



Terms and Conditions

Relating to the purchase and supply of products to NTT

US

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NTT contact details

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Please quote reference {Document Reference Number} in any correspondence or order.

Confidentiality

This document contains confidential and proprietary information of NTT Limited ('NTT'). {ClientFull} ('{Client}') may not disclose the confidential information contained herein to any third party without the written consent of NTT, save that {Client} may disclose the contents of this document to those of its agents, principals, representatives, consultants or employees who need to know its contents for the purpose of {Client}'s evaluation of the document. {Client} agrees to inform such persons of the confidential nature of this document and to obtain their agreement to preserve its confidentiality to the same extent as {Client}. As a condition of receiving this document, {Client} agrees to treat the confidential information contained herein with at least the same level of care as it takes with respect to its own confidential information, but in no event with less than reasonable care. This confidentiality statement shall be binding on the parties for a period of five (5) years from the issue date stated on the front cover unless superseded by confidentiality provisions detailed in a subsequent agreement.

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This document is valid until 11 July 2019 and, in the absence of any other written agreement between the parties, NTT and {Client} acknowledge and agree is subject to NTT's standard terms and conditions which are available on request. NTT reserves the right to vary the terms of this document in response to changes to the specifications or information made available by {Client}. Submission of this document by NTT in no way conveys any right, title, interest, or license in any intellectual property rights (including but not limited to patents, copyrights, trade secrets or trademarks) contained herein. All rights are reserved.

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All contracts with NTT will be governed by {Law} Law and be subject to the exclusive jurisdiction of the {Law} courts.





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- 1.1. These Terms and Conditions of Purchase shall apply to all contracts concluded by NTT (US) Inc. (hereinafter NTT) as the purchasing or ordering party, unless otherwise expressly agreed in writing.
- 1.2. Terms and conditions of business of the supplier that differ from these Terms and Conditions of Purchase shall not be regarded as part of the purchasing contract, even where they have not been expressly rejected by NTT.
- 1.3. Any words following the terms 'including', 'include', 'in particular', 'for example', or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4. **"Addendum"** means the Data Protection Addendum attached hereto.
- 1.5. **"Agreement"** means the Purchase Order, these Terms and Conditions of Purchase and the Addendum.
- 1.6. **"Products"** shall mean Services, equipment or software or any other products.
- 1.7. **"Purchase Order"** shall mean NTT's written instruction to supply the Product incorporating these conditions.
- 1.8. **"Services"** shall mean the services to be provided by Supplier as described in a Purchase Order.
- 1.9. **"Supplier"** shall mean the person, firm or company who accepts the Purchase Order.
2. These Terms and Conditions of Purchase shall:
 - 2.1. (a) apply to purchase and supply of the Products and be incorporated in the Purchase Order; and (b) prevail over any inconsistent terms or conditions contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere, or implied by law, trade custom, practice or course of dealing.
 - 2.2. The Purchase Order constitutes an offer by NTT to purchase the Equipment subject to these Terms and Conditions of Purchase. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase of that Product on these Terms and Conditions of Purchase. Any counter-offer made by the Supplier to supply the Product on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorized representative of the Customer. No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Terms and Conditions of Purchase or any



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of them shall be binding on NTT unless in writing and signed by a duly authorized representative of NTT. The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these Terms and Conditions of Purchase by the Supplier. Where the Purchase Order is for more than one item, it shall be regarded as a single contract for all Product supplied pursuant to that Purchase Order.

- 3.** All prices shall be as stated in the Purchase Order, except that if the Supplier quotes or offers to a third party lower prices or better terms for equipment of similar quality, quantity or description to the Product (or the items comprised in it), NTT shall be entitled to purchase the Product (or the relevant items comprised in it) on the same terms and shall be entitled to a refund of the amount of the difference in respect of all such Product supplied after whichever is the earlier of the first quotation or the first supply at the lower price or better terms (as the case may be). All prices are fixed and inclusive of delivery, packaging, packing, shipping, carriage, insurance and other charges and dues, and are not subject to adjustment save as specifically provided in these Terms and Conditions of Purchase or the Purchase Order. NTT will pay only undisputed amounts that appear on the invoice to which such fees relate from the later of forty-five (45) days after (i) receipt of a valid invoice, or (ii) NTT's acceptance of Products. Fees for renewing Services may increase only if NTT agrees in writing at the time of renewal. All prices shall be in US Dollars excluding tax, shipping, insurance, import/customs duty, etc.
- 4.** The Supplier warrants and covenants that all Products are and will: (i) be new and will conform with these Terms and Conditions of Purchase and all specifications; (ii) be free from defects in materials, workmanship and design; (iii) be free from liens, restrictions, reservations, security interests or encumbrances; (iv) be suitable for, and perform in accordance with, the particular purposes (a) for which they were purchased by NTT and (b) for which they were designed, manufactured or constructed; and (v) not infringe any third party intellectual property rights. Supplier warrants and covenants that all Services will be performed with reasonable skill and care, and to a standard that should reasonably be expected of a leading provider of the services in question. If Supplier does not promptly correct defects or replace non-conforming Products or Services after written notice to Supplier, NTT may make corrections or replace Products and Services and charge Supplier for the cost incurred.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4, SUPPLIER MAKES NO OTHER WARRANTIES REGARDING THE PRODUCTS,



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EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. The Supplier shall deliver the Product on the date specified in the Agreement or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Product under the Agreement and if the Supplier does not comply with its obligations in the preceding sentence, the Customer may, without prejudice to any other rights or remedies that it may have:

- cancel the Agreement in whole or in part without incurring any liability to the Supplier;
- refuse to accept any subsequent delivery of items comprised in the Product which the Supplier attempts to make;
- purchase substitute items elsewhere; and/or
- hold the Supplier accountable for any loss and additional costs incurred.

The Product shall be properly packed and secured in such manner as to enable it to reach its destination in good condition. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials.

6. The Products will be shipped FOB destination unless otherwise agreed in writing. Time of delivery shall be of the essence. NTT may without penalty on five (5) days' written notice: (a) cancel or delay the scheduled date for delivery of Product and/or performance of Services; (b) change the quantity of Products to be shipped, or scope of Services to be provided. No restocking fees will apply.

7. The Product shall be at the risk of the Supplier until delivery to NTT at the place of delivery specified in the Purchase Order, or as otherwise specified by NTT. The Supplier shall off-load the Equipment at its own risk as directed by NTT.

8. 8. Ownership of the Product shall pass to NTT on completion of delivery (including off-loading) in accordance with the Agreement, except that if the Product is paid for before delivery ownership shall pass to NTT once payment has been made. The



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passing of ownership in the Product is without prejudice to any right of rejection to which NTT may be entitled under this Agreement or otherwise.

- 9.** The Supplier will indemnify, defend and hold NTT and its respective officers, employees, agents and directors harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages (including punitive, treble and enhanced damages, if applicable) and liabilities, including reasonable legal fees arising out of, connected with or resulting from a claim based on: the Products and/or Services; any act or omission by Supplier under this Agreement; or any claim of infringement, misappropriation, or violation of any third party patents, copyrights, trademarks or trade secret rights or other proprietary rights. NTT will have no authority to settle any claim on behalf of Supplier without Supplier's prior written consent. If Supplier cannot resolve an infringement claim, Supplier will in addition to any claim made by NTT refund all amounts paid for the applicable Products and/or Services.
- 10.** Supplier shall disclose to NTT all designs, discoveries, computer programs, improvements, developments, drawings, notes, documents, information and materials developed by Supplier resulting from the delivery of the Products, including performance of the Services (collectively "Designs and Materials"). To the extent that the Designs and Materials are copyrightable, such Designs and Materials will be deemed to be "works made for hire" and owned by NTT under the U.S. Copyright Act [17 U.S.C. § 101, et seq.]. To the extent that the Designs and Materials are not deemed "works made for hire," or if Supplier may be entitled to claim any other ownership interest in any Designs and Materials, subject to payment in full of undisputed charges associated therewith by NTT, Supplier hereby conveys, assigns and transfers to NTT all worldwide rights, title and interests in and to the Designs and Materials that Supplier has or may accrue (and all rights incidental thereto), in perpetuity or for the longest period otherwise permitted by law, including, without limitation, any and all enhancements, revisions, updates and modifications thereto, along with all documentation, copyrights, trademarks, service marks, patents (including business method and software patents), moral rights and trade secrets associated therewith, including the right to apply for and register in Supplier's name any copyrights, trademarks, service marks, patents (including business method and software patents), and trade secrets in the United States and any foreign countries. To the extent Supplier is otherwise entitled to claim any ownership interest in the Designs and Materials under applicable law, Supplier will automatically transfer all such Designs and Materials in their entirety to NTT, without further consideration or documentation, immediately at such time as the Designs and Materials come into existence. Supplier will perform any acts that may be deemed necessary or desirable by NTT



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to evidence more fully the transfer of ownership of the Designs and Materials to NTT.

- 11.** For non-Supplier IP (including off-the-shelf software), Supplier grants to NTT a fully paid-up, worldwide, perpetual license to install, execute, use, copy, test, display, perform and distribute such intellectual property for NTT's business purposes subject to the terms of the manufacturer's terms and conditions including the EULA (end-user license agreement).
- 12.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR BREACH OF SECTION 15 OR THE ADDENDUM, A PARTY WILL NOT BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER IN TORT, CONTRACT OR OTHERWISE.
- 13.** NTT'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT SET OUT IN THE RELEVANT PURCHASE ORDER OR OTHER ORDERING DOCUMENT UNDER WHICH THE CLAIM OR ALLEGED CLAIM ARISES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS ARISING AS A RESULT OF GROSS NEGLIGENCE, FRAUDULENT OR WILFUL MISCONDUCT, OR ANY PERSONAL INJURY, DEATH OR BODILY HARM.
- 14.** NTT may terminate this Agreement or the provision of any Products or Services in whole or in part for any reason on ten (10) working days written notice, without liability (including termination fees) except for undisputed fees arising prior to the termination date. Supplier will promptly refund to NTT any unused prepaid fees (including prepaid recurring fees, on a pro-rata basis to the date of termination).
- 15.** NTT may disclose to Supplier proprietary, confidential or trade secret information pertaining to its business, customers or partners ("Confidential Information"). Supplier shall not disclose such Confidential Information to any third party or use such Confidential Information except to perform its obligations under this Agreement and shall upon expiration or termination of this Agreement destroy any originals and copies of such Confidential Information other than one copy held for archive purposes. Any personal data made available to Supplier by NTT shall be deemed Confidential Information.
- 16.** Supplier shall effect and maintain adequate insurance including workers' compensation, employer's liability insurance, professional negligence insurance, and product liability insurance in respect of persons in its employment, whether contracted to NTT Security or otherwise, appropriate to the nature of the Products to be supplied; and Commercial General Liability covering claims for bodily injury, death, personal injury, or property damage with minimum limits of US\$1,000,000



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for each occurrence, will name NTT as an Additional Insured, and will contain a waiver of subrogation in favor of NTT.

- 17.** NTT shall have the right to receive on request a copy of insurance effected or maintained by Supplier under this Agreement. This insurance shall not be suspended, voided, cancelled, or be reduced in coverage or in limits except with 90 days' written notice to NTT. For any claims, Supplier's insurance will be primary, and NTT's insurance will not contribute to it.
- 18.** The parties hereto are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise created between either party and its respective employees and the other party under this Agreement
- 19.** Supplier will not publicize this Agreement or identify NTT or its customer as a client in any disclosure, or use NTT's name or trademarks (or any variation thereof), without NTT's prior written consent in each case.
- 20.** Supplier will comply at its own expense with all laws, orders, and regulations. While on the premises of NTT or in contact with NTT systems, Supplier will comply with all applicable NTT or its Affiliate's rules, regulations and security policies.
- 21.** NTT may assign this Agreement in whole or in part, without the prior written consent of Supplier, to any Affiliate or in connection with a merger or acquisition or sale of all or a portion of the assets of NTT. Supplier may not assign all or any part of this Agreement, including by merger, without the prior written consent of NTT.
- 22.** Supplier is an independent contractor and not an agent or employee of NTT and Supplier is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claims by Supplier's employees or contractors.
- 23.** This Agreement shall be subject to the Laws of Nebraska, expressly excluding conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG), and to the exclusive jurisdiction of the state and federal courts located in Douglas County, Nebraska.
- 24.** NTT shall have the right to set-off any amount it owes to Supplier against any amount Supplier owes NTT.
- 25.** NTT WILL NOT BE LIABLE FOR ANY CLAIM MADE BY THE SUPPLIER UNDER OR BY REASON OF THIS AGREEMENT THAT IS IN EXCESS OF THIS AGREEMENT'S VALUE.
- 26.** The Supplier undertakes that it will at all times comply with all applicable laws and regulations, including but not limited to international standards, international conventions, national, regional, provincial and local laws, regulations, orders, conventions and standards that relate to the manufacture, labelling, import, export, licensing, approval or certification of suppliers and supplies, Data Privacy Laws and governing laws. Supplier holds NTT harmless against any claims, expenses,



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losses or fines NTT incurs including but not limited to legal costs arising as a result of the Supplier not fully complying with the provisions of the said laws or policies.

- 27.** The Supplier will indemnify and hold NTT, its directors, officers, employees, shareholders, and agents harmless from and against any and all fines, costs, judgements, damages and assessments, including all reasonable professionals' fees and expenses incurred by NTT as a result of the Supplier's breach of these terms.
- 28.** A reference to a statute or statutory provision or policy is a reference to it as amended, extended or re-enacted from time to time. No change, amendment or modification of these Terms and Conditions of Purchase will be effective unless in writing and signed by authorized representatives of NTT and Supplier. Failure by NTT to insist upon strict performance by Supplier of any of its obligations under this Agreement will not waive any subsequent or other default or failure to perform by Supplier. NTT's rights and remedies in law or equity are cumulative and may be exercised concurrently or separately. The invalidity, in whole or in part, of any provision of this Agreement will not affect the validity of any other provision.



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Addendum Data Protection Agreement

This Addendum (the “**Addendum**”) applies to and forms part of any and all agreements (each an “**Agreement**”) between NTT (US) Inc. (“**NTT**”) and the entity supplying NTT (“**Supplier**”). NTT is entering into this Addendum on behalf of itself and for the benefit of NTT Group. The Supplier is providing services to and for the benefit of NTT and NTT Group.

Any capitalised terms not defined in this Addendum shall have the respective meanings given to them in the Agreement. With respect to provisions regarding processing of NTT Data (defined below), to the extent of any conflict between the Agreement and this Addendum, the provisions of this Addendum shall prevail.

1. Definitions

The following definitions shall apply in this Addendum:

- a) “**Control**” means in relation to any entity: (i) holding a majority of the voting rights in it; (ii) having the right to appoint or remove a majority of its board of directors; or (iii) otherwise controlling its direction, management and policies pursuant to an agreement, and **Controls** and **Controlled** shall be construed accordingly;
- b) “**Controller**” means the natural or legal person who determines the purposes and means of Processing Personal Data;
- c) “**Data Protection Legislation**” means all laws relating to the Processing of Personal Data, privacy and security, including, without limitation, the EU General Data Protection Regulation 2016/679 and the EU Privacy and Electronic Communications Directive 2002/58/EC, as implemented in each jurisdiction, and all amendments, or all other applicable or replacement international, regional, federal or national data protection laws, regulations and regulatory guidance;
- d) “**NTT Data**” means Personal Data provided by NTT to the Supplier pursuant to the Agreement or which is otherwise Processed by the Supplier pursuant to the Agreement; and
- e) “**NTT Group**” means any and all of NTT, any company NTT Controls, any company NTT is Controlled by, and any company with which NTT is under common Control.
- f) “**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;



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- g) “**Process**” or “**Processing**” means any operation or set of operations which is performed on Personal Data whether or not by automated means;
- h) “**Processor**” means an entity that processes Personal Data on behalf of a Controller.

2. Obligations of the Parties

Each party shall comply with its respective obligations under applicable Data Protection Legislation.

3. Obligations of the Supplier

To the extent the Supplier processes NTT Data as a Processor, the Supplier shall:

- a) process NTT Data only in accordance with NTT’s documented instructions unless required by applicable law to process for other purposes, in which case the Supplier shall inform NTT of that legal requirement before Processing, unless prohibited from doing so. Upon termination or expiry of the Agreement, at NTT’s request, the Supplier shall promptly delete or return all NTT Data;
- b) implement appropriate technical and organisational measures to protect NTT Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, including ensuring personnel with access to NTT Data are subject to a binding obligation to protect the confidentiality of NTT Data;
- c) notify NTT without undue delay in writing (but in any event within 12 hours of becoming aware of it), of any data incident, including any suspected, potential or actual accidental, unlawful or unauthorised destruction, disclosure, loss, alteration or access in relation to NTT Data;
- d) provide reasonable information and assistance to NTT to assist NTT in complying with its obligations under applicable Data Protection Legislation (including referring promptly to NTT any requests, notices or other communication from individuals, third parties, relevant data protection authorities relating to NTT Data) and to demonstrate the Supplier’s compliance with this clause 3;
- e) not subcontract any Processing of NTT Data without the prior written consent of NTT and subject to imposing the same as or equivalent to/substantially the same as the obligations on the subcontractor as this clause 3 and the Supplier remaining fully liable for the acts and omissions of any such subcontractors as if they were acts and omissions of the Supplier itself;



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- f) not process and/or transfer NTT Data outside the country in which the individual to whom the NTT Data relates resides where that country has in place Data Protection Legislation that imposes data transfer restrictions (or, in the case of the individual residing in the European Economic Area ("EEA") outside the EEA ("Country of Residence")) without the prior written consent of NTT and subject to implementing or relying on a data transfer mechanism provided for by the applicable Data Protection Legislation to allow for the lawful Processing and/or transfer of NTT Data; and
- g) where required by applicable Data Protection Legislation and to the extent not set out in the Agreement or this Addendum, the parties shall include into the Agreement a description of the relevant Processing activities to be carried out by the Supplier pursuant to the Agreement (including the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of personal data, the categories of data subjects and the obligations and rights of NTT).

4. Indemnity

The Supplier shall indemnify and hold NTT and each NTT group company harmless in respect of all losses, damages, costs, charges, expenses and liabilities (including regulatory penalties imposed on NTT and each NTT group company) arising out of or in connection with a breach by the Supplier of this Addendum.