Specific Terms: Managed Employee Experience – Premium (MEX-P)

The service-specific terms and conditions set out in this document ('**Specific Terms**') are incorporated in and apply to the SOW formed between NTT DATA and Client for the provision of NTT DATA's Managed Employee Experience – Premium (MEX-P) core services and, as well as the optional add-on service components made available by NTT DATA in connection therewith (the '**Services**').

Unless otherwise specified therein, the Specific Terms set out in Part A apply to all MEX-P Services, including any add-on service components purchased by Client and included within the scope of the relevant MEX-P SOW.

The Specific Terms set out in Part B supplemental to Part A, and only apply to the specific optional add-on service component indicated therein (to the extent such add-on service component is purchased by Client and included within the scope of the relevant MEX-P SOW).

These Specific Terms are maintained by NTT DATA at this URL (or successor site) and may be updated by NTT DATA from time-to-time (effective upon publication).

Part A. Managed Employee Experience – Premium (MEX-P) Services

1 Service-specific definitions

1.1 Capitalized terms used but not defined in these Specific Terms will have the same meaning otherwise set out in the Agreement.

1.2 As additional or amended defined terms in these Specific Terms (or as used in the applicable SOW):

Availability means the ability of an IT service or other Configuration Item to perform its agreed function when required.

Business Day means Monday through Friday from 9 a.m. to 5 p.m. local time and excludes weekends and public holidays.

Case means Client-related cases created within the NTT DATA Services Portal that are a mechanism for capturing the details of a service, project, transaction, or response to Client requests for management of any Incident, Service Request or Change.

Change Advisory Board (or **CAB**) means a formalized body that supports the assessment, prioritization, authorization, and scheduling of changes and comprises Client and, if applicable, NTT representatives.

Change Request means a request generated by Client or NTT for the addition, modification, or removal of anything that could have a material impact on a Configuration Item or the provision of the MEX-P Services and any Service Feature thereunder.

Client Connectivity and Prerequisites Guide means the document that describes the mechanics on what is required technically to be configured within Client 's collaboration environment to enable access and protocols to deliver the MEX-P Services.

Configuration Item means any Device or User supported as part of the MEX-P Services.

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

Event means a change of state that has significance for the management of a Configuration Item.

Incident means, in relation to MEX-P Services, an unplanned interruption or reduction in quality related to one or more supported Configuration Items.

Major Incident means an Incident that meets specific criteria and has a high severity impact on Client or for which NTT DATA warrants a greater organizational focus to manage.

Manufacturer means either the original equipment manufacturer of any relevant hardware or the owner or licensor of any relevant software, as applicable.

Permanent Resolution means the action taken to resolve the root cause of an Incident or a Problem.

Priority means the relative urgency and importance of an Event, Incident, Problem, Change Request, or Service Request, based on a combination of impact and urgency, with Priority 1 being the highest and Priority 5 being the lowest.

Privileged Access Management (or **PAM**) means the application used by NTT DATA support engineers to securely access Client's in-scope tenant applications in order to deliver the MEX-P Services, as described further in clause 6.8 below.

Problem means the cause of one or more Incidents.

Security Vulnerabilities means an unintended flaw in software code or a system that leaves it open to the potential for exploitation in the form of unauthorized access or malicious behavior such as viruses, worms, Trojan horses and other forms of malware.

Sensitivity Label: General

Service Calendar means the hours specified in the SOW during which NTT must perform its obligations under a Service Feature in respect of a Configuration Item.

Service Commencement Date means the date of Service Acceptance for the steady-state MEX-P Services, as described in clause 2.1 below.

Service Desk means the NTT DATA service desk that acts as a single point of contact between NTT DATA and Client to manage all Incidents, Problems, Change Requests and Service Requests, and all related communications and escalations with Client.

Service Feature means, with respect specifically to the MEX-P Services delivered pursuant to these Specific Terms, a specific feature or outcome of the Services, as identified in the applicable Service Description.

Service Level Target mean the service commitments set out in the Service Levels.

Service Management System means the system used by NTT DATA to record information relating to the supply of the applicable MEX-P Services.

Service Operations Manual means a reference document provided to Client (prior to the Service Commencement Date), which describes how to contact and interact with NTT DATA in connection with the MEX-P Services being delivered.

Service Request Catalogue means a list of approved requests within a catalogue, that are generated by Client or NTT DATA for information, for a Standard Change, or for access to a service or report, and that is managed by the Service Request Fulfilment process.

Service Request Fulfilment means the process responsible for managing the lifecycle in respect of a Service Request generated by Client or NTT DATA.

Service Unit means a unit of measure that is used to track and calculate specific Service Request Fulfilment activities on a consumption basis, as set out in the Service Request Catalogue.

Services Portal means the internet portal created and configured by NTT DATA for access by Client as part of the MEX-P Service.

Standard Change means a low risk, relatively common change that is mutually agreed and documented and constitutes a preapproved change that is implemented through a Service Request.

Third-Party Supplier means a third-party company or entity with whom Client will have a separate agreement to provide a product or a service to maintain a Configuration Item at an operational level. This may include an Affiliate of NTT DATA, provided that in such a case, the relevant product or service would remain subject to a separate Order or SOW with such Affiliate of NTT DATA.

Unified Monitoring Application (or **UMA**) means the connectivity, infrastructure, and applications delivered by NTT DATA to monitor Client's Configurations Items to trigger alerts, indicate health status, and display reporting in the Services Portal.

Unified Provisioning Application (or **UPA**) means the connectivity, infrastructure, and applications delivered by NTT DATA to perform self-service MACDs on Client's Configurations Items from the Services Portal.

Workaround means a set of actions that reduces or eliminates the impact of an Incident or Problem for which a Permanent Resolution is not yet available.

2   Scope of Services

Service commencement

2.1   The provision of steady-state MEX-P Services, as set forth in the relevant SOW, will commence on the Service Commencement Date and, unless terminated earlier in accordance with the terms of the Agreement, will endure for the SOW Term. The Service Commencement Date will be declared upon the earlier to occur of:

(a)   the first production or non-test Configuration Item being onboarded to the steady-state MEX-P Services; or

(b)   receipt of Client's written confirmation (via email) that the following service acceptance criteria for the steady-state MEX-P Services has been met:

    (i)   the in-scope managed service components for the MEX-P Services have been enabled and made available to Client;

    (ii)   Client has received and approved the Service Operations Manual; and

    (iii)   Client has verified completion of any service acceptance testing, as set out in the relevant transition plan or otherwise previously agreed by the parties.

with the applicable milestone, as set forth in (a) and (b) above, being deemed '**Service Acceptance**'. If neither (a) nor (b) above have occurred within 10 days from NTT DATA giving Client notice that the relevant service acceptance criteria has been met, Service Acceptance will be deemed to have occurred on the day immediately following the expiration of such 10-day notice period.

Service Features and scope

2.2 The MEX-P Services consist solely of the Service Features which, together with the parties' respective obligations thereunder, are set out in the applicable Service Description and NTT DATA will only supply to Client those Service Features in respect of the Configuration Items specifically set out in the SOW.

2.3 Technology that is not supported as a standard supported technology by the MEX-P Services must be approved by NTT DATA before it is included in scope of the MEX-P Services.

2.4 Where there are variations to a Service Feature that are specific to a given MEX-P Service, or where there is provision made for Service Features to be customized as part of a given MEX-P Service, such varied or customized Service Features, and the parties' respective obligations thereunder, will be set out in the applicable SOW.

3 Location of Services

3.1 NTT DATA will provide the MEX-P Services from its service management locations, as may be set out in the applicable SOW or otherwise determined by NTT DATA.

3.2 Clause 3.1 notwithstanding, the service management and public or private cloud infrastructure locations relating to any third-party platforms or services provided by Third-Party Suppliers (including any public or private cloud environments) are solely determined by the applicable Third-Party Supplier or as may be selected by Client based on the options made available by such Third-Party Supplier. Client acknowledges and accepts that any such Third-Party Suppliers are solely responsible for the provision of any relevant third-party platforms and services, including, as applicable, any data transfer or residency policies and failover or disaster recovery services connected therewith.

4 Service Management System

4.1 NTT DATA may, in relation to the MEX-P Services delivered pursuant to these Specific Terms, make adjustments or add enhancements to its Service Management System during the SOW Term. NTT DATA will provide advance notice of any such changes, where possible.

5 Configuration Items

5.1 The applicable SOW will set out the Configuration Items, identifying the relevant Devices and User licenses and corresponding details. The Device and User license lists will be subject to change on an ongoing basis as Devices and User licenses are changed, added, and removed in accordance with NTT DATA processes. At any point in time, the definitive list of Configuration Items under management will be as specified in NTT DATA's Service Management System.

5.2 Where NTT DATA determines that it is unable to continue to provide the MEX-P Services on an End-of-Life Configuration Item, NTT DATA may, by giving Client at least 90 days' prior written notice, remove the End-of-Life Configuration Item from the Device or User license list, as applicable.

5.3 In addition to the Client obligations described in these Specific Terms and any general obligations set out in the Agreement (including as may be specified in the SOW), Client must:

(a) complete any transition tasks and changes to Configuration Items, as set out in the SOW or otherwise reasonably requested by NTT DATA, to enable the provision of the MEX-P Services and allow NTT DATA to perform its obligations thereunder;

(b) ensure that Configuration Items are covered by valid hardware and software maintenance contracts, with service levels and response times that align with the Service Level Targets and response times to be provided by NTT DATA;

(c) keep all records relating to use and performance of the Configuration Items as NTT DATA may reasonably request and ensure that NTT DATA personnel have access to such records at all reasonable times;

(d) keep an up-to-date copy of configuration files or other relevant information for all Configuration Items and provide a copy to NTT DATA when requested, except where NTT DATA is responsible for this as part of its contractual obligations to Client under a Service Feature;

(e) maintain backups of configuration files (which NTT DATA will work with Client to restore in-scope Configuration Items, if needed);

(f) notify NTT DATA through a Service Request of all changes to configuration files, including User access credentials, that will affect Configuration Items and the configuration download, no less than 2 business days before implementing the change;

(g) maintain the integrity of log files associated with a Configuration Item to enable NTT DATA to fulfil its diagnostic obligations. In the event log files are deleted or modified, Client will incur an additional charge for NTT DATA to remediate;

(h) review and validate the information stored in the Device and User license lists, as applicable, and notify NTT DATA of any discrepancies on a regular basis; and

(i) ensure the correct software versions are installed on all Devices to enable NTT DATA to retrieve configuration files.

6 Client obligations

Client equipment, network, and systems

6.1 Client must ensure that any of its equipment, network, or systems connected to any NTT DATA equipment, network, or systems used in receiving the MEX-P Services is technically compatible, connected, and used in accordance with any instructions or safety and security procedures, as communicated by NTT DATA.

6.2 If any Client equipment, network, or systems do not comply with the requirements of clause 6.1 above, Client must promptly advise NTT DATA. Upon notice from NTT DATA, Client must disconnect such equipment, network, or systems, or, where applicable, permit NTT DATA to do the same, the cost of which will be borne by Client.

6.3 NTT DATA makes no warranty regarding the interoperability between the NTT equipment, network, or systems and any Client equipment, network, or systems.

User applications and software

6.4 Client must ensure that all User workstations accessing the functionality or receiving the benefit of the MEX-P Services have supported and compatible versions of the necessary User applications and software, including web browsers and operating systems, installed and maintained during the SOW Term.

Licensing

6.5 Unless the applicable SOW expressly indicates that NTT DATA will procure specified third-party licenses for or on behalf of Client in connection with the MEX-P Services, Client must procure and maintain all relevant third-party licenses from any Third-Party Supplier necessary for Client's use of the MEX-P Services.

6.6 Without limiting Client's obligations under clause 6.5 above, for the vendor platform deployment model, Client must adhere to all applicable license mobility requirements for any Client-provided licenses procured from a Third-Party Supplier, including without limitation the timely submission of any license verifications forms.

Client connectivity

6.7 In order to enable NTT DATA to provide the MEX-P Services in accordance with the applicable SOW, Client will comply with all requirements specified in the Client Connectivity and Prerequisites Guide and will perform all Client obligations specified therein, including but not limited to providing NTT DATA with access via routing and firewall rules to all IP addresses that NTT DATA is required to manage under the applicable SOW. Where this is the required, NTT DATA will provide all IP address ranges needed to configure conditional access controls.

Privileged Access Management (PAM)

6.8 In order to enable NTT DATA to provide the MEX-P Services in accordance with the applicable SOW, Client must permit NTT DATA to enable one of the supported Privileged Access Management (PAM) options, as detailed further in the Client Connectivity and Prerequisites Guide. Client must inform NTT DATA of its preferred PAM option prior to the start of transition activities, and depending on the elected option, additional one-time fees and recurring monthly Charges may apply.

Client Microsoft Active Directory

6.9 Client will ensure that its Microsoft Active Directory configuration, including the forest level, service packs, and patches, are compatible with the MEX-P Services.

Third-Party platform access requirements

6.10 In order for NTT DATA to enable Client to have the ability to self-provision, automate (where required by the Client), manage voice users, perform extension number management and voice policies, etc. within their collaboration environment using the Services Portal, Unified Provisioning Application (UPA), and Unified Monitoring Application (UMA), Client must provide a level of access to either their Microsoft Azure Active Directory and Microsoft Teams platform, or to their Cisco Webex Control Hub for the synchronization and execution of such tasks. The Client Connectivity and Prerequisites Guide details these technical requirements in-depth and NTT DATA will review these requirements with the Client in advance of the onboarding of the MEX-P Services to ensure all Client security policies and requirements are adhered to wherever possible.

Carrier circuit coordination

6.11 Except in relation to specific, in-scope Service Request Fulfilment tasks where the Carrier Circuit Coordination add-on service component is purchased by Client, Client acknowledges that the procurement and commissioning of new telecommunication circuits, replacement of existing telecommunication circuits, and Service Request Fulfilment tasks associated with third-party provided telecommunication circuits are not in scope of the MEX-P Services and are the sole responsibility of Client to procure from the third-party telecommunication circuit provider. For the avoidance of doubt, NTT DATA will have no obligation to procure or commission new telecommunication circuits, replace existing telecommunication circuits, or perform out-of-scope Service Request Fulfilment tasks, regardless of whether the Carrier Circuit Coordination add-on service component is purchased by Client.

6.12   During the Transition-In Period, Client will be required to submit to NTT DATA a signed letter of authorization (LOA) for each applicable third-party telecommunication circuit provider appointed by Client pursuant to clause 6.11 above.

Change management

6.13   Client acknowledges that the change management service feature (as described in the MEX-P Service Description) is not generally subject to co-management between Client and NTT DATA and accordingly Client may not perform its own Service Request Fulfilment except for any Service Request Fulfilment task expressly identified as a self-service MACD in the Service Request Catalogue (which may be performed by the Client's administrator via the Services Portal).

Emergency calling (E911 – nomadic & dynamic routing for United States and Canada)

6.14   To the extent applicable (based on the scope of Services to be delivered pursuant to the applicable SOW), Client must, as its sole responsibility, provide NTT DATA with accurate and validated dispatchable location information (meaning a validated street address and any other address-related information such as floor, suite or apartment number, or similar such information necessary to adequately identify the location of the calling party) of each on-premises caller located in the United States or in Canada. It is likewise Client's sole responsibility to configure the relevant platform, so that the dispatchable location information of the caller is conveyed to the appropriate Public Safety Answering Point (PSAP) with 911 calls. Client must additionally provide NTT DATA with written notice of any changes relating to location information for Users and sites.

7   Maintenance

7.1   From time-to-time NTT DATA will schedule preventative maintenance ('**Scheduled Maintenance**') for the MEX-P Services which may lead to non-achievement of Service Level Targets. Wherever possible, Client will be given no less than 14 days prior notice of the Scheduled Maintenance and the Scheduled Maintenance will occur within the maintenance window specified in the table below:

Day	Scheduled Maintenance window
Monday – Saturday	12h00 am - 06h00 am
Sundays	12h00 am - 08h00 am

For purposes of the timing specified in the table above, the Client's local time zone where the Scheduled Maintenance is to be performed is applicable.

7.2   Scheduled Maintenance may be attributable to, inter alia:

(a)   preventative maintenance;

(b)   system moves or reconfigurations;

(c)   system testing of new systems or enhancements;

(d)   upgrades, application of security patches, application patches;

(e)   operating system patches; and

(f)   implementations of new systems or enhancements.

7.3   NTT DATA may also be required from time to time to conduct unscheduled maintenance ('**Unscheduled Maintenance**') for the Services, attributable to factors outside of its reasonable control, including but not limited to the service level exclusion events specified in clause 3 of the Service Levels, which may lead to non-achievement of Service Levels Targets. In such circumstances NTT DATA will endeavor to provide Client with as much prior notice of such Unscheduled Maintenance as is reasonable under the circumstances.

8   Fair Use Policy

8.1   NTT DATA will not charge Client for individual in-scope Service Requests. NTT DATA employs a 'fair use' policy under which NTT DATA reserves the right to limit the number of in-scope Service Requests after an extended timeframe where Client has initiated an excessive amount of such requests, as determined by NTT DATA in accordance with the boundary conditions set out in clause 8.2 below (or other reasonable grounds as NTT DATA may determine under the circumstances) ('**Fair Use Policy**'). In order to enforce the Fair Use Policy, NTT DATA will monitor Client's actual usage of the MEX-P Services against the anticipated or expected usage.

8.2   The following are the boundary target volumes considered a violation of the Fair Use Policy:

Boundary conditions (target volumes)	On a monthly basis, 5% of the Service Units consumed against the combined number of Users and Devices, provided that within this monthly limit, the number

	of Service Units consumed by Client per day should not exceed a maximum of 0.5% per ratio of number of Users and Devices.

8.3   At its discretion, NTT DATA reserves the right to invoke the Fair Use Policy, and to review and limit its provisions of Service Requests. In extreme cases, NTT DATA may, with reasonable notice, invoice Client for the services rendered which are deemed to be a violation of the Fair Use Policy or suspend Client's ability to use the Service Request Fulfilment service feature.

8.4   Service Units are determined or based on the relevant rate card described in the Service Request Catalogue. For the avoidance of doubt, activities that are not listed within the defined scope of the Service Request Catalogue, such as any project-based activities, will be quoted by NTT DATA on a time and materials basis and subject to the parties entering into a separate statement of work.

Part B.   Managed Meeting Room Environment (Optional Add-on Service Component)

These terms, along with all other relevant and applicable terms of the Agreement (including, for the avoidance of doubt, the terms set out in Part A of these Specific Terms above, apply to the provision of the Managed Meeting Room Services, to the extent such add-on services are purchased by Client and included within the scope of the relevant MEX-P SOW.

For purposes of its use in these Specific Terms and applicable SOW, '**Managed Meeting Room Environment Services**' or '**MMRE Services**' means a managed service for in-scope Devices within the contracted meeting rooms set out in the applicable SOW, as further described in the applicable Service Description.

1   Applicable Third-Party Terms

1.1   NTT DATA may use or make available to Client certain third-party software in connection with the Managed Meeting Room Services. Notwithstanding anything to the contrary in the Agreement, Client's use of and access to the third-party software in connection with the Managed Meeting Room Services is subject to and conditioned on Client's agreement to and compliance with the Third-Party Terms contained in Attachment A to these Specific Terms.

1.2   Client expressly accepts and agrees to be bound by the Third-Party Terms set out in clause 1.1 above and, for purposes of such Third-Party Terms, references to 'you', 'Customer', or 'Client' (or any substantively similar term identifying the party subject thereto) will be interpreted to refer to Client and, as applicable, its relevant Users.

1.3   Notwithstanding anything to the contrary in the Agreement, if required to comply with NTT DATA's agreements with the applicable licensors of the third-party software, NTT DATA (or the applicable licensor) may amend these Third-Party Terms, including the location of the attached documents, from time to time by notifying Client, either through disclosure of the updated version or by publishing the updated version (as applicable).

Attachment A   Utelogy Third-Party Terms

Where the Managed Meeting Room Environment add-on services ('**MMRE Services**') are purchased by Client and included within the scope of the relevant MEX-P SOW, these Third-Party Terms are hereby incorporated into the Agreement and govern Client's use of Utelogy Software (defined below), which has been integrated into the MMRE Services.

Utelogy Corporation ('**Utelogy**') owns the rights in and to a suite of software solutions for use in connection with the control and global management of media and audiovisual rooms, as well as IoT devices such as printers, wireless access points, occupancy sensors, HVAC, security, building automation and smart building devices and any and all such devices within an enterprise that may need to be controlled and managed from time to time (the '**Software**') and all related documentation (the '**Documentation**'). Access to, and use of, the Software and the Documentation is governed by these Third-Party Terms.

UTELOGY AND THE CLIENT ACCESSING OR USING THE SOFTWARE OR DOCUMENTATION AS INTEGRATED IN OR A COMPONENT OF THE MMRE SERVICES ('YOU' OR 'CLIENT', AS USED HEREIN) AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THESE THIRD-PARTY TERMS SO LONG AS THE UTELOGY SOFTWARE IS UTILIZED BY YOU. THESE THIRD-PARTY TERMS ARE AN AGREEMENT ENFORCEABLE UNDER CALIFORNIA LAW INCLUDING, WITHOUT LIMITATION, THE UNIFORM ELECTRONIC TRANSACTIONS ACT.

These Third-Party Terms provide Client with access to, and use of, the modules and other functionality of only the Utelogy Software integrated in or used as a component of the MMRE Services.

Capitalized terms used but not defined in these Specific Terms will have the same meaning otherwise set out in the Agreement.

Utelogy or NTT DATA retains the right to update these Third-Party Terms from time to time. Should any provision of these Third-Party Terms be or become invalid, this shall not affect the validity of the remaining provisions.

1   License

Grant

1.1   Utelogy grants to Client a non-exclusive, non-transferable, revocable, non-sublicensable license to use the Software's executable code and the Documentation solely for its intended purpose and function (the '**License**'). Client may (i) install the Software and the Documentation in the limited number of rooms specified in the applicable SOW (the '**Authorized Facilities**') and (ii) copy the Software and the Documentation for back-up and archival purposes.

Term of License

1.2   The term of the License for each component of the Software is either perpetual (a 'perpetual license') or for the limited time period in which the Software is authorized to be used in connection with the MMRE Services, as set out in the relevant SOW (a 'subscription license'). The License for each component of the Software is a subscription license unless expressly set forth in the applicable SOW (or other relevant ordering instrument) as a perpetual license. Client understands that the availability and use of some or all of the features or functionality of a component made available under a perpetual license may be dependent on Client maintaining a subscription license to one or more additional components.

Successor Product

1.3   In the event that Utelogy ceases to license and/or support any product licensed to Client ('**Old Product**'), and releases a new product whose functionality, features, and price are substantially similar to those of the Old Product ('**New Product**'), Utelogy shall make the New Product available to Client in consideration of license/subscription fees already paid, provided that Client ceases to use the Old Product and provided the Client is current on license/subscription fees. New features that are released in subsequent versions that differ substantially from current functionality may be accompanied by an additive license charge.

Restrictions

(a)   Client shall not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code, operational flow, data structures, and object structures of the Software or any of Software's components, data files, libraries or modules.

(b)   Client shall only use the Software and Documentation in a manner that complies with all applicable laws in the jurisdictions in which the Software and Documentation are used.

(c)   Client shall only use the Software for the benefit of Client. Client shall not lease, rent, distribute, or sublicense the Software to third parties. The Software shall not be used to provide, or in connection with, any commercial service or application that is for the benefit of third parties; provided, however, Client may permit third parties to use the Authorized Facilities and such permitted use may include access to the Software solely as an end user

(d)   Except as expressly authorized by these Third-Party Terms, Client is prohibited from any and all uses of the Software and the Documentation.

Operation of the Software

1.4   *Passwords*. Client is solely responsible for maintaining the confidentiality of passwords associated with the Software. Client must promptly notify Utelogy if any password is lost, stolen, needs to be reset because of a change in personnel or other circumstance which may jeopardize the confidentiality of any password.

1.5   *Support Tool*. Client understands and agrees that the Software is a tool designed to assist with the operation and management of A/V, and other building or enterprise systems. Client is and remains solely responsible for establishing all policies, procedures and practices used in connection with the management and operation of its business.

1.6   *Protection of Private and Proprietary Information*. Depending on the optional feature or features selected, the Software may receive, process, store, or generate output containing private and proprietary information. Utelogy has security policies and procedures in place for the purpose of protecting Client data and PII. Client understands and agrees that it is Client's sole responsibility to select and implement the process, procedure and technology for protecting access to, and use of, such information.

2   Subscription

2.1   Client understands and agrees that access to, and the right to use, the Software and Documentation is for the limited subscription period during which the Software is authorized to be used in connection with the MMRE Services, as set out in the relevant SOW. In the event the SOW, these Third-Party Terms, or the Agreement expires or is terminated the right to use the subscription portion of the Software and Documentation will end and that portion of the Software will cease to function.

3   Modifications and Enhancements of the Software

3.1   In the sole discretion of Utelogy, Utelogy may develop, and make available to Client and other customers, changes, revisions, enhancements and/or modifications to the Software (each a '**Software Revision**').

4   Technical Support.

4.1   Utelogy will provide technical support, maintenance and other support services in connection with the Software as provided in Utelogy's then current technical support program including, without limitation, fee-based support services. Notwithstanding the prior sentence, Client acknowledges and agrees that Utelogy is not obligated to provide technical support or other support services arising from or related to the Software or the Documentation. Further, Utelogy is not responsible for third party drivers that have not been certified by Utelogy. Utelogy, in its sole discretion, has the right to expand, reduce, modify, or eliminate such services, if any at all.

5   Proprietary Property Rights

5.1   All right, title and interest in and to the Software, Documentation and any Software Revision is solely owned by Utelogy. To the extent the Software may include one or more components licensed from third party suppliers and such suppliers own the rights to their respective components, those rights remain with the respective supplier. Conceptual ideas and other feedback provided by Client to Utelogy shall be jointly owned by each party without restriction and without a duty of accounting to the other.

6   Confidentiality / Proprietary Information

6.1   Each party acknowledges that it may be furnished with or may otherwise receive or have access to information, data or material that is confidential or proprietary to the other party ('**Proprietary Information**'). Failure to mark any of the information, data or material as confidential or proprietary does not affect its status as Proprietary Information. Each party agrees to take all reasonable steps preserve and protect the confidentiality of the Proprietary Information. The obligations with regard to Proprietary Information survives termination of this Agreement and remains in effect until all Proprietary Information enters the public domain.

7   Collection of Information.

7.1   As between Client and Utelogy, any information created by the Software in the course of Client's operation of the Software (collectively, '**User Data**'), is owned by Client. Except as otherwise provided herein, Utelogy will not use, modify or copy User Data for any purpose other than to operate the Software or otherwise provide services to Client, and will not disclose User Data to any third party except (i) to a vendor as may be necessary for the operation of the Software or otherwise providing services to Client, or (ii) as may be required pursuant to a criminal investigation or as otherwise required by law. Utelogy may provide User Data to third parties (collectively '**Business Associates**') who provide services for the benefit of Utelogy or Utelogy believes, in its sole discretion, will be useful or applicable to users of the Software. The use of such User Data by these Business Associates is restricted to using the information on behalf of Utelogy or as otherwise directed by Utelogy.

7.2   Notwithstanding anything to the contrary herein, Utelogy may use User Data for improving the Software or operations of Utelogy, including without limitation, analyzing data for the purpose of identifying trends, statistics and measurements that could contribute to the enhancement of the Software or improvement of the products or services offered by Utelogy.

7.3   Utelogy reserves the right to transfer any and all information that it collects to third parties, in the event of a sale, merger or transfer by Utelogy of all or any portion of its assets business.

8 Warranty

LIMITED WARRANTY

8.1 If you follow the instructions articulated in the Utelogy Documentation associated with this Software, the software will perform substantially as described in the Utelogy Documentation. Utelogy warrants that it will exercise due professional care and competence in the delivery of the Software, which at a minimum, shall be the care and skill ordinarily used by members of the profession for projects of substantially similar size, scope, and complexity and practicing under similar conditions at the same time and locality of the Software. During the warranty period, Utelogy warrants the Software shall be free from defects in workmanship, and conform to specifications as set forth in the Utelogy Documentation. This includes all services required to correct defects. Upon notice from Client, Utelogy shall promptly, and in any event within ten (10) calendar days, correct any unsatisfactory services ('Nonconforming Services') at no extra charge to Client.

TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES

8.2 The limited warranty covers the software for one year after acquired by the first user. If you receive supplements, updates, or replacement software during that year, they will be covered for the remainder of the warranty or 30 days, whichever is longer. If the first user transfers the software, the remainder of the warranty will apply to the recipient. Annual Software Maintenance extends the warranty for each additional year maintenance is paid.

EXCLUSIONS FROM WARRANTY

8.3 This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond Utelogy's reasonable control.

9 LIMITATION OF LIABILITY

9.1 IF UTELOGY BREACHES THIS AGREEMENT, UTELOGY'S SOLE LIABILITY IS, IN UTELOGY'S SOLE DISCRETION, ONE OR MORE OF THE FOLLOWING: (A) PROVIDE REPLACEMENT SOFTWARE, (B) ADVISE HOW TO ACHIEVE SUBSTANTIALLY THE SAME FUNCTIONALITY WITH THE SOFTWARE AS DESCRIBED IN THE DOCUMENTATION THROUGH A PROCEDURE DIFFERENT FROM THAT SET FORTH IN THE DOCUMENTATION; OR (C) REFUND THE SUBSCRIPTION FEE(S) PAID BY CLIENT FOR A MAXIMUM OF THE REMAINING SUBSCRIPTION PERIOD IMMEDIATELY FOLLOWING THE EVENT GIVING RISE TO SUCH CLAIM, OR SERVICE CREDITS APPLIED TO YOUR ACCOUNT.

9.2 IN NO EVENT WILL UTELOGY BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR ANY OTHER TYPE OF DAMAGES ARISING OUT OF OR RELATED TO THE USE OR OPERATION OF THE SOFTWARE OR DOCUMENTATION, ANY SERVICES PROVIDED, OR IN CONNECTION WITH THIS AGREEMENT. THE FOREGOING LIMITATION, EXCLUSION AND DISCLAIMER SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

10 Delays

10.1 Neither party shall be liable for delays caused by fire, accident, labor dispute, war insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control (including delays caused by Client or Client's employees, agents, faculty or students). Each party shall use commercially reasonable efforts to minimize the extent of any such delay.

11 Termination; Effect of Termination or Expiration.

Term of Agreement

11.1 Subject to earlier termination as provided herein, the term of these Third-Party Terms will continue for as long as the Software is authorized to be used in connection with the MMRE Services, as set out in the relevant SOW.

Termination for Cause

11.2 Utelogy reserves the right to immediately terminate a subscription license upon thirty (30) days' written notice if Client materially breaches any terms or conditions and fails to cure such breach within that notice period. In the event of a breach, Utelogy may affect immediate termination.

Consequences of Termination

11.3 In all cases of termination or expiration, the Client must cease all use of the Software and Documentation and certify to Utelogy the destruction of all copies thereof. Notwithstanding termination or expiration, any obligation to pay accrued fees, costs, or other compensation shall persist.

12 Additional Provisions

No Third Party Rights

12.1 Unless expressly stated otherwise (including in respect of any enforcement rights reserved by NTT DATA), this Agreement does not create any rights or benefits to parties other than Utelogy and Client.

Restrictions on Transfer; Binding Effect.

12.2   Client shall not directly or indirectly assign, sublicense, transfer or encumber any rights under this Agreement, whether involuntary, by operation of law or otherwise. Any assignment, sublicense, transfer or encumbrance, without the prior written consent of Utelogy, is void. Utelogy has the unrestricted right to assign this Agreement. Without limiting the prior sentences, this Agreement is binding on and inures to the benefit of Utelogy, Client and their respective successors and assigns.

Governing Law

12.3   This Agreement is governed by the laws of the State of California, without regard to its conflict of laws provisions.

Attorneys' Fees

12.4   In any action or proceeding to enforce this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and costs.

Entire Understanding; Waiver; Amendment

12.5   These Third-Party Terms constitute the complete and exclusive statement of the agreement among the parties about the described subject matter. It supersedes all prior written and oral statements, including any prior representation or statement. Any failure to enforce any provision of these Third-Party Terms shall not constitute a waiver thereof or any other provision of these Third-Party Terms. Except as otherwise set out herein, these Third-Party Terms may not be modified, amended, or waived except by an instrument in writing signed by the party to be bound.

Severability

12.6   If a court of competent jurisdiction finds any provision of these Third-Party Terms invalid or unenforceable as applied to any circumstance, the remainder of these Third-Party Terms and the application of such provision to other persons or circumstances shall be interpreted so as best to effect the intent of the parties hereto. The parties further agree to replace any such void or unenforceable provision of these Third-Party Terms with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provision

Survival

12.7   All terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such expiration or termination and shall continue thereafter in full force and effect, subject to the applicable statutes of limitations.

Dispute Resolution

12.8   Before initiating any legal proceeding, Client agrees to report any issue or concern to Utelogy. Client agrees to negotiate with Utelogy in good faith to resolve any issue or concern. Either Client or Utelogy may initiate a legal proceeding if Client's issue or concern is not resolved within 15 days of receipt of notice by Utelogy.

12.9   All actions or proceedings arising out of or related to these Third-Party Terms shall be subject to the exclusive jurisdiction of the state and federal courts of San Francisco County in the State of California. Client and Utelogy each waive any objection based on jurisdiction, venue, or inconvenient forum.

12.10   *NO CLASS ACTIONS*. Client may only resolve disputes with Utelogy on an individual basis. Client may not bring a claim as a plaintiff or a class member in a class, consolidated or representative action. Client understands and agree that class arbitrations, class actions, private attorney general actions and consolidation with other legal proceedings is not permitted.

12.11   Utelogy shall not issue any press releases containing, nor advertise, reference, reproduce, use, or display, Client's name or any Client trademark without Client's express prior written consent in each instance. Client's written approval can only be provided through written authorization from Client.