. Obligations of the customer

6.1. The customer hereby warrants that the System shall be in functional condition upon Commencement of Service.

6.2. The customer shall cooperate with NTT in connection with the latter's performance of services and shall grant access to any and all

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documentation, diagnostic programs, operating systems, service programs and application programs that may be required in order to troubleshoot a problem.

6.3. The customer undertakes to coordinate any planned modifications of the System in advance with NTT, so that their effects on the agreed services can be determined. NTT reserves the right to withhold services insofar as a given malfunction is attributable to modifications of the System that were not coordinated in advance. This shall not affect the customer's obligation to make payment.

6.4. Should the customer move the System to some other location, it must notify NTT in text form or in writing at least two weeks in advance. This shall also apply if the System is to be moved within the existing location, e.g. if the System is to be moved to a different room. Should such relocation result in an increased expenditure of time, effort, or money on the part of NTT, then NTT reserves the right to adjust its remuneration for services as well as the agreed reaction time or restoration time accordingly. If the new, intended location is situated in a different country than the original location (“Destination Country”), then the service provided shall be in keeping with the level of availability in the Destination Country. Clause 4 shall remain unaffected.

6.5. Whenever services are to be performed on site, the customer shall provide the following types of assistance insofar as they are needed: free-of-charge provision of a workroom, including lighting, heating, ventilation, power outlets, and electrical power; creation of access to the System; compliance with any applicable statutory regulations that might affect the persons designated by NTT, particularly in terms of safety and health; ensuring that each person designated by NTT is always accompanied by a second person whenever working at, or in the vicinity of, potentially hazardous products, or insofar as this is necessary for other some other reason, in particular for reasons of workplace safety.

6.6. The customer is to periodically perform a proper backup of the System data relevant to the agreement, and to check such data after any total breakdown of the System. This shall not apply if and insofar as the Parties have demonstrably agreed to make NTT responsible for such data backup.

6.7. The customer is to ensure that the System is properly protected against physical or virtual tampering by third parties in accordance with the generally recognised codes of practice. This also means that the customer must change the factory-set default passwords. The foregoing shall not apply if and insofar as the Parties have demonstrably agreed that the corresponding measures are to be taken by NTT.

6.8. If NTT discloses System-related passwords and access codes to the customer at the latter's request, then the customer shall be obligated to keep these confidential and to protect them from third-party access. If the customer changes these passwords and access codes, it shall be obligated to promptly forward the changed data to NTT, insofar as NTT requires it to perform its services under the service agreement. NTT, for its part, shall also keep the passwords and access codes confidential. They shall not be disclosed or made accessible to unauthorised parties.

7. Deployment of subcontractors

NTT reserves the right to also have the agreed services performed by suitable subcontractors. Also in the event of subcontractors being deployed, NTT shall remain liable for the proper performance of the contractual services. The customer may refuse to allow deployment of specific subcontractors if it has serious cause for doing so.

8. No hiring out of employees as temporary staff

NTT will have suitable personnel perform its services. However, this shall in no way entitle the customer to demand the deployment of (a) specific employee(s), even if specific employees of NTT have already been deployed on site with the customer for purposes of performing the above-defined services. The customer shall not be entitled to direct or instruct the employees of NTT. Furthermore, the employees deployed by NTT shall not be integrated into the operational structure of the customer. Any deviations from the foregoing must be expressly agreed between the Parties on a case-by-case basis.

9. Billing and payment terms

9.1. Immediately following the Commencement of Service, the monthly remuneration owed for services during the respectively current year shall be billed; the monthly remuneration owed for services during the remainder of the contractual term shall be billed at the start of the

respective calendar year. Remuneration for partial months shall be calculated pro-rata on the basis of a 30-day month.

9.2. Starting with Commencement of Service and for the duration of the remainder of that calendar year, the remuneration for services (plus VAT at the respectively applicable rate) shall be payable within 30 days of the corresponding invoice date; thereafter, it shall be payable in advance for each calendar quarter by the third work day of the given quarter. Payment shall be effected by direct debit insofar as the customer has given its consent.

9.3. Extensions, quantity increases or modifications with respect to the System, respectively of the service, shall result in an adjustment of the remuneration for services. Such extensions, quantity increases or modifications are to be confirmed by NTT after being formally accepted and shall be billed and fall due in the manner described above as soon as they have been performed, unless a specific key settlement date has been agreed. The confirmation shall serve as documentary proof of the extension.

9.4. All services exceeding those commissioned under the service agreement shall be billed separately by NTT upon being performed, at the customary rates defined in the General Terms and Conditions for the Provision of Services awarded to NTT (to be provided to the customer upon request). This type of service shall also be deemed to arise whenever a reported malfunction is attributable to a System, respectively to a portion thereof, that is not covered by the service agreement. Clause 4 shall remain unaffected.

9.5. The customer shall be entitled to perform retention or offset only on the basis of counterclaims that are undisputed or that have been finally and conclusively determined by a court's declaratory judgment. The customer may not assign to third parties any of its claims against NTT. Section 354a German Commercial Code (*HGB - Handelsgesetzbuch*) shall remain unaffected.

10. Price adjustments

If NTT's customary prices for services to be performed over a certain period should be affected by changes in personnel costs or other costs, e.g. rent costs or the costs of acquiring and maintaining motor vehicles (“Changes in Miscellaneous Costs”), then NTT shall be entitled to adjust the service prices set forth in the service agreement, insofar as they are cost-contingent. In this context, changes in personnel costs are to be assigned a weighting of 80 %, while Changes in Miscellaneous Costs shall receive a weighting of 20 %. Changes in Miscellaneous Costs shall be measured on the basis of the time series published by the German Federal Statistics Office (*Statistisches Bundesamt*). An adjustment may also be made whenever NTT experiences an increase in its procurement prices due to a manufacturer's price increase during the contractual term, or (assuming manufacturer prices are quoted in foreign currency) whenever there is a more than negligible change in the corresponding reference exchange rate published by the European Central Bank (ECB). An increase in service prices shall be limited to the amount required to cover the increase in costs, whereby the increase in service prices may not exceed 5 % of the respective contract value in any one calendar year. NTT shall give the customer sufficient advance notice of such a price increase before it comes into effect.

11. Claims for defects

11.1. The right to assert claims for defects shall presuppose that the customer has properly complied with its obligations to lodge complaint for defects pursuant to Section 377 HGB.

11.2. Upon asserting a claim for defects, the customer must promptly supply NTT with the affected serial number(s) of the hardware component(s), given that NTT will not be in a position to properly classify and correct the defect without this information.

11.3. If NTT is unable to correct a malfunction associated with services within a reasonable period despite repeated efforts, the customer shall be entitled to terminate the service agreement as far as the affected service is concerned, and to demand a reasonable reduction in the remuneration for services effective as of the time the relevant defect was reported.

11.4. Claims for defects shall become time-barred twelve months after the date of the corresponding service having been performed.

11.5. The customer shall not be entitled to assert claims for the compensation of damages or for the reimbursement of costs unless the prerequisites set forth in Clause 13 have been met.

12. Granting use of the System to third parties

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If the customer allows a third party to use the System and the terminal facilities covered by the services, then the obligations arising under the present agreement shall remain in force, unless the third party agrees to accede to the service agreement with the consent of NTT. The customer must contractually bind the third party to comply with the obligations arising under the service agreement. Any such grant of use to a third party is to be promptly reported to NTT.

13. Liability

NTT's liability shall be strictly limited as follows:

13.1. NTT shall be fully liable for cases involving wilful conduct, gross negligence or injury to life, limb or health, as well as for a failure to provide a characteristic for which the customer has assumed a guarantee, and for fraudulent misrepresentation.

13.2. NTT's liability for a slight negligent breach of a duty, the fulfilment of which is indispensable to the proper performance of the agreement and something upon which the customer should normally be able to rely, shall be limited to the damage that was foreseeable and customary upon conclusion of the agreement.

13.3. The damage that is “foreseeable and customary” for the type of contract concerned within the meaning of Clause 13.2 shall be capped at the amount of remuneration owed for services performed during a six-month period. If several damage events occur in a single contract year, the foreseeable and customary damage for the contractual agreement involved shall be limited, in the aggregate, to the remuneration owed for services performed during a twelve-month period. A corresponding insurance policy is to be taken out whenever the level of potential damage is atypically high.

13.4. Unless the Parties have demonstrably agreed that NTT is to be responsible for performing data backups, NTT shall assume no liability for any loss of data by the customer, except in those cases where NTT has wilfully or grossly negligently caused the data loss and the customer has ensured that the data files can be reconstructed at reasonable effort and expense using machine-readable data material kept available on a standby basis.

13.5. No liability shall be assumed for indirect damages, particularly for lost profits, production disruptions, investment-related interest costs, or financing costs.

13.6. Unless otherwise provided for in Clauses 13.1 to 13.4 hereof, the customer shall not enjoy any right to claim compensation of damages or reimbursement of costs, for whatever cause in law, in particular for a breach of obligations under the relationship entailing the performance of obligations or for tort. The above limitation of liability shall include claims against employees and vicarious agents of NTT.

13.7. In the event the customer receives consultancy services exceeding the commissioned scope, NTT shall be liable only for damages it has caused wilfully or grossly negligently. In particular, the customer shall not be released from its obligation to verify upon its own initiative that a given delivery is fit for its intended purpose. This shall apply also in those cases in which NTT is aware of the purpose intended by the customer.

13.8. Liability under the German Product Liability Act (*ProdHaftG - Produkthaftungsgesetz*) and the General Data Protection Regulation (*DS-GVO - Datenschutz-Grundverordnung*) shall remain unaffected.

14. Data protection

14.1. As part of performing the Services, data that are subject to data protection may be exchanged between the customer and NTT, respectively its authorised representatives.

14.2. NTT shall comply with the applicable statutory provisions regarding data protection, as e.g. the processing in good faith, transparency, appropriation, minimisation of data, correctness and integrity / confidentiality of personal data. The personal data will be protected by the necessary technical and organisational measures to the extent possible under the generally recognised codes of practice.

14.3. Any agents authorised by NTT have been contractually bound to observe these obligations. Those employees, respectively agents, of NTT who are to enjoy access to personal data in order to perform services have been carefully selected and have been instructed and contractually bound with respect to data protection in keeping with the applicable provisions of the law.

14.4. The customer is hereby advised that the provision of services may give rise to processing on behalf of others within the meaning of Article 28 General Data Protection Regulation, a situation for which the

customer may have to conclude a separate agreement with NTT, as the case may be. Unless the customer issues instructions to the contrary, NTT shall perform its services under express reference to Article 6 (1) lit. b and f General Data Protection Regulation.

15. Works of music free from GEMA contributions

Any musical material delivered by NTT for the System shall be free of rights held by the German Society for Musical Performing and Mechanical Reproduction Rights (*GEMA - Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte*). The customer hereby releases NTT from any claims that may be asserted by GEMA, insofar as the customer uses or uploads musical material on the System that was not delivered by NTT.

16. Miscellaneous provisions

16.1. If any provision of these General Terms and Conditions should be or become invalid, this shall not affect the remaining provisions.

16.2. Any amendments or addenda to the present service agreement must be made in writing in order to be valid. This shall also apply to any deviations from the present requirement as to the written form. NTT shall communicate any amendments of the present General Terms and Conditions to the customer by way of a written notification. Such amendments shall be deemed acknowledged unless the customer lodges a written objection within four weeks of receiving the notification. NTT shall make express reference to this legal consequence in its notification.

16.3. German law shall apply, to the exception of the UN Convention on Contracts for the International Sale of Goods (CISG) as well as international private law. The place of jurisdiction shall be Bad Homburg v. d. Höhe, Germany. NTT reserves the right to also bring suit at the customer's registered seat.

17. Return of Systems as per the Electrical and Electronic Equipment Act

The customer shall be entitled to return any System, respectively portions thereof, which it acquires under the service agreement to NTT, shipping it at its own cost and risk, or to request that it be de-installed and picked up by NTT in return for a fee. NTT shall ensure that the System, respectively portions thereof, is/are disposed of in a manner consistent with the German Electrical and Electronic Equipment Act (*ElektroG - Elektro- und Elektronikgerätegesetz*).