

## Virtual Private Cloud: Terms of Service

### 1 Introduction

- 1.1 These terms and conditions (the “**Terms**”) together with the following documents make up the contract that is formed between Client and NTT when NTT accepts an Order (the “**Agreement**”):
- (a) these **Terms**. The Terms are mainly legal in nature.
  - (b) all applicable **Orders**. Each Order sets out Service specific information including volumes and charges.
  - (c) **Third Party Software Terms**. The Services include software components provided to NTT by other companies and these companies require certain terms and conditions to be included in the Agreement.
  - (d) **AUP**. The Acceptable Use Policy prohibits certain types of activity, e.g. hacking and spamming, and sets out general rules that apply to use of the Services.
  - (e) **Usage Pricing Terms**. Prices and charges.
  - (f) **Service Descriptions**. These documents describe the features and functions of the Services.
  - (g) **Service Level Terms**. The performance and other metrics applicable to the Services.
- 1.2 The Agreement governs NTT’s provision and Client’s use of the Services.
- 1.3 As of 1 JULY 2019, Dimension Data was (along with certain other members of the NTT corporate group) reorganised to create a new NTT-branded global operating company. As part of that reorganisation:
- (a) Dimension Data contracts, including the documents comprising this Agreement (as set out above), have been rebranded; and
  - (b) the Dimension Data entity identified in your Order may have changed or updated its corporate name.
- For the avoidance of doubt, any reference to “Dimension Data” in the Order or any other document comprising the Agreement will now be interpreted to read “NTT”, as that term is defined below. The reorganisation referenced in this Section 1.3 (including the rebranding and any corporate name change described in (a) and (b) above) does not invalidate or impact (in any way) the enforceability of the Agreement. Each party’s rights and obligations under the Agreement (including, more specifically, in relation to the Services) are not modified as a result of the reorganisation, rebranding and/or corporate name change.
- 1.4 Virtual Private Cloud was previously referred to as “Public CaaS (MCP 2.0)” and/or “Public IaaS (MCP 2.0)”. Any reference to “Public CaaS (MCP 2.0)” and/or “Public IaaS (MCP 2.0)” in the Order or any other document comprising the Agreement will now be interpreted to read “Virtual Private Cloud”. Each party’s rights and obligations under the Agreement (including, more specifically, in relation to the Services) are not impacted or modified as a result of this name change.

### 2 Definitions

2.1 In these Terms:

**Administrator** means the single employee, agent or independent contractor authorised by Client, to provision, manage and administer the Services.

**API** means the application programming interface made available by NTT in connection with the Services, including the associated technical and administrative specifications, standards, requirements, procedures and communication protocols published by NTT.

**AUP** or **Acceptable Use Policy** describes obligations associated with use of the Services, located at <https://hello.global.ntt/-/media/ntt/global/legal/global/ntt-ltd-aup-cis-cloud-services-apr20.pdf>.

**Client** means the entity ordering Services from NTT, as identified in the applicable Order.

**Client Application** means software owned or licensed by Client that Client installs on the Services for use by the Client and third parties authorised by Client including customers and other end-users.

**Client Content** means Client Applications and all other content, materials or data that Client uses, installs, uploads or stores on the Services.

**Confidential Information** has the meaning given in Section 8.

**Credentials** mean a unique log in and password for the Administrator or a Sub-Administrator to access and use the Services.

**Documentation** means the developer guides, getting started guides, user guides, quick reference guides, and other documentation for the Services that NTT provides or makes available to Client.

**Effective Date** of an Order means the date that NTT accepts the Order under Section 3.

**Emergency Incident** means an Incident that renders the Services inoperative or causes a complete failure of the Services and impacts a large number of users and for which an effective workaround is not available.

**Excusing Event** means any of:

- (a) Client's acts or omissions or those of a third party for which Client is responsible, including failure to supply accurate, complete, and timely information when requested;
- (b) a Force Majeure Event (as defined in Section 16.10);
- (c) routine maintenance of the Services (as described in Section 7.1), any other scheduled downtime agreed to by the parties or emergency or unscheduled maintenance of the Services (as described in Section 7.2);
- (d) defects in Third Party Software or NTT's loss of license rights or restrictions imposed by third party licensors with respect to Third Party Software;
- (e) unavailability of necessary technology or other resources on commercially reasonable terms;
- (f) issues including configuration issues with any operating system, database, application, network, hardware, infrastructure, or other code or materials not provided by NTT;
- (g) any act or omission of a third party or that is not caused by NTT (for example, hacking, denial of service attacks and the introduction of malware including viruses), provided that NTT uses reasonable efforts to maintain current versions of Software patches; or
- (h) compliance with any applicable law or requests of governmental entities, in each case that adversely affects NTT's ability to provide the Services.

**Fees** mean the fees payable by Client to NTT for the Services, as described in Section 12 and the applicable Order.

**Geography** means a geographic region in which NTT maintains one or more Locations. The Geographies for a Service are set out in the Service Description.

**Incident** means a failure of the Services to conform in a material respect with the applicable Service Description.

**Incident Correction** means a bug fix, patch, or other modification or addition that brings the Services into material conformity with the applicable Service Description.

**Location** means a physical location from which NTT provides Services or in which NTT maintains an MCP necessary to provide the Services.

**MCP** or **Managed Cloud Platform** means the computing hardware and Software including NTT's automation and orchestration tools used by NTT to provide Services to Client.

**Minimum Commitment Plan** means a Plan that includes a Minimum Commitment Term.

**Minimum Commitment Term** means a period of consecutive months during which Client commits to pay a minimum Fee for Services, as indicated in the applicable Order.

**Minimum Usage Commitment** means the minimum Fee that Client commits to pay each month during the Minimum Commitment Term.

**NTT** means the NTT entity (identified in the applicable Order) providing Services to Client.

**Optional Services** means those optional Services described in the Service Description for Optional Services ("**SDOS**") located at <https://hello.global.ntt/en-us/legal/optional-services-service-descriptions>.

**Order** means an order for Services submitted by Client and accepted by NTT.

**Other Incident** means any Incident other than an Emergency Incident.

**Plan** means a plan for Services selected by Client in the applicable Order and includes Minimum Commitment Plans and Usage-Based Plans.

**Public Software** means open source software as that term is defined by the Open Source Initiative. Public Software includes software distributed under the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, or derivatives or similar licences.

**Services** means the information technology resources and services indicated in the applicable Order and described by the applicable Service Descriptions.

**Service Commencement Date** means the time indicated in the applicable Order from when NTT will commence providing the Services being either: (a) a calendar date; or (ii) the occurrence of an event or completion of a milestone. Client is deemed to have access to the Services when NTT sends the Welcome Pack containing Credentials to Client by email.

**Service Description** means, as applicable based on the Services indicated in an Order, the Virtual Private Cloud Service Description and any applicable SDOS.

**Service Level Credit** means a percentage rebate from the Fees that Client may receive if NTT fails to meet a Service Level, calculated as set out in the Service Level Terms.

**Service Level Failure** means, for a particular Service Level during a particular calendar month, a failure by NTT to meet that Service Level during the calendar month (excluding a failure caused by an Excusing Event).

**Service Levels** mean the service levels (if any) applicable to the Services, located at <https://hello.global.ntt/-/media/ntt/global/legal/global/ntt-ltd-virtual-private-cloud-service-level-terms-v5> (the "**Service Level Terms**").

**Service Portal** means a portal accessible by the Administrator or a Sub-Administrator that enables Client to manage and administer certain functions of the Services on its own. The URL for the Service Portal is included in the Welcome Pack.

**Service Request** means a request by Client to NTT for Technical Support.

**Software** means the software (including the API) that NTT makes available for Client's use as part of the Services, including both NTT's software and Third Party Software.

**Sub-Administrator** means an employee, agent, independent contractor or automated application account of Client whom the Administrator authorises to provision, manage and administer the Services.

**Support** means Incident Correction and Technical Support.

**Technical Support** means answering questions and providing information to Client regarding the Services but excludes Incident Correction.

**Third Party Software** means Public Software and other software owned by third parties that NTT uses or makes available to Client in connection with the Services.

**Third Party Software Terms** means the terms and conditions applicable to use of Third Party Software located at <https://hello.global.ntt/en-us/legal/third-party-software-terms-and-third-party-terms>.

**Usage** means Client's monthly usage of the Services, as measured in units of the currency set out in the applicable Order and the Usage Pricing Terms.

**Usage-Based Plan** means a Plan under which Client pays for Services based on Client's Usage.

**Usage Pricing Terms** are at <https://hello.global.ntt/en-us/legal/cloud-rate-card>

**Users** means the individuals using or receiving the benefit of the Services by or on behalf of Client. Users include Administrators and Sub-Administrators, other Client users and users at Client's customers and third party service providers.

**Virtual Private Cloud** means the cloud computing services (which may include access to and use of hosted Software and Documentation) provided by NTT to Client, as set out in an Order and more fully described (including the features, functions, limitations and restrictions) in the Virtual Private Cloud Service Description located at <https://hello.global.ntt/-/media/ntt/global/legal/global/ntt-ltd-virtual-private-cloud-service-description-v11>.

**Welcome Pack** means the materials including Administrator's Credentials and access instructions that NTT provides to Client to allow Client to access the Services.

### 3 Orders

#### Ordering Services

3.1 Client may order Services and Optional Services by submitting Orders. Orders may be submitted on-line, in electronic or paper format and must include the applicable Fees and be in a form approved by NTT.

#### Ordering Optional Services

3.2 NTT's provision of an Optional Service is subject to the availability of and NTT's capacity to provide the applicable Optional Service. NTT may reject an Order for Optional Services for any reason. Optional Services may also be subject to additional terms and conditions and additional Fees, as indicated in the SDOS or elsewhere.

#### Acceptance of Orders

3.3 An order is only binding on NTT once accepted as follows:

- (a) in the case of Client's first Order for Services, the earlier of when NTT
  - (i) countersigns a paper Order; and
  - (ii) sends the Welcome Pack containing Credentials to Client by email; and
- (b) in the case of subsequent Orders for Services and Orders for Optional Services, the earlier of when NTT:
  - (i) sends to Client an email confirming acceptance of the Order;
  - (ii) countersigns a paper Order; and
  - (iii) commences performing the applicable Services.

#### Appointment of Administrators

3.4 In its first applicable Order for Services Client will designate one Administrator. The Administrator is authorised by Client to provision Services, order additional Services, manage Client's use of Services, appoint Sub-Administrators and issue Credentials. Client may also automate the provisioning, ordering and management of Services through the API. Any and all actions, requests and Orders made using Credentials or through the API will be deemed to have been authorised by Client and Client will be responsible for the associated Fees.

#### Sub-Administrators

3.5 The Administrator may designate one or more Sub-Administrators. Sub-Administrators may perform all acts of the Administrator other than appointing Sub-Administrators. Appointment of Sub-Administrators may constitute additional Usage and be subject to additional Fees as described in the Usage Pricing Terms.

#### **Client Responsibility for Credentials**

3.6 Client is responsible for:

- (a) maintaining the security of Credentials;
- (b) ensuring Credentials are only used by the Administrator or Sub-Administrators; and
- (c) the acts and omissions of the Administrator, all Sub-Administrators and any person using Client's Credentials.

3.7 Client will notify NTT immediately in writing if it becomes aware of:

- (a) any loss, theft, or unauthorised use of Credentials; or
- (b) any breach of this Agreement by the Administrator or a Sub-Administrator

#### **Commencement of Services**

3.8 Following acceptance of an Order, NTT will perform the Services from the Service Commencement Date.

#### **Selecting Locations and Geographies**

3.9 Client will access the Services from, and store and process all Client Content in, the Location and Geography designated in the Order.

3.10 Locations and Geographies may be changed as follows:

- (a) for Services allowing a change of Location within a Geography through the Service Portal, Client may request the change through the Service Portal; or
- (b) in other cases, Client must request access to a different Location or Geography in writing to NTT, and if NTT approves the request, a new Order will be agreed and the Location available in the new Geography will then be available to Client.

3.11 Client acknowledges that the addition of any Locations may affect the calculation of Client's Usage, Fees and Service Level Credits.

## **4 Access to Services**

#### **Limited Right and License Granted**

4.1 Subject to Client's payment of all Fees and the terms and conditions of the Agreement, NTT grants to Client a limited, non-exclusive, non-transferable, non-sublicensable right and license during the term of each applicable Order for Client to access and use the Services as described in the applicable Service Description. This license includes the right to use the Documentation and APIs in connection with the Services.

#### **Restrictions**

4.2 Except as expressly permitted by the Agreement, Client will not and will ensure that Users do not:

- (a) reproduce, download, frame, mirror, or create derivative works from the Services;
- (b) decompile, disassemble, or otherwise reverse engineer any Services;
- (c) access or use any Services in order to build any competing product or service;
- (d) license, sub-license, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise make available any Services to any third party, or use any Services on a service bureau basis, however, nothing in this paragraph (d) prohibits Client from providing access to any Client Content to Users;
- (e) access or use any Services in violation of the AUP or any law or regulation;
- (f) remove, obscure or alter any trademarks, brand names, or other proprietary notices appearing on or contained within the Third Party Software, APIs or any of the Services; and
- (g) use or access any Services other than as expressly permitted by the Agreement.

#### **API**

4.3 Client may access the Services either through a web-based user interface or with a Client Application using the API. NTT may modify and republish the API from time to time and Client must ensure that Client Applications and systems are compatible with the then-current API. If NTT removes or changes a material feature or function of the API, NTT will use commercially reasonable efforts to maintain backwards compatibility with the previous version of the API for 12 months from the date of the change.

#### **Third Party Software**

4.4 The Services may include Third Party Software in which case the Third Party Software Terms will apply. If there is any conflict or inconsistency between the Third Party Software Terms and the other documents comprising

this Agreement with respect to Third Party Software, then the Third Party Software Terms will prevail to the extent of the conflict or inconsistency

#### **No Other Rights**

- 4.5 As between the parties, NTT is the owner of all right, title and interest (including intellectual property rights) in and to the Services. Subject only to the rights of use and licenses granted in this Agreement, Client will not acquire or claim any right, title or interest (including intellectual property rights) in or to the Services, whether by implication, operation of law or otherwise.

## **5 Client Content**

- 5.1 Client may install, host, process and use Client Content on the Services. Client is solely responsible for:
- ensuring that Client has the necessary rights, permissions and licences to install, host, process and use the Client Content on the Services;
  - the acts and omissions of any Users of the Client Content;
  - the functionality and operation of the Client Content; and
  - the support and maintenance arrangements for the Client Content.
- 5.2 As between the parties, Client is the owner of all right, title and interest (including intellectual property rights) in and to the Client Content. Client grants to NTT a limited, non-exclusive, right and license during the term of each applicable Order to host, process and use the Client Content solely in connection with providing the Services and performing its obligations under the Agreement.

## **6 Service Levels and Service Level Credits**

#### **Service Levels**

- 6.1 The Service Levels are set out in the Service Level Terms. Client is entitled to Service Level Credits as set out in the Service Level Terms and this Section 6. Failure to meet Service Levels is not a breach of the Agreement by NTT and Service Level Credits are Client's sole and exclusive remedy and NTT's sole and exclusive liability for failure to meet Service Levels.

#### **Service Level Credits**

- 6.2 Client must request Service Level Credits in writing by sending an email to [cloudcredits@dimensiondata.com](mailto:cloudcredits@dimensiondata.com) within 30 days of the first event giving rise to the applicable Service Level Failure. Following receipt of the request, NTT will review the request and determine whether Client is eligible for the applicable Service Level Credit. If NTT determines that Client is eligible for the Service Level Credit, then NTT will apply the Service Level Credit to Client's invoice for the calendar month following the calendar month in which Client requested the Service Level Credit. If NTT determines that Client is not eligible for the Service Level Credit and Client then disputes this determination, then if the dispute is resolved in Client's favour, NTT will apply the Service Level Credit to Client's invoice for the calendar month following the calendar month in which the dispute is resolved. The invoice to which the Service Level Credit is applied by NTT is called the "**Service Level Credit Invoice**."
- 6.3 Service Level Credits may only be applied against the Service Level Credit Invoice, may not be applied against any other invoices and may not be redeemed for cash. Following expiration or termination of the applicable Order, Service Level Credits that have not been redeemed will be treated as follows:
- if the Order expired in accordance with its terms, then Client will be entitled to apply the unused Service Level Credit against purchases of Services by Client during the 12 months following the month during which the Service Level Credit was incurred;
  - if Client terminated the Order for NTT's breach in accordance with the Terms, then NTT will pay the Service Level Credit to Client; and
  - if NTT terminated the Order for Client's breach, then on termination, the Service Level Credit will expire and will no longer be redeemable by Client.
- 6.4 Any Service Level Credits not requested or not redeemed by Client will automatically expire.
- 6.5 In order to be eligible for Service Level Credits, Client must be current on all outstanding invoices both at the time the Service Level Credits would otherwise have accrued and at the time the Service Level Credits would otherwise be payable.

## **7 Maintenance and Support**

#### **Maintenance**

- 7.1 NTT performs scheduled maintenance on the Services including maintenance related to the Software, MCP and other equipment and materials used for providing the Services. Occasionally NTT may need to perform emergency or unscheduled maintenance. Maintenance may cause interruptions to the Services although NTT

will use reasonable efforts to inform Client in advance about maintenance related Service interruptions including the likely duration. Additional information about maintenance is located at <https://docs.mcp-services.net/x/AQMu> (Software) and <https://docs.mcp-services.net/x/9wlu> (Operational).

### Cloud Support Community

- 7.2 NTT will provide Client with access to an online knowledge base for the Services, made available through the Service Portal (“**Cloud Support Community**”). Client may use the content posted in the Cloud Support Community during the term of this Agreement solely for the purpose of accessing and using the Services. NTT makes no warranty with respect to the accuracy completeness or usefulness of any content found on the Cloud Support Community. Client further agrees that NTT is not liable for any losses or damages Client may suffer resulting from any content posted to the Cloud Support Community.

### Global Service Centre

- 7.3 Client may obtain support via NTT’s 24-hour help desk (“**Global Service Centre**” or “**GSC**”). NTT will provide Client with access to phone and email support from the GSC 24 hours per day, seven days per week. The contact details for the GSC are included in the Welcome Pack.
- 7.4 When speaking with a GSC representative, Client will report all Incidents and make all Service Requests in sufficient detail to enable the GSC representative to classify and handle the Incident or Service Request and pass the Incident or Service Request to the appropriate technical support specialists.
- 7.5 NTT will classify each call as an Emergency Incident, Other Incident or Service Request. NTT may reclassify a call and respond accordingly based on the circumstances.
- 7.6 On each call, the GSC representative will assign a unique ticket number to Client, which Client can use to track Incident or Service Request.

## 8 Confidentiality

- 8.1 “**Confidential Information**” means all information (whether in written, oral, electronic, or other form) that is disclosed or otherwise made available by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) in connection with this Agreement or the Services. To be Confidential Information the information must be identified as being confidential or proprietary or a reasonable person would assume, under the circumstances, that it is confidential. Confidential Information of NTT includes any non-public Services, Documentation and pricing information. Confidential Information of Client includes all Client Content. The Agreement is deemed to be the Confidential Information of both parties. Confidential Information does not include information that:
- (a) is lawfully in the public domain when the Receiving Party received it;
  - (b) lawfully becomes part of the public domain afterwards;
  - (c) was already known to the Receiving Party before receiving it from the Disclosing Party;
  - (d) is given to the Receiving Party by a third person who is allowed to reveal it; or
  - (e) is independently created by the Receiving Party without reference to the Disclosing Party’s Confidential Information.
- 8.2 Subject to Section 8.4, the Receiving Party agrees to protect the interests of the Disclosing Party in the Confidential Information and will:
- (a) not disclose the Confidential Information except to its employees, contractors or agents that need it, and only give them as much as they need;
  - (b) protect the Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own Confidential Information;
  - (c) get promises of confidentiality from those employees, contractors or agents who need access to the Confidential Information;
  - (d) not reveal the Confidential Information to anyone else; and
  - (e) not use it for any purposes other than as required by the Services and this Agreement.
- 8.3 The Receiving Party must promptly advise the Disclosing Party in writing of any loss, wrongful disclosure or access, breach of confidentiality or misappropriation or misuse of the Disclosing Party’s Confidential Information of which the Receiving Party becomes aware.
- 8.4 The Receiving Party may disclose Confidential Information if required by law or judicial or other order. However, the Receiving Party must:
- (a) take all reasonable steps to promptly notify the Disclosing Party of the disclosure;
  - (b) allow intervention by the Disclosing Party; and
  - (c) cooperate with the Disclosing Party to contest or minimise the extent of the disclosure obligation.

- 8.5 Each party acknowledges that damages may not be a sufficient remedy for unauthorised disclosure or use of the other party's Confidential Information and that the other party will be entitled, without waiving any other rights or remedies, to seek injunctive or other equitable relief to protect its Confidential Information.

## 9 Data Security

### Client Security Obligations

- 9.1 Client has control over its use of the Services, including options to install third party software, implement security controls, establish and enforce user access controls and select the Locations in which Client Content will be stored. Client acknowledges that it is responsible for using the Services properly and for determining and taking appropriate technical and organisational measures to maintain security, protection, and backup of Client Content. This may include, as determined and maintained by Client, the use of encryption technology to protect Client Content from unauthorised access and routine back-up and archiving of Client Content. Client is also responsible for selecting the Locations in which Client Content will be stored. Client will comply with all applicable laws with respect to Client Content and Client's use of the Services.

### Privacy and Access to Client Content

- 9.2 Subject to Section 9.3, Client acknowledges that the Services are designed and operate so that NTT does not have possession of, control over or access to Client Content and NTT has no power or ability to manipulate, modify or deal in Client Content.
- 9.3 The functionality and operation of certain Services do involve NTT having limited and controlled access to Client Content including:
- (a) where Client requests support from NTT that requires access to Client Content (in which case, Client may be required to issue temporary Credentials to NTT to permit that access); and
  - (b) the Tech Ops Optional Services.

### NTT Security Obligations

- 9.4 To the extent NTT does have access to Client Content, and subject to Section 9.2, NTT will maintain appropriate technical and organisational measures to protect the Client Content in its possession or under its control against accidental, unauthorised or unlawful access, acquisition, processing, disclosure, alteration, loss or destruction.
- 9.5 In order to give effect to section 9.4, NTT will, having regard generally accepted information security practices and procedures and the cost of implementing any such measures:
- (a) identify all reasonably foreseeable internal and external risks to Client Content in its possession or under its control;
  - (b) establish and maintain appropriate safeguards against the risks identified;
  - (c) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
  - (d) regularly verify that the safeguards are effectively implemented.

### No Backup

- 9.6 Client agrees that unless backup services are included in the applicable Order as part of Optional Services, NTT will not create, maintain or implement backups of any Client Content and that Client is solely responsible for all backup, archiving and data retention of Client Content.

## 10 Representations and Warranties

### Mutual Warranties

- 10.1 Each party represents and warrants to the other that:
- (a) it has the full power and authority to enter in and perform this Agreement;
  - (b) it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement; and
  - (c) its performance of this Agreement does not put it in breach of any other agreement.

### NTT Warranty

- 10.2 NTT represents and warrants to Client that it will perform the Services materially in accordance with the applicable Service Descriptions.

### Third Party Software

- 10.3 NTT will pass on to Client the benefit of any warranties and indemnities it receives under the Third Party Software Terms to the extent NTT has the right to do so. Otherwise NTT makes no, and expressly disclaims all, representations and warranties with respect to Third Party Software and Client's use of Third Party Software is at Client's sole risk.

### Other Warranties Excluded

- 10.4 **The Services are provided on an “as is” and “as available” basis. Except for the representations and warranties in this Agreement, NTT expressly disclaims all other representations, warranties and conditions whether express or implied including as to merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, title, that the Services will meet Client requirements or be timely, uninterrupted, error free or secure. No advice, results or information obtained by Client from NTT or through the Services, any documentation or the Cloud Support Community, will create any warranty, condition or obligation on NTT.**

## 11 Indemnification

### NTT Indemnification

- 11.1 NTT will defend Client from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney’s fees and costs) finally awarded against Client by a court or tribunal of competent jurisdiction, arising from any allegation that the Services, when used as authorised by the Agreement, in the form provided by NTT, infringe any copyright, patent, trade secret, trademark or other intellectual property rights of a third party. If Client seeks indemnification under this Section, it must:

- (a) provide NTT with prompt notice of the claim;
- (b) give NTT sole control of the defence and related settlement negotiations; and
- (c) reasonably cooperate with NTT, at NTT’s expense, in defending or settling the claim.

- 11.2 Despite the foregoing, Client may participate with NTT in (but not control) the claim using counsel of its choice at its own expense. NTT will not enter into any settlement or other compromise of the claim that materially affects Client without Client’s written approval. The approval will not be unreasonably withheld.

### Client Indemnification

- 11.3 Client will defend NTT from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney’s fees and costs) finally awarded against NTT by a court or tribunal of competent jurisdiction, to the extent arising from:

- (a) any violation (or alleged violation) of applicable law by Client or any Client Content;
- (b) any allegation that any Client Content infringes, misappropriates or violates any copyright, patent, trade secret, trademark or other intellectual property rights of a third party;
- (c) any dispute with third party licensors or providers of any Client Content; or
- (d) any act or omission of Users, including any breach of the license restrictions set out in Section 4.2.

### Exclusions

- 11.4 NTT has no obligation to Client under this Section 11 in connection with:

- (a) any modification of the Services by anyone other than NTT;
- (b) any Third Party Software;
- (c) any combination of the Services with any Client Content or other software, hardware, network, infrastructure, or other materials not provided by NTT if the claim would not have arisen but for that combination;
- (d) use of the Services other than as permitted by the Agreement or contrary to the applicable Service Descriptions; or
- (e) Client’s continued use of the Services after notice of the alleged or actual infringement.

### Additional Remedies

- 11.5 If the Services are the subject of an infringement claim (or NTT reasonably believes that the claim is likely), then NTT may at its option and expense:

- (a) procure for Client the right to continue to use the Services;
- (b) modify the Services to be non-infringing or provide non-infringing substitutes with substantially similar functionality; or
- (c) if NTT cannot accomplish (a) or (b) using commercially reasonable efforts, terminate the Services and refund to Client the unused portion of any Fees paid in advance for the affected Services.

## 12 Fees and Payment

### Fees Generally

- 12.1 Client will pay the Fees to NTT. Unless Client acquired the right to use the Services by completing the online signup process made available by NTT (“**Online Signup Client**”) or otherwise specified in an Order, Fees are



payable in arrears and due within 30 days of invoice. If Client is an Online Signup Client, Fees are due immediately upon invoice and all payments shall be made by a valid and authorised credit card.

12.2 Fees are calculated based on the Usage Pricing Terms in effect on the date of each applicable invoice. Any changes to the Usage Pricing Terms will take effect from the last day of the full calendar month after publication.

12.3 For Minimum Commitment Plans, Client must pay the greater of (as set out in the applicable invoice):

- (a) the applicable Minimum Usage Commitment; and
- (b) the Fees associated with Client's actual Usage in the applicable month.

#### **Types of Fees**

12.4 The following types of Fees apply to the Services

- (a) **Set-up Fee:** A one-time Fee for activation of Services as described in the applicable Order.
- (b) **Usage Fees:** The Fees payable by Client each month based on Client's Usage.
- (c) **Optional Service Fees:** The Fees payable by Client each month for Optional Services.

#### **Invoices**

12.5 NTT will invoice Client each month for the Fees that accrued in the previous billing month. The date on which the first and each subsequent invoice will be delivered depends on the Effective Date of the applicable Order.

#### **Payment and Taxes**

12.6 Any Client-specific payment terms, including currency, dates and manner of payment, interest rates on late payment, and taxes, will be described in the applicable Order.

#### **Additional Fees**

12.7 NTT may charge Client additional Fees on a time and materials basis at NTT's then current rates for any of the following:

- (a) re-establishment of Services (whether following suspension under Section 14 or otherwise);
- (b) Service Requests or assistance requested by Client outside the scope of the applicable Order; and
- (c) Support, where NTT determines on reasonable grounds that Client's request was not related to an Incident.

#### **Fees for Additional Service Offerings**

12.8 Where NTT adds a new offering to the Services, the Fees payable for the new offering will be based on the applicable pricing in the Usage Pricing Terms at the time Client begins using the new offering, regardless of the Plan applicable to Client.

#### **Unforeseen Fee Increase**

12.9 Notwithstanding anything to the contrary in this Agreement, NTT may increase the Fees in an Order (including those subject to Minimum Commitment Plans) if the costs or charges incurred by NTT for electricity materially increase. NTT will promptly notify Client in the event of such an increase in the Fees in an Order, and such increased Fees will go into effect on the last day of the calendar month immediately following such notice. Notwithstanding anything to the contrary in this Agreement, if Client does not agree to such a price increase for a particular Order, Client may terminate such Order at any time prior to the effective date of such increase by providing NTT with written notice of such termination. Failure to terminate in accordance with the foregoing will constitute acceptance of such Fee increase.

#### **Other Payment Terms**

12.10 NTT may apply any payment received from Client under any Order towards any amounts that Client owes to NTT under this Agreement or otherwise. Client gives NTT permission to provide any registered credit bureau with information about the payment of amounts Client makes under this Agreement.

12.11 Subject to Section 12.12, Client may not withhold payment of any amount due to NTT for any reason.

12.12 If Client disputes any part of an invoice, Client must pay the undisputed part of the invoice before the due date.

## **13 Limitation of Liability**

13.1 **Notwithstanding anything in this Agreement to the contrary, except for Client's obligations under Section 11 (Indemnification) or Client's breach of Section 4.2 (Restrictions), to the full extent permitted by applicable law:**

- (a) **neither party will be liable for any indirect, incidental, consequential, special, punitive, or exemplary damages arising out of or related to the Services or this Agreement, including damages for interruption of business, loss of profits, loss of goodwill, or loss or corruption of data, regardless of the form of action, whether in contract, tort (including negligence), strict liability or other legal theory, even if the party was advised in advance of the possibility of those damages and even if those damages were foreseeable; and**

- (b) **in no event will either party's maximum aggregate liability to the other arising out of or related to the Services or this Agreement exceed the amounts paid by Client during the 12 month period preceding the event or circumstances giving rise to that liability. For avoidance of doubt, the foregoing limitation of liability does not apply to Client's obligation to pay Fees.**

## 14 Suspension

- 14.1 NTT reserves the right to suspend or restrict Client's or any User's access to and use of the Services if:
- (a) Client or any User breaches this Agreement;
  - (b) Client or any User fails to cooperate with any reasonable investigation by NTT of a suspected breach of this Agreement;
  - (c) NTT reasonably determines that suspension is necessary to prevent or mitigate damage or disruption to NTT's MCPs, systems or networks;
  - (d) Client fails to pay any Fees when due;
  - (e) there is an unusual spike or increase in Client's use of the Services that impacts NTT's ability to deliver the Services; or
  - (f) as the result of any Excusing Event, (collectively "**Service Suspensions**").

NTT will use commercially reasonable efforts to provide prior notice of a Service Suspension and updates regarding resumption of Services following a Service Suspension.

- 14.2 Client Content stored on the Services may be unavailable during a Service Suspension. Without limiting Section 13, NTT will have no liability for any damages, liabilities, or losses resulting from a Service Suspension.

## 15 Term and Termination

### Term

- 15.1 This Agreement commences on the Effective Date of Client's first Order and, unless terminated earlier, continues until the expiration or termination date of Client's last Orders. The initial term of each Order will be stated in the Order. Subject to the terms of the applicable Order, each Order with a Minimum Commitment Plan will automatically renew for an additional 12 month period (each a "**Renewal Term**") upon expiration of the then-current term (whether the initial term or a Renewal Term), unless either party provides written notice of termination at least 90 days prior to the expiration date of such then-current term.

### Limited Termination for Convenience

- 15.2 A party may terminate for convenience an Order by written notice to the other party, with termination to be effective:
- (a) for Usage-Based Plans, no later than seven days following the notice; or
  - (b) for Orders with Minimum Commitment Plans, at the end of the Minimum Commitment Term.

### Termination for Cause

- 15.3 Either party may terminate this Agreement (and all Orders) or any individual Order upon notice to the other party if the other party materially breaches any term or condition of this Agreement or any Order and fails to correct the breach within 15 days following notice specifying the breach. Without limitation, Client's failure to pay Fees on time and Client's (or any User's) noncompliance with Section 4.2 will constitute material breaches. In addition, NTT may terminate an Order or Services under an Order by notice to Client if it is unable to continue to provide the applicable Services because of a Force Majeure Event.

### Effect of Termination

- 15.4 Upon expiration or termination of this Agreement or any Order:
- (a) NTT will cease providing the applicable Services and Client's right to access and use the applicable Services will stop;
  - (b) all outstanding invoices will become immediately due;
  - (c) the remainder of all monthly Fees for the remaining Minimum Commit Term (if applicable) will become immediately due (termination by Client due to NTT's breach excepted); and
  - (d) NTT will not be required to maintain or store, and may delete, Client Content hosted or stored in connection with the terminated Services.
- 15.5 Either party's termination of this Agreement or any Order will be without prejudice to any other remedies that it may have at law or otherwise and will not relieve either party of breaches occurring prior to the effective date of termination. The following sections of these Terms will continue and survive after any expiration or termination: Sections 2, 4.2, 4.4, 4.5, 8, 10.4, 11, 12, 13, 15.4, 16, and 17.

## 16 General

### Severability

- 16.1 If the application of any provision of this Agreement to any particular facts or circumstances is held to be invalid or unenforceable by a court or tribunal of competent jurisdiction, then:
- (a) the validity and enforceability of that provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired thereby; and
  - (b) the provision will be enforced to the maximum extent possible so as to effect the intent of the parties and be deemed to have been amended without further action by the parties to the extent necessary to make the provision valid and enforceable

### Governing Law and Jurisdiction

- 16.2 The domicile of Client and the table at Section 17.1 determine the governing law and jurisdiction of this Agreement.

### Notices

- 16.3 Any notice, request, demand or other communication required or permitted by this Agreement will:
- (a) be in writing;
  - (b) reference the Agreement and the applicable Order; and
  - (c) be directed to the recipient's address or email address (or facsimile number if applicable) specified in the applicable Order by prepaid registered post, hand delivery, or facsimile, and will be deemed to be properly given when received. In addition, NTT may provide general notices related to the Services (including updates to the Service Descriptions, Service Level Terms and Third Party Software Terms) at the Service Portal, and the parties may communicate regarding support related issues through Global Service Centre.

### Assignment

- 16.4 Neither party may assign, delegate or otherwise transfer, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that:
- (a) NTT may assign this Agreement without the prior written consent of Client to an affiliate or in connection with a merger, consolidation, or sale of all or a portion of NTT's assets or business; and
  - (b) NTT may have any of the Services performed on its behalf by its affiliates or other third parties.

- 16.5 Subject to the foregoing, the rights and liabilities of the parties are binding on, and will inure to the benefit of, the parties and their respective successors and permitted assigns. Any attempted assignment, delegation or other transfer except in accordance with this section will be ineffective.

### Dispute Resolution

- 16.6 If a dispute ("**Dispute**") arises out of this Agreement or in connection with the Services, the parties will attempt to settle it by negotiation. A party may initiate Dispute negotiations by emailing a demand for Dispute resolution ("**Dispute Notice**") as follows:
- (a) for Client, to the NTT email address notified to Client;
  - (b) for NTT, to Client's email address as indicated in the applicable Order.

Within five days of a Dispute Notice the parties must refer the matter to a committee of four consisting of two representatives from each party (the "**Committee**"). The Committee will meet and attempt to resolve the Dispute within 30 days of referral. The Committee will determine its own procedures and any decision of the Committee will be binding on the parties. If the parties are unable to resolve the Dispute, they may commence legal proceedings in the relevant court having jurisdiction as determined by the table at section 17.1. Nothing in this section prevents a party from seeking interim or provisional relief concerning a Dispute, including a temporary restraining order or preliminary injunction.

### Right to Reference

- 16.7 Unless Client advises NTT otherwise in writing, Client consents to NTT using its name in any of NTT's marketing, sales materials, press releases, public announcements and case studies.

### Waiver

- 16.8 Any waiver by either party of a breach of or a default under any provision of this Agreement must be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have under the Agreement operate as a waiver of any right or remedy.

### Feedback

16.9 If Client provides suggestions for changes or improvements or other feedback (“**Feedback**”) about the Services or any of NTT’s products or services, NTT may use the Feedback for any purpose without obligation or payment of any consideration and Client assigns to NTT all right, title and interest (including intellectual property rights) in and to the Feedback

**Force Majeure**

16.10 Except for the payment of Fees, neither party will be liable to the other for failure or delay in performing its obligations under the Agreement if the failure or delay is due to circumstances beyond its reasonable control, including acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, interruption of or delay in telecommunications or third party services, or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Services (each, a “**Force Majeure Event**”).

**Relationship of the Parties**

16.11 Nothing contained in this Agreement will be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. Neither party, nor either party’s agents, have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times will continue to be, that of independent contractors.

**No Third Party Beneficiaries**

16.12 Nothing in this Agreement, express or implied, confers or is intended to confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities.

**Changes to the Term**

16.13 Subject to Section 16.14, NTT may change these Terms from time to time, including (but not limited to) when required by law or governmental entities. NTT will provide notice to Client of changes including by uploading and making available the updated version of these Terms. Client’s continued use of the Services following a change will be deemed acceptance by Client of the change provided that any material change to these Terms will not apply retrospectively to a claim or dispute between Client and NTT in connection with these Terms that arose prior to the date of the change.

16.14 If Client is using Services under an Order with a Minimum Commitment Term, then Client may, on giving NTT notice within ten business days of the applicable change, elect not to have the change apply and to continue to use the Services for the remainder of the Minimum Commitment Term under the previously existing Terms.

**No Presumptions**

16.15 If an ambiguity or question of interpretation arises the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof based on authorship will arise favouring one party over the other. Client waives any claims or defences regarding the validity or enforceability of this Agreement arising from the fact of electronic submission or presentation of the Agreement to Client.

**Entire Agreement**

16.16 This Agreement is the entire agreement of the parties on the subject matter and supersedes any previous understanding or agreements. Except as otherwise provided with respect to updating of certain terms by NTT, no modifications, additions, or amendments to this Agreement will be effective unless set out in a writing referencing this Agreement and signed by a duly authorised representative of each Party.

**Precedence**

16.17 If there is any conflict or inconsistency between these Terms and the terms in any other document that forms the Agreement, then:

- (a) the terms in an Order will take precedence and resolve the conflict or inconsistency solely with respect to the specific variable terms included in the Order concerning pricing, payment, term, termination, or specific Services ordered; and
- (b) these Terms will take precedence with respect to all other matters

**Interpretation**

16.18 Headings are inserted for reference purposes only and do not affect the interpretation of the Agreement. For the purposes of interpreting this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural, and the plural includes the singular;
- (b) the words “include” and “including” will not be construed as terms of limitation, and will mean “including without limitation”;
- (c) the words “writing” or “written” mean reduced to writing whether in electronic or hard copy form;
- (d) references to the parties will refer to their permitted successors and assigns; and

- (e) references to any document, agreement, instrument or statute mean that document, agreement, instrument or statute as amended from time to time.

## 17 Country Specific Terms

17.1 The follow table sets out the governing law and jurisdiction applicable to this Agreement and all Orders, based on the country of domicile of Client:

Client Domicile	Governing Law	Jurisdiction
North America	The laws of the state of New York, United States of America	The parties submit to the exclusive jurisdiction of the courts of the state of New York, United States of America.
Europe (other than Germany)	The laws of the country of domicile of Client	The parties submit to the exclusive jurisdiction of the courts of the country of domicile of Client.
Germany	The laws of Germany	The parties submit to the exclusive jurisdiction of the courts of the Federal Republic of Germany.
Australia	The laws in force in the state of New South Wales, Australia	The parties submit to the non-exclusive jurisdiction of the courts of the state of New South Wales and the Commonwealth of Australia.
Africa and the Middle East	The laws of South Africa, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of South Africa to the rights and duties of the parties.	The parties submit to the exclusive jurisdiction of a South African court of competent jurisdiction.
Singapore (and Asia if not otherwise stated)	The laws of Singapore	The parties submit to the exclusive jurisdiction of the courts of Singapore.
Malaysia	The laws of Malaysia	The parties submit to the exclusive jurisdiction of the courts of Malaysia.
Thailand	The laws of Thailand	The parties submit to the exclusive jurisdiction of the courts of Thailand.
Indonesia	The laws of Indonesia	The parties submit to the exclusive jurisdiction of the courts of Indonesia.
India	The laws of India	The parties submit to the exclusive jurisdiction of the courts of India.
China	The laws of the People's Republic of China	The parties submit to the exclusive jurisdiction of the Beijing courts of the People's Republic of China.
Hong Kong	The laws of Hong Kong, Special Administrative Region	The parties submit to the exclusive jurisdiction of the courts of Hong Kong, Special Administrative Region.
Taiwan	The laws of Taiwan	The parties submit to the exclusive jurisdiction of the courts of Taiwan.
South Korea	The laws of the Republic of Korea	The parties submit to the exclusive jurisdiction of the courts of the Republic of Korea.

Japan	The laws of Japan	The parties submit to the exclusive jurisdiction of the District Court of Tokyo.
Vietnam	The laws of Singapore	The parties submit to the exclusive jurisdiction of the courts of Singapore.
New Zealand	The laws of New Zealand	The parties submit to the exclusive jurisdiction of the courts of New Zealand.

17.2 The following section sets out amendments to Sections 1 through 16 of these Terms, which apply based on the domicile of the Client entity that contracts with NTT:

Client Domicile	Amendment
<b>North America</b>	<p>(a) <u>The following is added as Section 16.19:</u></p> <p><b>“Export Controls</b></p> <p>16.19 Client will comply with all applicable export laws and regulations in its use of the Service. No part of the Services may be downloaded or otherwise exported or re-exported (a) into any country for which the United States has a trade embargo, or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals, which is currently maintained at <a href="http://www.treasury.gov/resource-Center/sanctions/SDN-List/Pages/default.aspx">http://www.treasury.gov/resource-Center/sanctions/SDN-List/Pages/default.aspx</a>, or the U.S. Commerce Department’s Denied Persons List, which is currently maintained at <a href="http://www.bis.doc.gov/dpl/thedeniallist.asp">http://www.bis.doc.gov/dpl/thedeniallist.asp</a>. Client represents and warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list.”</p>
<b>Australia</b>	<p>(a) <u>Section 10.4 is replaced by the following:</u></p> <p><b>“Implied Warranties</b></p> <p>10.4 The application of the United Nations Convention on Contracts for the International Sale of Goods (the <i>Vienna Convention</i>) to this Agreement (by virtue of any law relevant to this Agreement) is excluded.</p> <p>10.5 Pursuant to the <i>Australian Consumer Law</i> (under the <i>Competition and Consumer Act 2010</i> (Cth)):</p> <p>(a) this sub-section 10.5 applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this sub-section will not apply if the Client establishes that reliance on it would not be fair and reasonable;</p> <p>(b) our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure;</p> <p>(c) liability for breach of a guarantee conferred by the <i>Australian Consumer Law</i> (under the <i>Competition and Consumer Act 2010</i> (Cth)), other than those conferred by ss 51–53 of that Law, is limited:</p> <p>(i) in the case of goods, to any one of the following as determined by NTT:</p> <p>(A) the replacement of the goods or the supply of equivalent goods; or</p> <p>(B) the repair of the goods; or</p> <p>(C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or</p> <p>(D) the payment of the cost of having the goods repaired;</p> <p>(ii) in the case of services, to any one of the following as determined by NTT:</p> <p>(A) the supplying of the services again; or</p> <p>(B) the payment of the cost of having the services supplied again.</p>

	<p><b>Disclaimer</b></p> <p>10.6 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT ABOVE AND SUBJECT TO SECTION 10.5, THE SERVICES, ALL THIRD PARTY SOFTWARE, ALL THIRD PARTY SERVICES, AND ANY OTHER SERVICES, SOFTWARE, INFORMATION, TECHNOLOGY, CONTENT, EQUIPMENT AND MATERIALS ARE PROVIDED BY NTT ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND NTT DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. WITHOUT LIMITATION OF THE FOREGOING, NTT DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ANY THIRD PARTY SOFTWARE OR THIRD PARTY SERVICE WILL MEET CLIENT’S REQUIREMENTS OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, AND CLIENT’S USE OF AND ACCESS TO THIRD PARTY SOFTWARE AND THIRD PARTY SERVICES IS AT CLIENT’S SOLE RISK. NO ADVICE, RESULTS OR INFORMATION OBTAINED BY CLIENT FROM NTT OR THROUGH ANY SERVICES, ANY DOCUMENTATION, OR THE CLOUD SUPPORT COMMUNITY, WILL CREATE ANY WARRANTY. THE ONLY REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE AND THIRD PARTY SERVICES ARE THOSE, IF ANY, THAT ARE: (1) MADE BY THE APPLICABLE THIRD PARTY PROVIDERS DIRECTLY TO CLIENT AND/OR (2) SET OUT IN THE THIRD PARTY TERMS.”</p>
<p><b>Middle East and Africa</b></p>	<p>(a) <u>Section 10.4 is replaced by the following:</u></p> <p>“10.4 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT ABOVE AND, UNLESS ANY WARRANTIES ARE IMPLIED INTO THIS AGREEMENT BY A LAW WHICH CANNOT BE EXCLUDED, THE SERVICES AND ANY OTHER INFORMATION, TECHNOLOGY, CONTENT AND MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND NTT DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL, OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. WITHOUT LIMITATION OF THE FOREGOING, NTT DOES NOT REPRESENT OR WARRANT THAT ACCESS TO THE SERVICES WILL MEET CLIENT’S REQUIREMENTS OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. NO ADVICE, RESULTS OR INFORMATION OBTAINED BY CLIENT FROM NTT OR THROUGH ANY SERVICES, DOCUMENTATION, OR THE CLOUD SUPPORT COMMUNITY, WILL CREATE ANY WARRANTY. IN ADDITION, EXCEPT AS SET FORTH IN SECTION 10.3, NTT MAKES NO, AND EXPRESSLY DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES REGARDING THIRD PARTY SOFTWARE, AND THE ONLY REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE ARE THOSE THAT ARE MADE BY APPLICABLE THIRD PARTY LICENSORS AND SET FORTH IN THE THIRD PARTY SOFTWARE TERMS.”</p> <p>(b) <u>Section 16.3(c) is replaced by the following:</u></p> <p>“16.3 (c) be directed to the recipient’s address or email address (or facsimile number if applicable) specified in the applicable Order by prepaid registered post, hand delivery, or facsimile, and will be deemed to be properly given when received. All legal notices must be sent to the legal manager. In addition, NTT may provide general notices related to the Services via the Service Portal and the parties may communicate regarding support-related issues via the Global Service Centre.”</p>
<p><b>Germany</b></p>	<p>(a) <u>Section 10.4 is replaced by the following:</u></p> <p>“10.4 The application of the United Nations Convention on Contracts for the International Sale of Goods (the <i>Vienna Convention</i>) to this Agreement (by virtue of any law relevant to this Agreement) is excluded.</p> <p>10.5 Except for the representations and warranties expressly set out above, the Services and any other information, technology, content and materials are provided on an “as agreed” basis, and NTT does not make any, and expressly disclaims all, other warranties, express or implied, including any warranties of merchantability, fitness for a particular purpose, non-infringement and title. Without limitation of the foregoing, NTT does not represent or warrant that access to the Services will meet Client’s requirements or will be uninterrupted, error-free, or secure. No advice, results or information obtained by Client from NTT or through</p>

	<p>any Services, any Documentation, or the Cloud Support Community, will create any warranty not expressly made in this Agreement.”</p> <p>(b) <u>Section 11.1 (b) is replaced by the following:</u></p> <p>“11.1 (b) conduct any dispute, including possible out of court settlements, only in agreement with NTT; and”</p> <p>(c) <u>Section 13 is replaced by the following:</u></p> <p>“13.1 NTT shall always be liable without restriction to the Client notwithstanding the following provisions:</p> <ul style="list-style-type: none"> <li>(a) For the damage caused by themselves or by their legal agents or persons employed in fulfilling obligations that is deliberate or the outcome of gross negligence;</li> <li>(b) In accordance with the provisions of the Product Liability Law; and</li> <li>(c) for damage arising from risk to life, from physical injury or from harm to health that is the responsibility of NTT, of their legal agents or of persons fulfilling obligations.</li> </ul> <p>13.2 NTT shall not be liable in the case of ordinary negligence, except in the case of violation of important contractual obligations (cardinal obligations).</p> <p>13.3 This liability is restricted in the case of material damage and pecuniary detriment to contractually typical and foreseeable damage. This shall also apply in the case of loss of profit and of opportunities to reduce costs. The liability for any other distant consequential damage is excluded.</p> <p>13.4 In any instance of one-time damage the liability is restricted to the contractual value, in the case of uninterrupted remuneration to the amount per year of contract.</p> <p>13.5 On the basis of a warranty NTT shall only be liable if this expressly covered by the warranty. This liability is subject to restrictions cited in paragraph (2) in the case of ordinary negligence.</p> <p>13.6 In the case of lost data the NTT is liable solely for the outlay that would have been incurred for retrieval of the data as a result of proper and normal data backup procedures by the Client. In the case of ordinary negligence NTT is only liable if the Client has carried out the proper and normal backup procedures immediately prior to the measure that had resulted in the loss of data.</p> <p>13.7 NTT has ensured that there is adequate insurance cover for typical risks of damage.</p> <p>13.8 The obligation of the Client to take measures to prevent and reduce damage and outlay remain unaffected.”</p>
<b>Singapore</b>	<p>(a) <u>Section 16.12 is replaced by the following:</u></p> <p><b>“Contracts (Right of Third Parties) Act</b></p> <p>16.12. A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act Cap 53B of the Republic of Singapore (“Act”) to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.”</p>
<b>Malaysia</b>	<p>(a) <u>The following is added as Section 16.19:</u></p> <p><b>“Stamp Duty</b></p> <p>16.19. To the extent necessary, each party shall equally bear any stamp duty that arises in connection with the execution of this Agreement.”</p>
<b>Indonesia</b>	<p>(a) <u>The following is added as Section 15.6:</u></p> <p>“15.6 The parties agree to waive the provisions of Article 1266 of the Indonesian Civil Code to the extent that any such provisions require a judicial order or other pronouncement to terminate this Agreement.”</p>



	<p>(b) <u>The following is added as Section 16.19:</u></p> <p><b>“Compliance With Anti-Bribery &amp; Anti-Corruption Laws</b></p> <p>16.19 NTT understands that they are also required not to breach and to comply with the Indonesia’s Law No. 11 of 1980 re Acts of Bribery and Law No. 31 of 1999 re The Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 (together, “Indonesian Anti-Corruption Laws”) and their applicability to conduct in Indonesia.”</p>
<p><b>New Zealand</b></p>	<p>(a) <u>Section 10.4 is replaced by the following:</u></p> <p>“10.4</p> <p>(a) <b>Subject to paragraph (b), the Services are provided on an “as is” and “as available” basis. Except for the representations and warranties in this Agreement, NTT expressly disclaims all other representations, warranties and conditions whether express or implied including as to merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, title, that the Services will meet Client requirements or be timely, uninterrupted, error free or secure. To the extent permitted by law, no advice, results or information obtained by Client from NTT or through the Services, any documentation or the Cloud Support Community, will create any warranty, condition or obligation on NTT.</b></p> <p>(b) <b><u>Consumer Guarantees Act 1993.</u></b> The exclusions and limitations in respect of warranties, liability and remedies will apply except to the extent that such exclusions or limitations are prohibited by the Consumer Guarantees Act 1993 in situations where that Act can apply and its provisions have not been excluded or modified as permitted by that Act. Where the supply of products or services is for business purposes, the parties agree that the Consumer Guarantees Act 1993 will not apply and that given the nature and value of the transaction, that is fair and reasonable.”</p>