



NTT AMERICA, INC. TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS GOVERN THE SALE AND PURCHASE OF THE PRODUCTS AND SERVICES (“ITEMS”) IN THE ATTACHED QUOTE BETWEEN **NTT AMERICA, INC.** (“**NTT**”) AND THE PARTY TO WHICH THE QUOTE IS ISSUED (“**YOU**”). IF WE ARE PARTIES TO AN EXISTING AGREEMENT FOR THE SALE AND PURCHASE OF THE QUOTED ITEMS, THAT AGREEMENT WILL PREVAIL.

1. **ORDERS.** NTT may offer to sell You third party manufactured hardware, software licenses or Third Party Maintenance (defined in Section 11) (“**Products**”) and/or Services (defined in Section 12) as identified in a NTT-issued Quote (“**Quote**”) or Statement of Work (“**SOW**,” as defined in Section 13). NTT’s offer to sell the Items in the Quote or perform under a SOW are expressly conditional upon Your acceptance of these terms and conditions without additional or different terms. You may accept NTT’s Quote by issuing a responsive purchase order or accept NTT’s SOW by executing the SOW, and each constitutes an “**Order**.” You agree the Quote or SOW and these Terms and Conditions of Sale are the entire agreement between us (“**Agreement**”) and any terms and conditions or other provisions on Your purchase order or other document(s) are considered material alterations to this Agreement and are expressly rejected and superseded by the terms and conditions of this Agreement.

2. **PRICES; TAXES.** Quotes and SOWs are void if You do not accept them within 30 days. Prices in a Quote or SOW do not include applicable taxes, freight or handling charges. Any Items Ordered in one country for delivery to another may be subject to value added tax or similar indirect sales related taxes that are incurred by NTT and for which You are responsible and agree to reimburse NTT. You shall pay all federal, state, local, and foreign taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees, as applicable. NTT shall have the right to recover from You, and You shall pay, the amount of any federal, state, local, or foreign fees, charges or taxes arising as a result of the Agreement that are imposed on NTT or NTT’s Services, or measured on NTT’s receipts, and any other costs or expenses that NTT is entitled under applicable Law to pass through to or otherwise charge You for Your use or receipt of the Services. Such fees or taxes shall be invoiced to You in the form of a surcharge included on Your invoice. NTT shall be responsible for and shall pay all taxes measured by NTT’s net income. You shall provide NTT any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under the Agreement. To the extent such documentation is held invalid for any reason, You shall reimburse NTT for any tax or fee liability, including related interest and penalties arising from such invalid documentation.

If You are required by law to make any deduction or withholding from any payment due hereunder to NTT, then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by You to NTT will be increased so that, after any such deduction or withholding for taxes, the net amount received by NTT will not be less than NTT would have received had no such deduction or withholding been required. If any taxing or governmental authority asserts that You should have made a deduction for withholding for or on account of any taxes with respect to all or a portion of any payment made hereunder, You hereby agree to indemnify NTT for such withholding taxes and to hold NTT harmless on an after-tax basis from and against any taxes, interest or penalties levied or asserted against them in connection therewith.

You acknowledge that currently, and from time to time, there is uncertainty about the regulatory classification and/or treatment of some of the Services NTT provides and, consequently, uncertainty regarding what fees, taxes and surcharges are payable by NTT and/or You. You agree that NTT has the right to determine, in its discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to You. You hereby waive any claims You may have regarding NTT’s collection or remittance of such fees, taxes and surcharges. If a governmental authority later provides clarifications that indicate NTT’s determination was incorrect, NTT shall refund to You any such fees, taxes and surcharges that are refunded to NTT, to the extent such fees, taxes and surcharges were passed through to You.

3. **PAYMENT; INVOICING.** You agree to pay NTT in full 30 days from date of invoice without offset or deduction. NTT issues invoices (i) for Products upon shipment, (ii) for managed services and Third-Party Maintenance at the commencement of the service period, and (iii) for all other Services at the time of performance or as agreed in the SOW. Undisputed past due invoices are subject to a finance charge of the greater of 1.5% per month or the maximum allowed by law. NTT may cease the performance of Services if any undisputed invoice remains past due 5 days after NTT notifies You.

4. **TERM; TERMINATION.** The Agreement remains in effect until all items in the Order have been delivered and paid for or until otherwise terminated. Orders may not be cancelled without NTT’s consent, however, either of us may terminate this Agreement, an Order or a SOW (i) if the other fails to cure a material breach within 30 days of receipt of written notice specifying the breach or (ii) by immediate written notice to the other upon the other becoming insolvent, or the initiation of any proceeding by or against it under bankruptcy or insolvency laws. Termination of an Order shall not affect any other Order(s) in effect at the time of termination. Termination of this Agreement or an Order will not limit either of us from pursuing any other remedies, including injunctive relief, nor will termination relieve Your obligation to pay for all Items delivered and/or any actual pre-approved third party costs NTT accrues on Your behalf prior to the termination date.

5. **WARRANTY.** All Products are subject to applicable manufacturer warranties which NTT transfers to You as legally permissible. NTT agrees to perform Services in a professional and workmanlike manner conforming to generally accepted industry standards and practices. Your exclusive remedy and NTT’s entire liability for any breach of the express Services warranties in this Agreement shall be the re-performance of the applicable Services at no charge or, should NTT be unable to reperform the Services, a refund of the applicable fees for such Services. All Service warranties are void if the Service is modified by any party other than NTT or its authorized agent. NTT MAKES NO WARRANTY AS TO THE RESULTS OF ANY SERVICES. NTT FURTHER MAKES NO WARRANTY THAT PRODUCTS OR SERVICES WILL DETECT OR PREVENT ANY SECURITY VULNERABILITIES AND/OR ATTACKS OR THAT THEY WILL MEET YOUR SPECIFIC SECURITY REQUIREMENTS. EXCEPT AS SET FORTH IN

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THIS PARAGRAPH, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND NTT DISCLAIMS ANY OTHER WARRANTIES AND REMEDIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE AND NON-INFRINGEMENT.

6. **CONFIDENTIALITY.** Each of us agrees not to disclose Confidential Information to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement. Both of us also agree to use the same degree of care that we each use to protect our own confidential information. We each will hold Confidential Information in confidence for a period of 2 years after termination of this Agreement. "**Confidential Information**" includes information that is labeled confidential or would reasonably be considered confidential, and does not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving party; or (b) was in the receiving party's lawful possession prior to the disclosure and not subject to nondisclosure requirements; or (c) was lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party. Either of us may disclose Confidential Information as required by law or governmental ruling provided, however, that we shall notify the other before doing so.

7. **LIMITATION OF LIABILITY.** A PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE AMOUNTS IT HAS PAID OR COMMITTED TO PAY UNDER THIS AGREEMENT. IN NO EVENT WILL A PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE, LOST PROFITS, OR LOST DATA EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. THIS LIMITATION OF LIABILITY AND EXCLUSION OF INDIRECT DAMAGES WILL APPLY EVEN IF THE EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

8. **SOFTWARE LICENSING.** Any third party software is subject to the license terms provided with it, and all software license terms are established directly between You and the software licensor. NTT is not a party to any such software license and makes no warranties or representations related to the software.

9. **SHIPPING; DELIVERY.** All shipments in the USA are F.O.B. Destination Freight Prepaid and Added. Delivery of Products to locations outside of the country in which they are Ordered will be subject to additional fees specified on a Quote. Risk of loss to Products passes to You upon delivery to the agreed ship to location. Title to Products passes to You when NTT receives payment in full of the Product purchase price. You acknowledge the applicable manufacturer or distributor controls shipment, and any shipment dates NTT provides are estimates only. NTT will not be liable for any delay in delivery or failure to give notice of such delay. Products delivered to NTT's facility for staging Services will be shipped to You no later than 10 days after completion of such Service, and You agree to accept delivery of all such Products or reimburse NTT's warehousing cost. You will accept and pay for partial shipments of Products.

10. **RETURN POLICY.** You will promptly notify NTT of any discrepancy in shipment quantity or type or shipment damage and NTT will remedy any such issues at its cost. You will return all failed parts, freight and insurance prepaid, to the Cisco designated location. For Product that has been replaced pursuant to the Product warranty or governing terms, You shall return the failed/defective Product within ten (10) days of receipt of the replacement Product; otherwise, replacement Product will be invoiced to You at the then-current list price. NTT's invoice to You may act as notice that the failed/defective Product has not been returned to Cisco. You agree to pay such invoice if the failed/defective Product is not returned to Cisco within ten (10) days of receipt of NTT's invoice. Should Cisco receive the failed/defective Product within ten (10) days of Your receipt of NTT's invoice, such invoice will be cancelled.

Correctly delivered Products may not be returned unless NTT approves it and any such returns (i) are subject to the manufacturer's restocking fees and related charges, (ii) must be in the original shipping cartons, undamaged, unused and unaltered, and (iii) specify a Return Material Authorization ("RMA") number. You will comply with manufacturer RMA requirements.

You shall comply with the following RMA procedure:

- (a) Ensure all Products are properly packaged prior to being shipped, and include a written description of the failure and specification of any changes or alterations made to the Product. Product returned to Cisco must conform in quantity and serial number to the RMA request.
- (b) Tag each Product returned with the RMA transaction number and a brief description of the problem. Cisco will not accept any Product returned which is not accompanied by an RMA number.

11. **THIRD-PARTY MAINTENANCE.** "**Third-Party Maintenance**" is product support service delivered by a third party that NTT resells to You. Third Party Maintenance is subject to the service description(s), terms and conditions identified by the applicable third party provider. NTT is not a party to any such third party terms and conditions and is not responsible for delivery of Third-Party Maintenance.

12. **SERVICES DESCRIPTIONS.** "**Services**" governed by this Agreement are those services NTT performs other than cloud services which are offered subject to separate terms of service. Descriptions of NTT Services are available upon request, online at <https://hello.global.ntt/en-us/legal> or are as set forth in the applicable SOW. The terms of NTT's service description(s) are incorporated by reference into this Agreement. Services provided and charged based on labor time and materials supplied (a) carry a 4-hour minimum charge, (b) are estimated for budgeting purposes and not performed by a fixed deadline or for a set charge, and (c) are considered accepted at the time of delivery. NTT will comply with Your published and reasonable standard safety and security policies when performing Services on Your premises.

13. **STATEMENTS OF WORK.** Services may require a SOW which is a contract governed by this Agreement and specifying the details of a particular Service. In the case of any conflict between the terms of this Agreement and a SOW, the terms of the SOW will control.

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14. **SOW DELIVERABLES.** For any deliverables identified in a SOW and provided to You (or a corrected version of the same), You will have 10 business days from delivery to notify NTT in writing if it fails to comply with the applicable acceptance criteria specified in the SOW ("**Acceptance Criteria**"). Your written notice shall itemize how the deliverable fails to meet the Acceptance Criteria ("**Failure**"). NTT will use commercially reasonable efforts to promptly remedy all confirmed Failures and provide a corrected deliverable to You. If You or a third party authorized by You modifies a deliverable which causes a Failure, such deliverable shall be deemed automatically accepted and any NTT efforts to correct the Failure will be on agreed terms. A SOW may specify alternate acceptance period(s) or terms. If no Acceptance Criteria are specified in a SOW then the corresponding deliverable is deemed accepted at time of delivery.

15. **RETAINED PERSONNEL.** NTT may obtain and assign certain employees or contractors with skills You request to do work under Your supervision ("**Retained Personnel**"). In such cases, NTT will ensure Retained Personnel have no right to participate in any of Your employee benefit plans and that services supplied by them will comply with this Agreement. You may use Retained Personnel only in the capacities specified for them on the applicable Order. At Your direction, NTT will remove any Retained Personnel from assignment.

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

17. **THIRD PARTY SOFTWARE.** If software licensed to You is used in the performance of Services, (i) You will ensure NTT has the right to use it, (ii) NTT will use it only in the performance of Services, and (iii) the rights in any derivative works, customizations and/or enhancements of it will be subject to the terms of the applicable third party software license.

18. **YOUR OBLIGATIONS.** Your timely, complete and accurate provision of, and access to, Your equipment, services, facilities, personnel, third party software and/or information may be necessary for NTT to perform Services. NTT will inform You of Your failure to provide such goods or assistance, and any resulting inability to perform Services will be excused until You cure the failure. Any such failure may also result in increased charges which NTT will confirm with You. If NTT equipment is installed at Your location for delivery of Services You agree (i) You are responsible for any loss or damage to such equipment, (ii) NTT retains ownership of such equipment, and (iii) to return that equipment at Your expense within 30 days of termination of the Service or pay NTT its then-current depreciated value.

19. **DATA PRIVACY.** In order to receive the Services, You may need to grant NTT access to information that, directly or indirectly, either alone or in combination with other data, identifies or uniquely relates to an individual employed or otherwise retained by You or Your agents or contractors (hereafter "**Client Personal Data**"). If You give NTT access to any Client Personal Data, NTT shall be allowed to process Client Personal Data to perform the Services, and such processing shall adhere to the applicable data privacy legislation in the jurisdiction where the processing occurs. In all circumstances You will remain the Data Controller and NTT will be the Data Processor as such terms are defined in applicable state and federal laws or regulations relating to data privacy. You warrant the transfer of Client Personal Data to NTT shall comply with all applicable laws and regulations on protection of Personal Data. If the processing of Client Personal Data by NTT is conducted in accordance with Your instructions or can be considered as customary usage for the performance of Services, You shall indemnify, defend and hold NTT harmless from and against any and all claims, liabilities, losses and reasonable expenses incurred by or asserted against NTT in connection with any third party claim related to the processing of the Client Personal Data. You understand and accept you bear sole and full responsibility for the backup and redundancy of any Client Personal Data.

20. **INTELLECTUAL PROPERTY.** Upon payment for the associated Services, and except as specified in Section 17, above, You shall own all Works and the entire right, title and interest therein, shall be exclusively vested in You as works made for hire and made in the course of the Services rendered. As used herein, "**Works**" are any written or computer coded materials, systems design, disks, tapes, drawings, reports, specifications, notebooks, recommendations, data and memoranda including any modifications to Your existing techniques, software, processes, methodologies or other intellectual property, any of which are first created specifically for You as a result of Services. If title to any Works may not by operation of law vest in You, NTT hereby irrevocably assigns the sole right, title and interest in such Works and its proprietary rights therein to You. NTT agrees to execute papers which You reasonably may require to secure and maintain Your rights related to the Works. Notwithstanding the foregoing, NTT retains exclusive and unrestricted ownership of any NTT IP relating to the Services and/or supplied with any Works, and NTT grants You a worldwide, perpetual, royalty-free, and non-exclusive right and license to use such NTT IP as part of the Works; provided, however, for subscription based Services, such license shall expire at the end of the applicable term. "**NTT IP**" includes (i) "**Prior Elements**" which are pre-existing methodologies, tools, techniques, software or intellectual property elements NTT owns, (ii) "**Enhancements**" which are modifications to Prior Elements made while performing Services, and (iii) "**Retained IP**" which are methodologies, tools, techniques, software or other intellectual property developed while performing Services and that NTT may use in the course of its business. In no event will Enhancements or Retained IP contain any of Your specific data, processes or information. This license grant is non-transferable unless NTT authorizes it in writing. You agree to protect NTT IP in the same manner You protect Your own similar intellectual property which shall be no less than a reasonable standard of protection.

21. **INFRINGEMENT INDEMNITY.** NTT will indemnify and defend You against intellectual property infringement claim(s) related to Product(s) that NTT sells to You, to the same extent NTT receives a corresponding intellectual property indemnification in its reseller agreement with the applicable Product manufacturer or supplier. NTT will also defend and indemnify You against a claim that information, design, specification, instruction, software, data, or material NTT furnishes as part of the Service ("**NTT Material**") and used by You in connection with the Services infringes an intellectual property right, copyright or patent. You will defend and indemnify NTT against a claim that information, design, specification, instruction, software, data, or material You furnish ("**Your Material**") and NTT uses in connection with the Services infringes an intellectual property right, copyright or patent. The above indemnifications apply provided that: (a) the indemnified Party notifies the indemnifying Party in writing within 30 days of the claim; (b) the indemnifying Party has sole control of the defense or settlement of the claim; and (c) the indemnified Party provides the indemnifying Party with the

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assistance, information, and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by the indemnified Party in providing such assistance will be reimbursed by the indemnifying Party. The indemnifying Party shall have no liability for any claim of infringement resulting from the indemnified Party's use of a superseded or altered release of some or all of the Product, NTT Material or Your Material if infringement would have been avoided by the use of a subsequent unaltered release of the Product or Material which is provided at no charge to the indemnified Party. If a Product or NTT Material is held or is believed to be infringing NTT may, at its expense, (a) modify the Product or NTT Material to be non-infringing; (b) obtain for You a license to continue using the Product or NTT Material; or (c) to require return of the infringing Product or NTT Material and grant You a refund of the fees paid for it. Any such refunded fees will be as depreciated on a 60-month straight line basis from the date of delivery of the Product or NTT Material. If You have authorized NTT to use or have supplied us with Your Material that is the subject of a claim then NTT may terminate the applicable SOW(s) upon written notice to You and You shall pay NTT for the Services rendered through the date of such termination. This section states NTT's entire liability and Your exclusive remedy for any infringement claim or breach of a non-infringement warranty related to the Services.

22. **NO SOLICITATION.** During NTT's performance of Services and for 6 months thereafter, neither of us shall solicit for employment or retention as an independent contractor any employee or former employee or Retained Personnel of the other who provided or received any Services. "Solicit" shall not be deemed to include advertising in newspapers, web sites or trade publications available to the public.

23. **ASSIGNMENT.** You may not assign this Agreement nor any of its rights or obligations without NTT's written consent, however, You may upon notice assign the Agreement to a wholly-owned subsidiary or surviving entity in a merger, acquisition or consolidation.

24. **WAIVER.** Either Party's delay or failure to exercise a right or remedy will not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either Party's intellectual property rights, neither of us may bring an action arising out of this Agreement more than 1 year after discovering, or when it should have discovered, the basis for the cause of action.

25. **FORCE MAJEURE.** NTT will not be in default or otherwise liable for any delay in or failure of its obligations or performance where such delay or failure arises by reason of any Act of God, or act of governmental body, acts of the common enemy, the elements, strikes or labor disputes, or other causes beyond NTT's reasonable control.

26. **DISPUTES AND ARBITRATION.** We will promptly notify each other in writing of any dispute and factual background. If we cannot resolve the dispute within 30 days, either of us may seek to resolve it by arbitration. Any such arbitration will be subject to the rules of the American Arbitration Association. Nothing will preclude either of us from making an application to the arbitrator to expedite the proceedings, nor restrict the arbitrator from granting such an application, nor shall anything in this section preclude either of us from bringing an action for injunctive or other equitable relief. The arbitrator is not authorized to award punitive damages. The award rendered by the arbitrator will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

27. **LAW.** This Agreement and all transactions made under it will be governed by the laws of the state of New York, excluding any conflict of laws rules that may apply. Any dispute regarding this Agreement will be subject to the exclusive jurisdiction of the applicable court in New York. The United Nations Convention on Contracts for the International Sale of Goods will not apply. You acknowledge and agree (i) You have the ability to access each URL referenced in any Quote and in this Agreement, and (ii) NTT may from time to time change (including by moving or deleting portions of, or adding to), the materials posted at any such URL. You waive any claims or defenses to the validity or enforceability of this Agreement or other documents arising from electronic submission or availability of them.

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

29. **FCPA; EXPORTS.** We each agree to comply with (i) the U.S. Foreign Corrupt Practices Act (15 U.S.C. 78(dd)(i) et seq.) and anti-bribery laws and regulations of any country having jurisdiction over our transactions, and (ii) all relevant U.S. export and sanctions laws.

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

31. **NOTICE.** Notices provided hereunder will be in writing and properly given when personally delivered or sent by a delivery service providing proof of delivery. Notices to You will be addressed as specified on the Order. Notices to NTT will be sent to NTT America, Inc., 757 Third Avenue, 14th Floor, New York, NY 10017 U.S.A. Attention: Legal Department. The date of notice will be deemed to be the date of receipt. Refusal to accept delivery of a notice will constitute actual delivery.

32. **SURVIVAL.** Terms of this Agreement which by their nature are intended to extend beyond this Agreement's expiration or termination will remain in effect until fulfilled.

33. **RELATIONSHIP.** NTT is an independent contractor. Nothing in this Agreement creates a partnership, joint venture, employer and employee or agency relationship between us, and each of us will be solely responsible for payment of all compensation owed to our own employees, federal and state income tax withholding, Social Security taxes, and unemployment insurance applicable to such personnel.