



# Uptime

## Support Services Agreement

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## 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 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.

**“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 10 by telephone.

**“Customer Interactive Solution Technology Category”** means any Software that forms part of any system that functions as a client contact centre solution.

**“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.

**“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”.

**“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 operating in accordance with the manufacturer’s specifications.

**“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 Term”** means the period specified as such in the Agreement Details.

**“Maintenance Agreement”** means the agreement between the Client and NTT pursuant to which NTT supplies hardware maintenance services for the Configuration Items.

**“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.
- “**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.
- “**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.
- “**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.
- “**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 t he 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 offerings, Service Calendar, service levels targets as specified in the Record of Entitlement.
- “**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.
- “**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.

## Services 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 13 to 12 inclusive.
- 2.3 Table of Service Elements and activities:

Clause Ref.	Service Elements / activities	Uptime Services	Support
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<b>7</b>	Asset Database	✓
	Asset discovery and inventory	
	Asset database reporting	
	Asset database maintenance	
<b>8</b>	License Renewal Reminders	✓
	Notification to Client of upcoming license renewals	
<b>9</b>	Configuration MACDs	✓
	Normal and urgent configuration MACDs	
	Management of Service Units	
	Quarterly Service Unit Usage Report	
<b>10</b>	Consultant on Call	✓
	Telephone based consultation	
<b>11</b>	Site Based Services	✓
	Engineer situated at a Site	
	Spares situated at a Site	
<b>12</b>	Assessments	✓
	Discovery, analysis and recommendation tasks	
<b>13</b>	Service Level Management	✓
	Service management reports	
	Service management reviews	
	Awareness training	
	Mobile service centre application	

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.

#### **The Client's obligations**

2.6 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.

2.7 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.

2.8 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.

### 3 Prerequisites

#### The Client's obligations

- 3.1 The Client must have an existing Maintenance Agreement with NTT.
- 3.2 If the Client does not have, or ceases to have, a Maintenance Agreement with NTT, NTT may terminate this Agreement.
- 3.3 If NTT terminates this Agreement under clause 17 the Client is entitled to a pro-rata refund of any part of the Service Charges that applies to any period after the date of termination.

### Client Take-on

#### 4 Provision of information

##### The Client's obligations

- 4.1 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.

#### 5 Secure remote connection to the Client Site

5.1 The secure remote connection to the Client site described in this clause 5 only applies if the Client selects the optional asset database Service Element.

##### Site to Site VPN connection

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

##### NTT's obligations

- 5.3 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.
- 5.4 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

- 5.5 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.
- 5.6 The Client must protect the NTT owned VPN device from loss or damage and return it to NTT at the end of the Term.
- 5.7 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.

- 5.8 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.

## 6 Asset database establishment (Option)

### NTT's obligations

- 6.1 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

- 6.2 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.
- 6.3 If an existing VPN link is established between NTT and the Client, this link will be utilised to deliver the asset database activity. If no such link is in place, the establishment of a new VPN link will be required.

## Service Elements

### 7 Asset database (Option)

- 7.1 The *asset database* activity described in this clause 7 is provided optionally as part of the Service.
- 7.2 *Asset database reporting* is limited to 1,000 Cisco devices.
- 7.3 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

- 7.4 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

- 7.5 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.

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

### Asset database reporting

#### NTT's obligations

- 7.7 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 7.4(d) 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

7.8 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

7.9 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.

## 8 Licence renewal reminders (Option)

8.1 The *licence renewal reminders* activity described in this clause 8 is provided optionally as part of the Service.

#### NTT's obligations

8.2 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

8.3 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

8.4 The *licence renewal reminders* activity does not include the implementation or administration of licence management software in the Client's environment.

## 9 Configuration MACDs (Option)

9.1 The *configuration MACDs* activity described in this clause 9 is provided optionally as part of the Service.

#### Performance of configuration MACDs

9.2 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.

9.3 The standard Service Calendar for Configuration MACDs is Business Hours.

9.4 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.

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

9.6 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 9.2 will be scoped and charged as a separate engagement.

9.7 Service Units expire 12 months from date of purchase.

#### NTT's obligations

- 9.8 NTT must:
- (a) perform the Configuration MACD in accordance with the Agreement;
  - (b) charge the Client for the Configuration MACD using Service Units the number of which will be:
    - (i) dependent on the complexity of the activity, time of execution, engineering skills level, technology and urgency;
    - (ii) generally in accordance with the Service Unit calculator provided to the Client during service establishment; and
    - (iii) discussed with the Client at the time the Request is logged; and
  - (c) endeavour to commence:
    - (i) a normal Configuration MACD within two (2) Business Days if the requested task can be performed remotely;
    - (ii) a normal Configuration MACD within five (5) Business Days if the requested task requires an engineer to attend the Site;
    - (iii) an urgent Configuration MACD within four (4) Business Hours if the requested task can be performed remotely; and
    - (iv) an urgent Configuration MACD within two (2) Business Days if the requested task requires an engineer to attend the Site.
- 9.9 If the Client requests that a Configuration MACD be performed outside Business Hours, then the target commencement times specified in clause 9.8 will not apply.
- 9.10 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**

- 9.11 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**

- 9.12 The *Configuration MACDs* option described in this clause 9 is not available for the Security Technology Category or the Customer Interactive Solutions Technology Category.
- 9.13 NTT has no responsibility for any risks associated with the performance of Configuration MACDs.
- 9.14 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.
- 9.15 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.

## **10 Consultant on Call (Option)**

- 10.1 The *Consultant on Call* activity described in this clause 10 is provided optionally as part of the Service.
- 10.2 The Service Calendar for the *Consultant on Call* option is Business Hours.

#### **NTT's obligations**

- 10.3 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) dependent on the complexity of the activity, time of execution, engineering skills level, technology and urgency;
- (ii) generally in accordance with the Service Unit calculator provided to the Client during service establishment; and
- (iii) discussed with the Client at the time the Request is logged.

- 10.4 Requests for consultation with an engineer are not subject to Service Levels and are scheduled and responded to on a best efforts basis.
- 10.5 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 sc oped at an Additional Charge.
- 10.6 The *Consultant on Call* option described in this clause 10 is not available for the Security Technology Category or the Customer Interactive Solutions Technology Category.

## 11 Site Based Services

### Engineer situated at a Site (Option)

- 11.1 The *engineer situated at a Site* activity described in this clause 11 is provided optionally as part of the Service.
- 11.2 The Service Calendar for the *engineer situated at a Site* option is 09:00 to 17:00 on Business Days (with standard NTT meal and similar breaks).
- 11.3 The minimum period for the *engineer situated at a Site* option is 12 months.

### NTT's obligations

- 11.4 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 Incident Records. 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 the Service Calendar will be at an Additional Charge.
- 11.5 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 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.
- 11.6 The Client may on reasonable grounds, by written notice to NTT request that NTT replace the engineer.
- 11.7 If NTT receives a notice from the Client under clause 11.6, it must endeavour to replace the person concerned with another suitably qualified person without undue delay.

### The Client obligations

- 11.8 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.
- 11.9 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

- 11.10 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)

- 11.11 The *spares situated at a Site* activities described in clauses 11.11 to 11.14 are provided optionally as part of the Service.
- 11.12 The *spares situated at a Site* option is only available in conjunction with the *engineer situated at a Site* option.

### NTT's obligations

- 11.13 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 11.1 to 11.10 inclusive.
- 11.14 The Client must:
- (a) purchase the recommended number and type of Spares, to be stored at the Site;
  - (b) facilitate the performance of the pre-determined tasks related to Spares management to be performed by the engineer provided under clauses 11.1 to 11.10 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.
- 11.15 NTT may use a Spare for either of the following purposes:
- (a) the permanent replacement of a Configuration Item; or
  - (b) as a Workaround.
- 11.16 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**
- 11.17 If the Client fails to perform its obligations under clause 11.14, NTT will have no liability for its failure to comply with the Service Levels applicable to the affected Configuration Items.

## Service Elements

### 12 Assessments (Option)

- 12.1 The *assessments* activity described in this clause 12 is provided optionally as part of the Service.
- 12.2 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>

#### NTT's obligations

- 12.3 NTT must:
- (a) execute the specific type of Assessment set out in the Service Details and the Record of Entitlement; and
  - (b) perform the Assessment at the frequency set out in the Record of Entitlement.

### 13 Service Level Management (Option)

- 13.1 The *Service Level Management* activities described in this clause 13 is provide optionally as part of the Service.

#### Service Management Reports and Service management reviews

#### NTT's obligations

- 13.2 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-service reporting);
    - (vi) Service Unit usage (if Configuration MACDs/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

- 13.3 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

- 13.4 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; and
    - (iv) make a Mobile Service Centre Application user guide available to the Client; and
  - (b) respond to Mobile Service Centre Application queries and bugs

## Service Administration

- 13.5 The Client must promptly notify and provide NTT with all relevant information for any Service Administration MACDs.
- 13.6 NTT requires up to 45 days from the date of the 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 the 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.
- 13.7 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 Time for the moved Configuration Item will not apply until NTT's agreement to the move has been given.
- 13.8 NTT requires 90 days advance notice of any requested deletion of a Configuration Item from the Agreement.
- 13.9 If the parties have agreed in writing to the addition, replacement or removal of any Configuration Item from the operation of the 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

### 14 Modification of Configuration Items

- 14.1 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 the Agreement and if removed, NTT must make an appropriate pro rata adjustment of the Service Charges and the Record of Entitlement.

## Terms of Service

### 15 Term

- 15.1 The Initial Term of this Agreement commences on the Commencement Date and continues for the Initial Term specified in the Agreement Details.
- 15.2 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.
- 15.3 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 17.4.

### 16 Services

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

### 17 Service Charges and Payment Terms

#### Invoices

17.1 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.

17.2 NTT must issue invoices for any Additional Charges when it has done the relevant work, supplied the goods or incurred the expenses.

### **Payment Terms**

17.3 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**

17.4 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

17.5 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**

17.6 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**

17.7 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.

## **18 Taxes**

18.1 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.

18.2 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.

## **19 Insurance**

19.1 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 19.

## **20 Warranties**

20.1 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

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

## **21 The Client's Obligations**

21.1 The Client must:



- (a) provide NTT with reasonable assistance and information to assist it to provide the Services;
- (b) 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.

21.2 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.

## 22 Subcontractors

22.1 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.

## 23 Confidentiality

23.1 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.

23.2 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.

23.3 The operation of this clause 23 survives the expiry or earlier termination of this Agreement.

## 24 Limitations on liability

24.1 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.

24.2 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.

24.3 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, Page 24 of 26 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.

24.4 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.

24.5 Notwithstanding the other provisions of this clause 24, 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.

24.6 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.

## 25 Termination

- 25.1 If a party breaches any provision of this Agreement, the other party may:
- 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
  - 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.
- 25.2 Either party may terminate this Agreement immediately if the other party:
- enters into any arrangement between itself and its (or any class of its) creditors;
  - ceases to be able to pay its debts as they become due;
  - ceases to carry on business;
  - has a mortgagee enter into possession or disposes of the whole or any part of its assets or business;
  - enters into liquidation or any form of insolvency administration; or
  - 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.
- 25.3 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.
- 25.4 If NTT terminates this Agreement on any of the grounds set out in clauses 25.1 or 25.2 the Client is not entitled to a refund or adjustment of any applicable Set-Up Fee or of any Service Charges paid to NTT.
- 25.5 If the Client terminates this Agreement on any of the grounds set out in clauses 25.1 or 25.2, 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.
- 25.6 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.

## 26 Soliciting Employees or Contractors

- 26.1 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.
- 26.2 This clause does not apply where:
- a person responds to an advertisement for employment by a party; or
  - the employment is agreed to by the parties.
- 26.3 Each party acknowledges that the restriction specified in this clause 26 is in the circumstances reasonable and necessary to protect each party's legitimate interests.

## 27 General Conditions

### Other terms

- 27.1 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

- 27.2 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-conditionsadditional-charge-services.pdf>.

### Governing law

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

### Prior agreements

- 27.4 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

- 27.5 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



27.6 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**

27.7 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**

27.8 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**

27.9 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**

27.10 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.