



## **Net.Pro Professional Services Contract Terms and Conditions**

Allied Telesis Service and Support Solutions





# **NET.PRO PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS**

## **Allied Telesis Service and Support Solutions**

Please refer to the relevant section below to view the terms and conditions applicable. Your right to receive the professional services you have purchased is conditional upon acceptance of these terms.

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# Net.Pro Professional Services Terms and Conditions

These Net.Pro Professional Terms and Conditions (the “**Terms and Conditions**”) are applicable to all offers from, agreements with and services provided by Allied Telesis International B.V. a company incorporated under the laws of The Netherlands (hereinafter also referred to as: “**Allied Telesis**”). The applicability of other general terms and conditions, such as those of Allied Telesis opposite party (hereinafter also to be referred to as: the “**Customer**”), is expressly rejected.

Please read these Terms and Conditions carefully before registering or paying for the services offered by Allied Telesis (the “**Allied Telesis Services**”).

Allied Telesis Services are intended for use for professional, commercial, or other business purposes only and not for personal use by consumers, and Allied Telesis is offering the Allied Telesis Services only to business users of the Allied Telesis Services. By paying for the Allied Telesis Services, you represent and warrant that for the purposes of the agreement between Allied Telesis and yourself (the “**Agreement**”) you are not deemed a consumer under any consumer protections laws in any jurisdiction, and that you will use the Allied Telesis Services for professional, commercial, or other business purposes only.

## 1. Term

The term of the Agreement (the “**Term**”) shall commence upon the receipt by Allied Telesis of a purchase order from the Customer or an offer by Allied Telesis to Customer, whichever comes earlier, and, unless earlier terminated, shall continue until the completion of the Services as defined in Section 2 below.

## 2. Services

- a. Retention. For the Term, Customer hereby non-exclusively retains Allied Telesis, and Allied Telesis shall perform on behalf of Customer the Services. The work to be performed according to all exhibits attached hereto, including the duties specified in the Exhibit A: Professional Services Statement of Work, together with the duties specified in subsequent exhibits (if any) shall collectively be considered the “**Services**.” Allied Telesis’s performance under this Agreement shall be conducted with due diligence and in full compliance with the highest professional standards of practice in the industry. Allied Telesis shall comply with all applicable laws and safety rules in the course of performing the Services. If Allied Telesis’s work requires a license, Allied Telesis shall obtain that license prior to commencing the Services, and that license shall be in full force and effect.
- b. Allied Telesis’ Sole Discretion. Customer shall not obligate, directly or indirectly, Allied Telesis to take any action with regard to any third party. Nothing herein shall be construed to obligate Allied Telesis to discuss, negotiate, execute agreements or have any other

contact with any party.

## 3. Payment

Allied Telesis shall be paid for the Services as set forth in subsequent exhibits, if any.

## 4. Confidentiality

- a. Except as otherwise provided in this Agreement, all Confidential Information, as defined herein, disclosed by either Party (the “**Disclosing Party**”) is considered confidential and: (a) shall remain the exclusive property of the Disclosing Party; (b) shall be used by the other Party (the “**Receiving Party**”) only in connection with its performance under this Agreement; and (c) shall be maintained in strict confidence by both Parties. “**Confidential Information**” means any intellectual property, technical information, code, hardware, formula, pattern, program, method, marketing program, profitability, corporate strategy, technique, process, design, sketch, artwork, material, business plan, customer or personnel list, and financial statement disclosed by either Party or any other information, which would reasonably be construed as confidential under the circumstances of disclosure. Confidential Information shall include, without limitation, information disclosed in connection with this Agreement, but shall not include information that: (i) is now or subsequently becomes generally available to the public through no wrongful act or omission of either Party; or (ii) is independently developed by either Party without use, directly or indirectly, of any Confidential Information.
- b. Except as contemplated by this Agreement or as specifically authorized by the Disclosing Party in writing, and except as required by law, the Receiving Party shall reproduce, use, distribute, disclose or otherwise disseminate Confidential Information disclosed by the Disclosing Party. Upon expiration or termination of this Agreement or upon request by the Disclosing Party, the Receiving Party shall, within five (5) days after such expiration, termination or request, deliver to the Disclosing Party all Confidential Information (including copies) then in its custody, control or possession.

## 5. Inventions

- a. Allied Telesis will be the sole owner of all domestic and foreign rights pertaining to the inventions in connection with the Services (the “**Inventions**”).
- b. Customer acknowledges and agrees that all of the Inventions, including all intellectual property rights, including but not limited to, patent rights and rights of copyright therein the “**IP Rights**”) will be the sole and exclusive property of Allied Telesis and that Allied Telesis has the exclusive right to prepare derivative works of such Inventions and register any IP Rights



in connection thereto. Customer understands and agrees that Allied Telesis shall have the sole right to determine the treatment of any such Invention, including the right to keep the same as trade secrets, to file and execute patent applications thereon, to use and disclose the same without prior patent application, to file registrations for copyright or trademark thereon in its own name, or to follow any other procedure that Allied Telesis deems appropriate. In as far as necessary, by entering into the Agreement the Customer transfers to Allied Telesis any IP Rights it may have in connection with the Inventions and shall execute and do and procure to be executed and done all such further documents, forms, transfers, assurances and other things as may reasonably be required for giving full effect to such transfer of IP Rights.

## 6. Warranties

During the Term of this Agreement, each Party represents and warrants that:

- a. It is free to enter into this Agreement and does not have and will not have any contract or obligation that will conflict herewith and that this Agreement.
- b. It shall act in a business-like manner and devote commercially reasonable efforts in its obligations hereunder, and shall take no action that is harmful to either Parties' interests or goodwill.
- c. It shall comply with all applicable laws, including any workers' compensation laws, and shall conduct itself in an ethical manner.
- d. It shall not hold itself out as having any power on behalf of the other Party.
- e. It shall bear all of its costs and liabilities for all actions it takes hereunder (including without limitation those for the Services).
- f. The Services, Inventions and Allied Telesis's work product in accordance with this Agreement will not violate any intellectual property rights, including but not limited to, patent, copyright, trademark and trade secret rights, or any other rights, of any third party.

## 7. Indemnity

In addition to any other indemnification requirements specifically noted in this Agreement, Customer shall indemnify and hold harmless Allied Telesis, its officers, directors, employees and agents, and its indirect and direct parent companies and such companies' indirect and direct affiliates and subsidiaries, from and against any and all claims, actions, suits, proceedings, costs, expenses (including court costs and attorney's fees), damages, obligations, penalties, injuries and liabilities arising out of, connected with or resulting from any suit, claim or proceedings brought against Customer which results from, arises from, or is related in any way to Allied Telesis's actions or omissions, or from breach of any term or condition of this Agreement.

## 8. Termination

- a. Either Party may terminate this Agreement with immediate effect by reason of (a) any breach of a warranty or an uncured material breach by the other Party of any obligation hereunder, which breach is not remedied within thirty (30) days following receipt of written notice thereof, (b) an application for bankruptcy or suspension of payment or moratorium being filed by or against the other Party or (c) liquidation of the other Party.
- b. Allied Telesis may terminate this Agreement, or any portion thereof, with thirty (30) days' notice at any time for any reason.

## 9. Effect of Expiration or Termination

- a. In the event of termination or expiration of this Agreement for any reason, Sections 4, 5, 7, 9, 10 and 12 shall survive, and the provisions of said Sections shall be valid in any situation, including if the Agreement expires or is terminated for any reason. Neither Party shall be liable to the other Party for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.
- b. Immediately upon Allied Telesis's request, upon completion of the Services, or upon expiration or termination of this Agreement for any reason (whichever occurs first), Customer shall promptly deliver to Allied Telesis all of the Confidential Information, Inventions and Allied Telesis's work product resulting from the Services (including without limitation all works made for hire).

## 10. Injunctive Relief

Customer acknowledges that any violation by Customer of Sections 4 through 6 above will constitute a material breach of this Agreement and will cause substantial harm to Allied Telesis for which damages may, to Allied Telesis sole discretion not be a fully adequate remedy. Therefore, in the event of any such breach, in addition to other available remedies, Allied Telesis shall have the right to obtain preliminary relief by raising preliminary relief proceedings.

## 11. Assignment

Customer may not assign, in part or in whole, this Agreement, and any attempted assignment shall be considered null and void. This non-assignment clause has effect under property law. Allied Telesis may assign this Agreement in whole or in part, in its sole discretion.

## 12. Choice of Law and Jurisdiction

This Agreement shall be governed as to all matters, including validity, construction, and performance, by and under the laws of the Netherlands. All disputes arising out of or in connection with the Agreement will be resolved by the Amsterdam District Court following proceedings in English before the Chamber for International Commercial Matters ("Netherlands Commercial Court" or "NCC"). An action for interim measures, including protective measures, available under Dutch law may be brought

in the NCC's Court in Summary Proceedings ("CSP") in proceedings in English. However, notwithstanding the foregoing, nothing in this Agreement shall prevent Allied Telesis from seeking injunctive relief or a restraining order in so far as allowed by the terms of this Agreement from a court of competent jurisdiction in anywhere in the world where such injunctive relief or restraining order shall be applied.

### 13. General Provisions

- a. Final Agreement. This Agreement sets forth the entire and final agreement and understanding of the Parties with respect to the subject matter hereof. Any and all prior agreements or understandings, whether written or oral, with respect to the subject matter of this Agreement are terminated.
- b. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.
- c. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be valid unless the same shall be in writing (excluding email or the like) and signed by each of the Parties. No waiver by either Party with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- d. Notice. Any notice or other communication, if any, required hereunder will be effective only if given in writing, evidenced by a delivery receipt, and personally delivered or sent by facsimile, overnight courier, or mail, postage prepaid to the addresses shown above. Any notice or other communication if given personally will be effective upon the date shown or the delivery if given receipt.
- e. Captions. The captions in this Agreement are for convenience only and will not be considered a part of or be deemed to affect the construction or interpretation of, any provision of this Agreement.
- f. Expenses. Each Party shall bear its own costs and expenses (including legal fees and expenses), unless otherwise explicitly noted in this Agreement, incurred in connection with this Agreement and any transactions contemplated hereby.
- g. United States Government Requirements. **ATI** shall be subject to and bound by those Federal Acquisition Regulations (FAR), Agency Acquisition Regulations (AAR) and the Procurement Integrity Act clauses and provisions which are obligated by law by all federal contractors and their subcontractors. Such clauses and provisions are made a part of this Agreement and **ATI** agrees to execute any certifications required by law or regulation.
- h. Limitation of Liability. In no event will either Party be liable under or in connection with this Agreement for any indirect damages, lost profits and/or incidental and/or consequential damages. ALLIED TELESIS' TOTAL LIABILITY TO CUSTOMER UNDER THIS AGREEMENT DURING ANY ONE-YEAR TERM WILL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO ALLIED TELESIS UNDER THIS AGREEMENT DURING SUCH ONE-YEAR TERM.
- i. Export. Customer agrees not to export, directly or indirectly, any deliverables or technical data acquired from Allied Telesis to any country in violation of the Netherlands and/or United States export laws or regulations.

# Allied Telesis Professional Service Offering

## Net.Pro - On-Demand Service

### 1. Service Term

Purchased On-Demand Service days are valid for 1 Year from receipt of the Purchase Order. Upon purchase, the Customer and Allied Telesis determine a mutually agreeable starting date.

### 2. Services Provided

This service provides an Allied Telesis Engineer to work in the areas of implementation, design, assessment, and general troubleshooting tailored to the needs of the customers' business.

This is an ad hoc, best effort service, provided during Mon-Fri business hours. Minimum booking period is thirty (30) minutes. In exceptional cases out of hours may be agreed to for an additional cost.

All affected devices must be covered under a current Net. Cover contract.

### 3. Services Excluded

While the Customer is entitled to direct the Allied Telesis Engineers time, any activity to be undertaken must be agreed to by Allied Telesis, Inc.

### 4. Assistance and Assumptions

You agree to provide reasonable assistance as requested by Allied Telesis for the performance of the Allied Telesis Professional Services. Such assistance shall include, without limitation:

1. Delegation of staff member(s) with authority to obtain information and make critical decisions regarding the project
2. Ensuring that Key Customer network staff are available for participation and consulting in the process, as needed
3. If on-site activity is required, The Customer will provide a suitable safe working environment for the listed work items and activities. This will include:
  - 3.1. Sufficient rack space and work clearance for equipment
  - 3.2. Appropriate network connectivity
  - 3.3. Adequate power, lighting, and cabling
  - 3.4. Desk space and LAN connectivity for Allied Telesis, Inc. personnel
  - 3.5. Operating and accessible elevators in multi-floor facilities
4. Allied Telesis, Inc. is not responsible for interoperability issues between third party vendor equipment, and Allied Telesis, Inc. equipment unless otherwise specified.

- 4.1. Third party equipment includes all product not manufactured by Allied Telesis, Inc. or sold by Allied Telesis, Inc.

### 5. Acceptance and Validation

Once the Allied Telesis Engineer determines that the task is complete, they will provide an updated summary of the work performed as well as the results. They will summarize the time spent so that it is possible to update the total of available PS-On-Demand days that the customer has available to them.

## Net.Pro - Pre-defined & Custom SOW Services

### 1. Service Term

This Agreement shall commence upon the receipt by Allied Telesis of a Purchase Order ("PO") from Customer.

To ensure this project is efficiently executed, the Project Readiness Form located in Appendix A, will be used to ensure all necessary equipment and access is available to Allied Telesis deployment personnel. This form is to be completed by Customer prior to final completion date signoff and if required, scheduling Allied Telesis, site visit.

### 2. Services Provided

- a. Services to be provided are covered under the associated Statement of Work

### 3. Services Excluded

- b. Any service or task not explicitly listed in the Statement of Work is excluded.
- c. All tasks identified as Customer responsibilities within the Statement of Work are beyond the scope.
- d. All items identified as assumptions in the Statement of Work are considered as pre-conditions to the successful completion of the specified task.

Any work requested that is outside the scope of the Statement of Work will be performed at a negotiated rate and will require a signed change order by the Customer, and an amendment to the existing PO, or a new PO to be supplied.

### 4. Assistance and Assumptions

You agree to provide reasonable assistance as requested by Allied Telesis for the performance of the Allied Telesis Professional Services. Such assistance shall include, without limitation:

5. Delegation of staff member(s) with authority to obtain information and make critical decisions regarding the project
6. Ensuring that Key Customer network staff are be

available for participation and consulting in the process, as needed

7. If on-site activity is required, Customer will provide a suitable safe working environment for the listed work items and activities. This will include:
  - 7.1. Sufficient rack space and work clearance for equipment
  - 7.2. Appropriate network connectivity
  - 7.3. Adequate power, lighting, and cabling
  - 7.4. Desk space and LAN connectivity for Allied Telesis personnel
  - 7.5. Operating and accessible elevators in multi-floor facilities
8. Unless otherwise stated explicitly in this document and associated Bill of Material, provide all necessary patch cables (Cat-5, fiber optics, etc.) for this project. If desired, Allied Telesis can perform a site survey and provide a bid for these items to include both procurement and installation.
9. Customer is to provide the following documentation unless otherwise specified in this document:
  - 9.1. Project Schedule
  - 9.2. Network requirements and vendor integration documentation
  - 9.3. Project resources contact list
  - 9.4. Project acceptance and success criteria
  - 9.5. Project reports, when distributed
  - 9.6. New network architecture requirements documentation
  - 9.7. Existing baseline equipment configuration
  - 9.8. Planned port allocations, IP addresses, routing, schema, etc.
10. Customer will review acceptance criteria and work with Allied Telesis to produce mutually acceptable criteria prior to the start of project.
11. Customer will participate, either as an active member or a remote observer, in the conduct of acceptance testing and sign-off upon the successful completion of testing.
12. Allied Telesis is not responsible for interoperability issues between 3rd party vendor equipment, and Allied Telesis equipment unless otherwise specified.
  - 12.1. 3rd party equipment includes all product not manufactured by Allied Telesis or sold by Allied Telesis.

## 5. Acceptance and Validation

Once the network configuration effort is completed, Allied Telesis and Customer personnel will conduct a final

configuration acceptance test (as mutually agreed upon by Allied Telesis and Customer) to verify network feature and functionality.

The system shall be deemed accepted under any of the following occurrences:

- The system is formally accepted by Customer.
- No material discrepancies are reported within 10 days acceptance test completion.
- System is used in production by Customer.

## 6. Post Installation

### Knowledge Transfer

Allied Telesis will provide Customer a knowledge transfer briefing session at the conclusion of the project. This session is not meant to replace formal Allied Telesis training, but as a means to provide Customer's technicians a high level overview of the implementation to include topology review, network configuration and service flow. The length of this session is not to exceed one hour in time.

### Project Documentation

Upon project completion, Customer will receive electronic access to the completed project folder. This contains all documentation pertaining to the project deployment and generally includes the network diagram, equipment configuration files, and relevant manuals. This information will also be placed on a secured drive accessible to Allied Telesis's TAC engineers during trouble or maintenance events.

## 7. Project Site

The work items specified in this document may be performed on site and remotely. For work that will be performed at Customer's site, Allied Telesis's personnel will need appropriate workspace and facilities at these sites to conduct the work items as outlined in this proposal. For work performed remotely, Customer will provide remote capability to allow Allied Telesis's engineers access. Depending on the nature of the configuration, and the network equipment involved, this could be from any of Allied Telesis world-wide facilities. VPN access to Customer site will be required. In addition, any requests for travel outside the general serving area of Customer, may incur additional time and costs.

If travel is required, Customer will provide, at a minimum, four weeks' notice, of desired project start date to enable cost effective travel of Allied Telesis's resources to the Customer site. The precise on-site date will be mutually determined by Customer and the Allied Telesis Project Manager at a time following the submission of a PO.

## 8. Timeline

The Allied Telesis Project Manager will work with Customer to define schedules to meet their timelines for the execution of the above tasks. Precise schedules will be mutually determined by Customer and the Allied Telesis Project Manager at a time following the submission of a PO. At least 30 days' notice must be provided prior to start of the project. Once a schedule has been defined, any customer requirements to modify this schedule may result in additional Time and Material Charges if it results in financial impacts.

# Appendix A - Project Readiness Checklist

Sections 1, 2, and 3 must be completed prior to scheduling any on site project activity. If this is a remote only engagement – please mark as NA items that do not apply.

<b>1</b>	<b>Logistics</b>	<b>Complete/ Available</b>
a	Site phone number list	
b	Contact list of customer, Allied Telesis, and other vendors	
c	Local Map with CO's, buildings and cabinets marked	
d	Site access (procedures, keys, etc)	
e	Implementation schedule	
<b>2</b>	<b>Communications and Facilities</b>	
a	All fiber facilities and patch panel locations are identified and labelled at all sites	
b	All copper cabling runs are identified, including any MDF block assignments/ locations	
c	Equipment rack positions documented	
d	Fuse positions documented	
e	Card Layout Plan	
f	Logical plan (IP and VLAN)	
g	Network connectivity plan / network topology	
h	Mutually agreed upon acceptance plan	
i	Desired status reporting agreed upon	
<b>3</b>	<b>Personnel</b>	
a	Lead technician identified	
b	Project manager identified	
<b>4</b>	<b>Equipment</b>	
a	All Allied Telesis equipment on site and is validated against packing slips	
b	Server equipment installed and OS operational (ie, NMS, DHCP, Syslog)	
c	Copper cables are on site	
d	Fiber cables and patch cords are on site	
e	All required ancillary equipment is on site	
f	All dependent outside vendor equipment on site and verified against network design	



### **About Allied Telesis**

For over 30 years, Allied Telesis has been delivering reliable, intelligent connectivity for everything from enterprise organizations to complex, critical infrastructure projects around the globe.

In a world moving toward Smart Cities and the Internet of Things, networks must evolve rapidly to meet new challenges. Allied Telesis smart technologies, such as Allied Telesis Autonomous Management Framework™ (AMF) and Enterprise SDN, ensure that network evolution can keep pace, and deliver efficient and secure solutions for people, organizations, and “things”—both now and into the future.

Allied Telesis is recognized for innovating the way in which services and applications are delivered and managed, resulting in increased value and lower operating costs.

Visit us online at [alliedtelesis.com](https://alliedtelesis.com)