

**EFFECTIVE DATE:** .....

**MASTER SERVICES AGREEMENT**  
(PRODUCT AND SERVICES)

between

**NTT DATA UK Limited**

a company incorporated in England with registered number 03085018, whose registered office is at 2 Royal Exchange, London EC3V 3DG (hereinafter referred to as "**NTT DATA**")

and

**[Customer]**

a company incorporated in [Country] with registered number [Enter], whose registered office is at [Enter full registered address] (hereinafter referred to as "**Customer**"),

each a "**Party**" and collectively the "**Parties**".

Address for Notices:

<b>Customer Contact Name:</b>	<b>NTT DATA Contact Name:</b> Head of Legal and Compliance UK
<b>Customer Address:</b>	<b>NTT DATA Address:</b> NTT DATA UK Limited 2 Royal Exchange London EC3V 3DG
<b>Customer E-mail address:</b>	<b>NTT DATA E-Mail Address:</b> uklegal@nttdata.com

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## 1. **DEFINITIONS AND INTERPRETATION**

In this Agreement, the definitions and rules of interpretation set out in Schedule 1 (Definitions and Interpretation) shall apply.

## 2. **STRUCTURE AND STATEMENTS OF WORK**

2.1 This Agreement sets out the terms and conditions which govern the supply of the Services, Products and/or Deliverables by NTT DATA to the Customer. The particular Services, Products and/or Deliverables to be provided by NTT DATA to the Customer from time to time under this Agreement shall be set out in a SoW.

2.2 The Parties may agree individual SoWs from time to time which shall be substantially in the same format as the template attached at Schedule 2 (Statement of Work Template) of this Agreement. Once executed, each SoW shall form a separate contract incorporating the terms of this Agreement.

2.3 Where there is any conflict or ambiguity within the Agreement between the terms of this Agreement or a SoW, the following descending order of precedence shall apply:

2.3.1 the applicable SoW;

2.3.2 the body of this Agreement;

2.3.3 the schedules to this Agreement;

2.3.4 the appendices to this Agreement; and

2.3.5 any document expressly referred to in this Agreement.

## 3. **NTT DATA OBLIGATIONS**

3.1 NTT DATA shall:

3.1.1 use appropriately skilled and experienced personnel to deliver the Services;

3.1.2 have the right to or will procure the right to provide the Products to the Customer under a SoW;

3.1.3 use reasonable endeavours to provide the Services, Products and Deliverables in accordance with the relevant SoW in all material respects;

3.1.4 use reasonable endeavours to meet any performance dates or milestones specified in a SoW, however such dates shall be estimates only; and

3.1.5 where applicable, make available to the Customer any third party Software terms and conditions which the Customer is subject to by virtue of the provision of Services under this Agreement.

3.2 NTT DATA warrants that it:

3.2.1 has full power and authority to enter into this Agreement;

3.2.2 is not aware of any existing circumstances that would compromise its ability to perform its obligations under this Agreement;

- 3.2.3 will comply with all Applicable Law at all times during the Term;
  - 3.2.4 has the necessary licences, certificates, authorisations and consents required by Applicable Law to perform the Services and to provide the Products and/or Deliverables; and
  - 3.2.5 will use reasonable endeavours not to introduce any computer virus or other contamination, whether knowingly or not, onto any of the Customer's equipment or systems by using up-to-date virus checking software.
- 3.3 In respect of Products and/or Software which are procured by NTT DATA from a third party, NTT DATA shall:
- 3.3.1 give to the Customer the same warranties which it has been given by the relevant third party supplier, manufacturer and/or licensor (as applicable);
  - 3.3.2 to the extent permitted, pass through such warranties to the Customer so that the relevant third party supplier, manufacturer and/or licensor will be construed to have given the warranties directly to the Customer;
  - 3.3.3 give the Customer commercially reasonable support in enforcing its rights in respect of any warranties given by any such third party supplier, manufacturer and/or licensor; and
  - 3.3.4 not be responsible for the associated levels of performance, bugs, errors or omissions of such third party Software and/or Products.
- 3.4 Except as expressly provided in this Agreement, NTT DATA gives no representation, undertaking or warranties, express or implied, by operation of Applicable Law or otherwise, particularly in relation to Products and/or Software procured by NTT DATA from a third party on the Customer's behalf. Any warranties given by NTT DATA extend solely to the Customer and are not transferable.

#### 4. **CUSTOMER OBLIGATIONS**

- 4.1 The Customer undertakes, warrants and represents that:
- 4.1.1 has full power and authority to enter into this Agreement;
  - 4.1.2 it is the owner of or has procured all necessary licences, certificates, authorities and consents required by Applicable Law in respect of Customer Proprietary Software and other IPR required for NTT DATA to provide the Services, Products and/or Deliverables under this Agreement;
  - 4.1.3 the Customer Proprietary Software and other IPR referred to in clause 9 do not infringe or constitute an infringement or misappropriation of any IPR or other proprietary rights of any third party;
  - 4.1.4 it will use best endeavours not to introduce any computer virus or other contamination, whether knowingly or not, onto any of NTT DATA's equipment or systems;
  - 4.1.5 any data supplied to enable NTT DATA in order for it to perform the Services and to provide the Products and/or Deliverables, shall be complete and accurate in all material respects and the Customer shall retain a back-up copy;

4.1.6 it shall comply with all Applicable Law, any acceptable use policies and/or any other conditions, requirements or instructions to the Customer relating to NTT DATA's performance of the Agreement from time to time during the Term; and

4.1.7 it shall enter into and comply with the terms and conditions of any Licence Agreement and/or any other third party Software terms and conditions where reasonably required by NTT DATA pursuant to this Agreement.

4.2 During the Term, the Customer shall be solely responsible for and shall provide (or procure the provision of) all Customer Retained Responsibilities. If the Customer fails to provide any of the Customer Retained Responsibilities (a "**Customer Default**"), then, to the extent that NTT DATA is prevented or delayed in performing its obligations under this Agreement by such Customer Default ("**Knock-on Default**"), NTT DATA shall be relieved of liability for such Knock-on Default for the duration of the Customer Default and afterwards, for so long as and to the extent that the Customer Default continues to have an impact upon NTT DATA.

## 5. **EXCLUSIONS**

Without prejudice to any exclusion contained within a SoW, the provision of Services, Products and/or Deliverables under this Agreement shall not include the provision of services, nor repairs or replacements necessitated by or related to: (a) damage caused by a Force Majeure Event, abnormal operating conditions or the transportation or relocation of software or equipment by a party other than NTT DATA and its subcontractors; (b) the connection of ancillary equipment supplied by a party other than NTT DATA and its subcontractors; (c) electrical work performed by parties other than NTT DATA and its subcontractors; (d) causes external to the equipment; (e) failure of the whole or part of the internet or telecommunication link used by NTT DATA (save to the extent NTT DATA provide and/or maintain the same); (f) modifications, repairs or replacements performed by parties other than NTT DATA and its subcontractors or without NTT DATA's prior written consent; (g) the restoration of lost data; (h) the provision of any accessories or consumables; (i) changes or modifications required as a consequence of changes in applicable law; and/or (j) the negligent use, abuse or misuse by the Customer (or the Customer's representatives, employees, agents or subcontractors) of the Equipment or Software.

## 6. **PERSONNEL AND TUPE**

6.1 For the purposes of this clause 6:

6.1.1 at the Effective Date, the Customer shall be known as the "**Original Employer**" and NTT DATA the "**Claimed New Employer**"; and

6.1.2 on cessation of the relevant SoW, or on termination or expiry of this Agreement, the Customer shall be known as the "**Claimed New Employer**" and NTT DATA the "**Original Employer**".

6.2 Subject to any agreement in writing to the contrary, none of the Impacted Personnel shall transfer to the Customer or any of its Affiliates as a result of this Agreement.

6.3 The Original Employer will notify all the Impacted Personnel in writing that it shall remain their employer notwithstanding the terms of this Agreement and that their employment shall not transfer over to the Claimed New Employer as a result of this Agreement.

6.4 Notwithstanding clauses 6.2 and 6.3, in the event that any of the Impacted Personnel claim that their employment has transferred to the Claimed New Employer as a result of this Agreement, then:

- 6.4.1 the Claimed New Employer shall notify the Original Employer as soon as reasonably possible but in any event within fourteen (14) days of such claim by the relevant Impacted Personnel;
  - 6.4.2 the Original Employer shall have a period of twenty-eight (28) days following such notification within which to notify the relevant Impacted Personnel that they continue to be employed by the Original Employer and if the Impacted Personnel's role is redundant as a result of this Agreement, to offer to re-deploy the Impacted Personnel to the Original Employer's other clients on the same or better job level and terms, to take effect immediately; and
  - 6.4.3 if the relevant Impacted Personnel does not accept the offer from the Original Employer within such twenty-eight (28) day period, then the Claimed New Employer may determine that the relevant Impacted Personnel is redundant, in which case the Original Employer shall indemnify and keep the Claimed New Employer and its Affiliates, indemnified against any and all costs, proceedings, actions, claims or demands, liabilities and obligations which the Claimed New Employer may incur or suffer in relation to the employment and termination of such Impacted Personnel.
- 6.5 The indemnity to be provided by the Original Employer to the Claimed New Employer and its Affiliates under clause 6.4 shall include but not be limited to:
- 6.5.1 any claim relating to redundancy (whether pursuant to statutory requirements or otherwise) breach of contract, wrongful dismissal, unfair dismissal, discrimination on grounds of any of the protected characteristics under the relevant Employment Transfer Law or related legislation in force from time to time, equal pay, health and safety (including, without limitation personal injury) and any other claim relating to such person's employment or its termination whether under English or European law, the Treaty of Rome, or otherwise; and
  - 6.5.2 any claim arising out of any failure by the Original Employer to comply with any obligations relating to the provision of information and/or consultation in relation to such person whether pursuant to the Employment Transfer Law or related legislation in force from time to time.
- 6.6 NTT DATA shall have complete discretion as to which of its personnel perform the Services and may provide a substitute wherever necessary, provided that any replacement personnel have the skills and qualifications necessary to perform the particular role.

## 7. **CHARGES**

- 7.1 In consideration of the provision of the Services, Products and/or Deliverables by NTT DATA, the Customer shall pay the Charges. Subject to clause 7.2, such Charges will escalate at the rate and in the manner specified in each SoW and/or otherwise in accordance with clause 7.3 below.
- 7.2 To the extent there are:
  - 7.2.1 any changes in Applicable Law; or
  - 7.2.2 material changes in the underlying costs associated with NTT DATA providing or performing the Services, Products and/or Deliverables to the Customer,

in each case which are beyond NTT DATA's reasonable control, then NTT DATA may increase the Charges by written notice to the Customer, to the extent that NTT DATA is impacted by any such change(s).

7.3 NTT DATA may increase any Charges on an annual basis with effect from each anniversary of the Effective Date (starting from the first anniversary of the Effective Date) in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period.

## 8. PAYMENT

8.1 NTT DATA shall invoice the Customer for the Charges at the intervals and in accordance with the charging models specified in each SoW, however if no such intervals or charging models are specified:

8.1.1 Charges relating to Product(s) shall be invoiced upon delivery of the Product to the Customer; and

8.1.2 Charges relating to Services (and any related Deliverables) shall be invoiced by NTT DATA monthly in arrears.

8.2 The Customer shall pay each invoice submitted to it by NTT DATA without set-off or deductions within thirty (30) days of the date of invoice, to a bank account nominated in writing by NTT DATA.

8.3 If the Customer fails to pay any invoiced amount by the due date, then:

8.3.1 the Customer shall pay interest on overdue amounts at the rate of four percent (4%) over the base rate of the Bank of England (which shall accrue on a daily basis) from the due date until payment is made, whether before or after judgement; and

8.3.2 NTT DATA may without limiting its rights or remedies, suspend the Agreement and/or any existing SoWs in whole or in part until such amounts are paid in full.

8.4 In the event that any invoice is disputed, the undisputed part of the invoiced sums shall remain due and payable in accordance with this clause 8 and any withheld payment shall be limited to the disputed line item in question. The Dispute shall be settled in accordance with clause 18.

8.5 All sums payable to NTT DATA under the Agreement are exclusive of value added tax (or similar taxes and duties which are required to be imposed by Applicable Law) and shall be paid in full without any set-off, counterclaim, deduction or withholding (other than where required by Applicable Law). The Customer shall pay or reimburse NTT DATA any such taxes and duties upon receipt of a valid tax invoice.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 Nothing in this Agreement shall operate to transfer ownership of any IPR from one Party to the other and, other than the licences explicitly granted pursuant to this Agreement, neither Party shall have any rights to copy, exploit, sell, transfer, lease, licence, sub-licence, distribute or otherwise use any intellectual property owned or licensed by the other Party.

9.2 Any new IPR created as a result of NTT DATA delivering the Services or providing the Products and/or Deliverables under this Agreement ("**New IPR**") shall vest in NTT DATA upon creation unless the Parties agree otherwise in the relevant SoW.



- 9.3 NTT DATA grants the Customer a worldwide, revocable, non-exclusive licence for the Term to use any New IPR to the extent reasonably necessary solely to enjoy the benefit of any Products and/or Deliverables under this Agreement. For the avoidance of doubt the Customer's right to use any other NTT DATA IP shall be subject to the Customer entering into and complying with the terms of a separate Licence Agreement, and complying with such acceptable use policies as NTT DATA may notify to the Customer from time to time.
- 9.4 The Customer grants to NTT DATA a non-exclusive, non-transferable, royalty-free licence to use the Customer Proprietary Software and any other Customer IPR during the Term to the extent reasonably necessary in order to perform the Services and to provide the Services and/or Products under this Agreement.
- 9.5 The Parties shall co-operate to obtain the consents of applicable third parties to the use by the Customer or NTT DATA as applicable, of any third-party software, documentation and other materials (including, without limitation, Software and know-how) ("**Third Party Products**") that:
- 9.5.1 the other Party is permitted to use; and/or
- 9.5.2 is required to be used for the provision of the Services, Products and/or Deliverables, as applicable.

If either Party fails to obtain such consent or determines that the cost of obtaining such consent is unreasonable, the Parties shall co-operate to agree on alternative Third Party Products that are acceptable to and pre-approved by the other Party and that may replace those in respect of which consents have not been or cannot, except at unreasonable cost, be obtained.

- 9.6 Neither Party may use the names, services marks, trademarks, logos or other corporate identifications (the "**Branding**") of the other Party without prior written consent, save that NTT DATA may use the Customer's Branding for the purposes of identifying the Customer as a customer of NTT DATA in marketing and publicity materials.
- 9.7 Subject to clause 9.9, each Party (the "**Indemnifying Party**") shall indemnify and keep indemnified the other Party (the "**Indemnified Party**") against all claims, damages, costs and other expenses arising from any claim that the Indemnified Party's use of any IPR supplied by the Indemnifying Party under or in accordance with this Agreement infringes the rights of a third party (an "**IPR Claim**").
- 9.8 In respect of any IPR Claim, the Indemnified Party shall:
- 9.8.1 notify the Indemnifying Party promptly upon becoming aware of the IPR Claim;
- 9.8.2 not, without the Indemnifying Party's written consent (not to be unreasonably withheld or delayed) make any admission or compromise in respect of such IPR Claim;
- 9.8.3 allow the Indemnifying Party primary conduct of such IPR Claim provided that the Indemnified Party shall use and continue to use all reasonable endeavours to deal with such claim properly using reputable and appropriately qualified professional advisers and counsel; and
- 9.8.4 at the Indemnifying Party's expense, provide reasonable assistance to the Indemnified Party in respect of such IPR Claim.
- 9.9 NTT DATA shall have no obligation under clause 9.7 if and to the extent that an IPR Claim arises from:

- 9.9.1 compliance by NTT DATA with the Customer's specifications, requirements or directions, if any; or
  - 9.9.2 combination of the Services, Products and/or Deliverables with other computer programs, software or materials, which is either not permitted by this Agreement or is without NTT DATA's approval in writing.
- 9.10 Neither Party shall have any obligation under clause 9.7 if and to the extent that an IPR Claim arises from:
- 9.10.1 any matter or circumstance which could reasonably have been avoided or mitigated by the other Party; or
  - 9.10.2 any unauthorised modification or changes carried out by a third party which are either not permitted by this Agreement or are without the Indemnifying Party's approval in writing.

## 10. **CONFIDENTIALITY AND NON DISCLOSURE**

- 10.1 Subject to clause 10.3, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.2 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.3 A Party may disclose the other Party's Confidential Information:
- 10.3.1 to those of its and its Affiliates' directors, officers, employees, agents, contractors and professional advisors who reasonably require knowledge of the relevant information in order to properly carry out their functions provided that, in each case, the relevant person shall be bound by obligations of confidentiality in relation to such information which are reasonably equivalent to those contained in this Agreement; and/or
  - 10.3.2 to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 10.4 The Customer acknowledges that details of the Services, Products and Deliverables, constitute NTT DATA's Confidential Information.
- 10.5 The Customer shall not make, or permit any person to make, any public announcement concerning this Agreement without NTT DATA's prior written consent, except to the extent required pursuant to clause 10.3.2.
- 10.6 The above provisions of this clause 10 shall survive termination of this Agreement, however arising.

## 11. **NON SOLICITATION**

Neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party, any employee of the other Party employed or involved in the supply of Products and/or Services under this Agreement during the term or for a further six (6) months after the termination of the Agreement. Nothing in this Agreement shall prohibit a genuine offer of employment when made in response to a general published announcement made in any media.

## 12. ACCEPTANCE TESTING PROCEDURES AND CRITERIA

12.1 Prior to handing over a Product and/or Deliverable to the Customer, acceptance testing shall be carried out in accordance with the procedures and criteria contained in the relevant SoW.

12.2 The Customer shall be deemed to have accepted the Product and/or Deliverable if:

12.2.1 the Product and/or Deliverable materially complies with the acceptance criteria as specified in the relevant SoW;

12.2.2 the time period within which acceptance testing is supposed to be carried out, as specified in the relevant SoW (or, where no such time is specified, a reasonable period following the provision of the Product and/or Deliverable elapses) and the Customer has not notified NTT DATA that the Product and/or Deliverable has failed acceptance testing; or

12.2.3 the Customer commences operational use of and/or uses the Product and/or Deliverable in any way and for any purpose other than to conduct acceptance testing in accordance with clause 12.1 and the relevant SoW.

## 13. CHANGE ORDER PROCEDURE

13.1 Either Party may propose a Change to the Agreement by submitting a draft change order to the other Party ("**Change Order**"), however no proposed Change shall come into effect until it has been signed by both Parties in accordance with this clause 13.

13.2 If the Customer issues the Change Order:

13.2.1 NTT DATA shall (acting reasonably) evaluate the feasibility of the proposed Change within a reasonable time and shall respond to the Customer providing: (i) details of any impact on the Charges, the forecast timetable for performance and any resource allocations; (ii) proposing an amendment to the proposed Change; or (iii) notice of its intention not to proceed with the Change, (a "**Change Control Report**"). If NTT DATA does decide not to proceed with the Change, then it shall confirm its reasons in writing to NTT DATA as soon as is reasonable practicable following such decision; and

13.2.2 the Customer shall provide NTT DATA with all and any further information reasonably necessary in order for NTT DATA to respond pursuant to paragraph 13.2.1

13.3 Within ten (10) Business Days of receiving a draft Change Order or a Change Control Report from NTT DATA, the Customer shall evaluate the draft Change Order and/or the Change Control Report and shall do one of the following:

13.3.1 approve the proposed Change, in which case the Parties shall follow the procedure set out in clause 13.4;

13.3.2 (acting reasonably) reject the Change, in which case it shall notify NTT DATA of the rejection. For the avoidance of doubt the Customer shall not reject any proposed Change to the extent that the Change is necessary for NTT DATA or the Services to comply with any change in Applicable Law. If the Customer does reject a Change, then it shall confirm its reasons in writing to NTT DATA as soon as is reasonably practicable following such rejection; or

13.3.3 (acting reasonably) require NTT DATA to modify the Change Order and/or Change Control Report in which event NTT DATA shall make such modifications within ten (10) Business Days of such request. On receiving the modified Change Order and/or Change Control Report, the Customer shall approve or reject the proposed Change within five (5) Business Days.

13.4 If the Customer approves the proposed Change pursuant to clause 13.3 and it has not subsequently been rejected by NTT DATA, it shall inform NTT DATA and NTT DATA shall prepare a final version of the Change Order which it shall sign and deliver to the Customer for its signature. On the Customer's signature, the Change Order shall constitute a binding variation to the Agreement provided that the Change Order is signed by persons authorised to bind each Party.

#### 14. **SUB CONTRACTORS, AFFILIATES AND ASSIGNMENT**

14.1 NTT DATA may appoint any of its Affiliates or any other Sub-Contractors to supply the Products, Services and/or Deliverables (or any part thereof), provided that:

14.1.1 Such Affiliates and/or Sub-Contractors are subject to duties of confidence in respect of the Customer's Confidential Information equivalent to those set out in this Agreement; and

14.1.2 NTT DATA shall remain liable to the Customer under this Agreement for the supply of such Products, Services and/or Deliverables.

14.2 Neither Party shall assign or otherwise transfer this Agreement to any third party other than an Affiliate without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

#### 15. **TERM AND TERMINATION**

15.1 Unless terminated earlier in accordance with its terms, this Agreement will:

15.1.1 commence on the Effective Date and shall continue for an initial term of twelve (12) months (the "**Initial Term**"); and

15.1.2 automatically extend for a further twelve (12) months (each, a "**Renewal Period**") at the end of the Initial Term and each Renewal Period, unless either Party provides at least three (3) months' prior written notice to the other Party to terminate this Agreement, such notice to expire on or after the end of the Initial Term or any Renewal Term (as applicable),

and the Initial Term together with any subsequent Renewal Periods shall constitute the "**Term**".

15.2 Either Party may, without prejudice to its other rights or remedies, terminate this Agreement (in whole or in part) with immediate effect by written notice to the other Party if:

- 15.2.1 that Party breaches a material provision of this Agreement which is either incapable of remedy, or where it is capable of remedy, is not remedied within thirty (30) days of receipt of written notice requiring it to do so;
  - 15.2.2 that Party is insolvent according to Applicable Law, or has made any arrangements with its creditors or under the Applicable Law with a view to avoiding an impending insolvency, or has had any person appointed by its creditors or under Applicable Law as a consequence of debts which have fallen, or which are about to fall, due and which the relevant Party is unable to properly repay; or
  - 15.2.3 circumstances arise permitting that Party to terminate the Agreement pursuant to clause 25.2 (Force Majeure).
- 15.3 NTT DATA may, without prejudice to its other rights or remedies, terminate this Agreement (in whole or in part) with immediate effect by written notice to the Customer if the Customer:
- 15.3.1 fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; and/or
  - 15.3.2 undergoes a change of Control.

**16. CONSEQUENCES OF TERMINATION**

- 16.1 Where this Agreement is terminated in part, the Agreement and any SoWs in effect as at the date of termination shall otherwise continue in full force and effect.
- 16.2 Subject to clauses 16.1 and 16.3, on termination or expiry of this Agreement for any reason:
- 16.2.1 any existing SoWs shall continue in full force and effect unless and to the extent that the Parties agree otherwise in writing;
  - 16.2.2 the Customer shall immediately pay to NTT DATA all of NTT DATA's outstanding unpaid invoices and interest;
  - 16.2.3 NTT DATA shall be entitled to invoice any sums in respect of Services, Products and/or Deliverables supplied, procured or ordered by NTT DATA pursuant to this Agreement, which have not yet been the subject of a valid invoice, and such sums shall be due and payable immediately on receipt of such invoice;
  - 16.2.4 all licences granted to the Customer under this Agreement shall immediately terminate;
  - 16.2.5 each Party shall return and make no further use of any equipment, property, information, Documentation and other items (and all copies of them) belonging to the other Party;
  - 16.2.6 without prejudice to the generality of clause 16.2.5, the Customer shall return all Equipment and expunge or return all NTT DATA IP (including any New IPR) from any equipment, systems or devices into which it is installed, entered or programmed. If the Customer fails to do so, NTT DATA may enter the Customer's premises and take possession of such Equipment and/or NTT DATA IP. Until the relevant Equipment and/or NTT DATA IP has been returned, expunged or repossessed, the Customer shall be solely responsible for its safekeeping;

- 16.2.7 the Parties shall be regarded as discharged from any further obligations in respect of the terminated Agreement (or part of it); and
  - 16.2.8 save where the Customer has terminated this Agreement for cause in accordance with clause 15.2.1 or 15.2.2, the Customer shall immediately pay to NTT DATA any termination charges as may be specified in any applicable SoW(s).
- 16.3 In the event NTT DATA has terminated this Agreement for cause in accordance with clause 15.2 or 15.3, NTT DATA shall be entitled to:
- 16.3.1 take possession of all Products and/or Deliverables which have not yet been paid for in full;
  - 16.3.2 retain all monies already paid by the Customer (to the extent allowed by Applicable Law). ; and
  - 16.3.3 claim Termination Compensation from the Customer as if the Customer has terminated the Agreement for convenience.
- 16.4 Expiry or termination of this Agreement, howsoever caused, shall not:
- 16.4.1 prejudice any obligations or rights or remedies of either of the Parties which have accrued prior to termination or expiry; or
  - 16.4.2 affect any provisions of this Agreement which are expressly or impliedly intended to survive termination, including without limitation clauses 1 (*Definitions and Interpretation*), 6 (*Personnel and TUPE*), 9 (*Intellectual Property Rights*), 10 (*Confidentiality and Non-Disclosure*), 11 (*Non Solicitation*), 16 (*Consequence of Termination*), 17 (*Limitation of Liability*), 20 (*Data Protection*), 26 (*Entire Agreement*), 27 (*Third Party Rights*), 32 (*Governing Law and Jurisdiction*).

## 17. **LIMITATION OF LIABILITY**

- 17.1 This clause 17 sets out each Party's entire liability arising out of this Agreement and the performance or non-performance of its obligations hereunder, whether such liability arises in contract, tort, statute or otherwise, in law, equity or otherwise or is direct, indirect, special, consequential or otherwise.
- 17.2 Nothing in this Agreement shall exclude or limit:
- 17.2.1 a Party's liability for:
    - 17.2.1.1 death or personal injury caused by negligence;
    - 17.2.1.2 fraud, including fraudulent misrepresentation; or
    - 17.2.1.3 any other form of liability which cannot lawfully be limited or excluded;
  - 17.2.2 the Customer's liability arising out of any claim under the indemnity in clause 20.7; or
  - 17.2.3 the Customer's obligation to pay the Charges.
- 17.3 Subject to clauses 17.1 and 17.2, neither Party shall be liable to the other for:

- 17.3.1 loss of profits;
- 17.3.2 loss of turnover;
- 17.3.3 loss of sales or business;
- 17.3.4 loss of use or corruption of data, Software or information;
- 17.3.5 loss of anticipated savings;
- 17.3.6 loss of or damage to goodwill; or
- 17.3.7 any indirect, special or consequential losses.

17.4 Subject to clauses 17.1, 17.2, and 17.3, each Party's maximum aggregate liability for all claims arising out of or in connection with the relevant SoW in any one (1) year shall be limited to one hundred and twenty five per cent (125%) of the Charges paid by the Customer to NTT DATA in connection with the relevant SoW in respect of which the liability arises, during the twelve (12) months immediately preceding the date of the relevant claim.

## 18. **DISPUTE RESOLUTION**

18.1 In the event of any dispute, disagreement or claim arising between the Parties (a "**Dispute**") concerning this Agreement, the Parties shall attempt to resolve such Dispute in good faith without recourse to legal proceedings.

18.2 The Parties shall first attempt to resolve a Dispute informally by:

18.2.1 either Party referring the matter in dispute to the other Party's Contract Representative within five (5) Business Days of the Dispute occurring;

18.2.2 in the event that the Contract Representatives are unable to resolve the Dispute within three (3) Business Days of referring them, then within one (1) Business Day thereafter, the Parties shall refer the Dispute to a more senior level of management within each Party;

18.2.3 in the event that the nominated senior managers are unable to resolve the Dispute within three (3) Business Days of receiving the request, then, within one (1) Business Day thereafter, the Parties shall refer the Dispute to each Party's respective Chief Executive Officer; and

18.2.4 if the Chief Executive Officers are unable to resolve the Dispute within three (3) Business Days of reference to them, either Party may submit the Dispute to the International Chamber of Commerce (with such arbitration to be held in London and in the English language).

18.3 Clauses 18.1 and 18.2 are without prejudice to NTT DATA's right to bring immediate action for matters arising out of or in connection with breaches of confidence (including any breach of clause 10), infringement of IPR (including any breach of clause 9 or any IPR Claims made by NTT DATA) and/or any debt recovery claims made under or in connection with this Agreement (including any SoW).

## 19. **BRIBERY ACT AND SUSTAINABILITY POLICY**

19.1 Both Parties have and shall maintain anti-bribery and anti-corruption policies (the "Relevant Policies") to ensure compliance with all Applicable Laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010. NTT DATA shall provide its Relevant Policies to the Customer upon request.

19.2 Both Parties agree to adhere to NTT DATA's Sustainability Policy detailed at <https://uk.nttdata.com/documents/ntt-data-uk-sustainability-policy.pdf>

## 20. DATA PROTECTION

20.1 Within this clause 20, "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**" and "**Processing**" shall have the meaning prescribed in applicable Data Protection Legislation.

20.2 With respect to the Parties' rights and obligations under this Agreement, the Customer is the Controller and NTT DATA is the Processor.

20.3 Neither Party shall do, or omit to do, nor cause or permit to be done, anything which may result in a breach of the Data Protection Legislation by the other Party.

20.4 Without limiting the generality of clause, where Personal Data is Processed by NTT DATA under or in connection with this Agreement, NTT DATA shall:

20.4.1 not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than:

20.4.1.1 as required to meet the Customer's lawful, documented and reasonable instructions (which shall unless otherwise agreed be to process Personal Data as necessary to provide the Services under this Agreement); or

20.4.1.2 as required to comply with an EU or Member State law to which NTT DATA is subject, in which case NTT DATA shall (to the extent permitted by Applicable Law) inform the Customer of that legal requirement before Processing that Personal Data;

20.4.2 upon becoming aware of a Personal Data Breach:

20.4.2.1 notify the Customer without undue delay; and

20.4.2.2 co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of that Personal Data Breach, provided in each case that the Customer shall reimburse NTT DATA in full for all costs (including for internal resources and any third party costs) reasonably incurred by NTT DATA in performing the obligations under this clause 20.4.2 to the extent the Personal Data Breach was not caused by NTT DATA;

20.4.3 upon receiving any request, complaint or communication relating to the Customer's obligations under the Data Protection Laws:

20.4.3.1 notify the Customer as soon as reasonably practicable;

20.4.3.2 co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to enable the Customer to comply with any exercise of rights by a Data Subject under any Data Protection Laws in



respect of Personal Data processed by NTT DATA under the Agreement or comply with any assessment, enquiry, notice or investigation under any Data Protection Laws, provided in each case that the Customer shall reimburse NTT DATA in full for all costs (including for internal resources and any third party costs) reasonably incurred by NTT DATA in performing its obligations under this clause 20.4.3;

- 20.4.4 implement appropriate technical and organisational measures to protect against the unauthorised or unlawful Processing of, and against the accidental loss, destruction or damage to, Personal Data, which the Customer shall supervise and immediately report any issues or concerns to NTT DATA at: ukdataprotection@nttdata.com;
  - 20.4.5 ensure that its employees who may have access to the Personal Data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
  - 20.4.6 not authorise any Sub-Contractor to process the Personal Data ("**sub-processor**") other than with the prior written consent of the Customer provided that the Customer consents to the appointment of sub-processors who may from time to time be engaged by NTT DATA to provide the Services under this Agreement, who in each case are subject to terms between NTT DATA and the sub-processor which are no less protective than those set out in this clause 20; and
  - 20.4.7 subject to the requirements of any Exit Management Services, cease Processing the Personal Data within ninety (90) days of the termination or expiry of the Agreement or, if sooner, the Service to which it relates and as soon as possible thereafter, either return, or securely wipe from its systems, the Personal Data and any copies of it or of the information it contains.
- 20.5 NTT DATA shall make available to the Customer such further information and (as applicable) cooperate in the conduct of any audit or review exercise, as the Customer may reasonably require to provide assurance that NTT DATA is in compliance with the obligations set out in this clause 20, provided always that this requirement shall not oblige NTT DATA to provide or permit access to information concerning:
- 20.5.1 NTT DATA internal pricing information;
  - 20.5.2 information relating to NTT DATA's other customers;
  - 20.5.3 any of NTT DATA's non-public external reports; or
  - 20.5.4 any internal reports prepared by NTT DATA's internal audit function.

Further, a maximum of one (1) audit or review may be activated under this clause in any twelve (12) month period.

- 20.6 The Customer warrants that all Personal Data Processed by NTT DATA as envisaged under this clause 20 has been and shall be collected and processed by the Customer in accordance with Data Protection Laws including without limitation:
- 20.6.1 ensuring that all notifications to and approvals from regulators which are required by Data Protection Laws are made and maintained by the Customer; and

20.6.2 ensuring that all Personal Data is collected and processed fairly and lawfully, is accurate and up to date and that a fair collection notice is provided to Data Subjects which describes the processing to be undertaken by NTT DATA pursuant to this Agreement.

20.7 The Customer shall indemnify and hold NTT DATA harmless against all losses, fines and regulatory sanctions arising from any claim by a third party or regulator arising from any breach by the Customer of this clause 20.

## 21. **EXIT MANAGEMENT**

21.1 NTT DATA shall, at its sole discretion, provide such assistance as is reasonably required by the Customer to ensure an orderly transition of the Services to the Customer or any replacement supplier upon the termination or expiry of this Agreement ("**Exit Management Services**") in any circumstances other than termination by NTT DATA pursuant to clause 15.2.

21.2 NTT DATA shall be entitled to reimbursement of Charges incurred in providing the Exit Management Services. The amount and/or method of calculation of NTT DATA's Charges shall be agreed before the commencement of the Exit Management Services.

## 22. **VARIATION**

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties to this Agreement.

## 23. **WAIVER AND CUMULATIVE REMEDIES**

23.1 No failure or delay by either Party to exercise any right or remedy arising under, or in connection with, this Agreement (collectively, any "action") will act as a waiver, or otherwise prejudice or restrict the rights of that Party, in relation to that action or any other contemporaneous or future action.

23.2 The rights and remedies arising under, or in connection with, this Agreement are cumulative and, except where otherwise expressly provided in this Agreement, do not exclude rights and remedies provided by Applicable Law or otherwise.

## 24. **NOTICES**

24.1 Any notice given by one Party to another under this Agreement shall be in writing, delivered by hand or by prepaid first class or special delivery post to the address given at the start of this Agreement.

24.2 Notices delivered by hand shall be given on the day of receipt (unless received after 5.00 pm in which case they shall be given on the next Business Day). Notices sent by prepaid first class post or special delivery shall be deemed to have been given two (2) Business Days after the date of posting.

24.3 Either Party may vary their address and/or contact for notices by giving notice to the other. The notice must expressly state that the new address is the address for notices and the new contact is the contact to whose attention all future notices should be brought, as the case may be.

## 25. **FORCE MAJEURE**

25.1 Neither Party shall be liable for any delay or failure to meet its obligations under this Agreement due to any cause outside its reasonable control including (without limitation), inclement weather, acts of God, war, terrorism, riot, malicious acts of damage, non-performance by suppliers or subcontractors,

interruption or failure of a utility service, civil commotion, the United Kingdom's departure from the European Union, strike, lockout, industrial Dispute, refusal of licence, power failure or fire ("**Force Majeure Events**").

- 25.2 If performance hereunder is substantially prevented for a continuous period of sixty (60) days by virtue of the Force Majeure Events then the other Party may terminate this Agreement forthwith by written notice to the Party affected by the relevant cause.

26. **ENTIRE AGREEMENT**

- 26.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 26.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

27. **THIRD PARTY RIGHTS**

A person who is not a Party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists, or is available, other than under such Act.

28. **CONTRACT REPRESENTATIVES**

For the duration of the Term, the Parties shall each nominate and maintain at least one (1) representative, as the single point of contact between the Parties, to regulate and control the implementation and performance of the Parties under this Agreement (a "**Contract Representative**"). Such Contract Representative may be changed by the Party appointing him or her by giving written notice to the other Party.

29. **RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement is intended to create a partnership, joint venture or legal relationship of any kind between the Parties that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other. Except where otherwise expressly provided in this Agreement, neither Party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other.

30. **CLAIMS**

The Customer shall only make a claim or bring proceedings relating to the Services or otherwise under the Agreement against NTT DATA, and not any NTT DATA Affiliate, Sub-contractor or NTT DATA personnel. NTT DATA confirms that it will be liable to the Customer in respect of breaches of the Agreement by any NTT DATA Affiliate (to the extent that the relevant NTT DATA Affiliate would have been liable to the Customer) and in this regard, shall have available to it all of the same rights and defences that would have been available to such NTT DATA Affiliate. The Customer will indemnify NTT DATA in respect of any losses incurred by NTT DATA, any NTT DATA Affiliate or any Sub-contractor in the event of the Customer bringing such a claim against NTT DATA, any NTT DATA Affiliate or any Sub-contractor.

31. **SEVERANCE**

- 31.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 31.2 If any provision or part-provision of this Agreement is deemed deleted under clause 31.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. **GOVERNING LAW AND JURISDICTION**

This Agreement and any Dispute arising out of or in connection with it (including any non-contractual claims or Disputes) shall be governed by and construed in accordance with the laws of England and Wales. Each Party hereby submits to the exclusive jurisdiction of the courts of England and Wales over any Dispute arising out of or in connection with this Agreement.

**ENDORSEMENT:** By signing below the Parties acknowledge and agree to be bound to the terms of this Agreement. This Agreement may be executed in counterparts, each of which shall be treated as original for all purposes.

For	NTT DATA UK Limited	[Customer]
By		
Name		
Title		
Date		

## APPENDIX 1: DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS

1.1 In this Agreement, the definitions set out in this paragraph 1 of Appendix 1 (Definitions and Interpretation) shall apply.

**"Affiliate"** means in relation to a Party any group undertaking of that Party, in each case from time to time and the term "group undertaking" shall be construed in accordance with Section 1161 of the Companies Act 2006;

**"Agreement"** means the terms and conditions of this master services agreement, including the front cover, the attached schedules and any attached or referenced appendices and any document referred to, completed or to be completed in accordance with its provisions, as may be amended from time to time;

**"Applicable Law"** means all laws and regulations as applicable in the countries of operation of the Customer, enactments, regulatory policies, binding regulatory guidance, regulatory permits and licences of any government, foreign, or domestic and all treaties, conventions and international agreements which are in force from time to time during the Term;

**"Business Day"** means any day other than a Saturday or a Sunday or a day that is a public holiday in the country in which the Services are being provided or Product supplied;

**"Change"** means any actual or proposed change to the nature, level and/or extent of the Services or any Service Levels or the manner in which NTT DATA provides or is to provide the Services (whether resulting in additions to, reductions in, or amendments to the Services or the Service Levels);

**"Change Order"** has the meaning given to it in clause 13.1;

**"Charges"** means the sums payable for the Services, Products and/or Deliverables based on NTT DATA's rate card, as set out in a SoW;

**"Confidential Information"** means all information which is disclosed by one Party to the other whether before or after the date of this Agreement, whether disclosed orally or in writing, together with any reproductions in any form or medium, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a Party's (or its Affiliates') business including Deliverables, operations, policies, processes, plans or intentions, strategic objectives, developments, trade secrets, know-how, design rights, market opportunities and information, products and services, personnel, suppliers and customers of the Party disclosing it and all information derived from any of the above together with the existence or provisions of the Agreement and the negotiations relating to it, but which shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving Party;
- (b) was in the other Party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving Party, which independent development can be shown by written evidence;

**"Contract Representative"** has the meaning given to it in clause 28;

**"Control"** means the ability to control or direct, directly or indirectly, the board, executive body, decision making process or management of an entity by virtue of ownership, right of appointment, right to control election or appointment, voting rights, the ability to control the exercise of voting rights, management agreement or any other agreement;

**"Customer Default"** has the meaning given to it in clause 4.2;

**"Customer Proprietary Software"** means any Software owned by or licensed to the Customer (other than by NTT DATA pursuant to this Agreement);

**"Customer Retained Responsibilities"** means the functions and responsibilities to be retained and provided by Customer (in each case as described in the applicable SoW) and the provision by the Customer of:

- (a) the space, furnishings, phones, workstations (and maintenance related thereto), utilities, printers, parking, duplicating services and fixtures necessary for NTT DATA to perform the Services at the Customer's facility, all of which shall be substantially similar to those which the Customer provides to its own similarly situated employees, and
- (b) network access, connectivity infrastructure and access to and use of that portfolio of the applications, software, (including upgrades and version control related thereto) hardware, equipment, technology refreshes and assets as are necessary for NTT DATA to deliver the Services;

**"Data Protection Legislation"** means all Applicable Laws relating to the protection and processing of personal data and privacy including but not limited to the EU General Data Protection Regulation 2016/679 ("**GDPR**"), the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection Act 2018, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and other data protection or privacy legislation in force from time to time in the United Kingdom;

**"Deliverable"** means the items described in an SoW which are produced and/or delivered to the Customer as outputs of the Services;

**"Dispute"** has the meaning given to it in clause 18.1;

**"Documentation"** means any documentation necessary for the recording or supply of Product(s) procured and/or Services rendered;

**"Effective Date"** means the date on the front cover of this Agreement notwithstanding the date of signature of this Agreement;

**"Employee Transfer Law"** means any Applicable Law which operates to transfer the employment of any person by operation of such Applicable Law as a consequence a service provision change, including all Applicable Laws adopting the Transfers of Undertakings Directive 2001/23/EC, including but not limited to the Transfer of Undertakings (protection of Employment) Regulations 2006;

**"Equipment"** means all components, materials, plant, tools, test equipment, hardware, firmware, computing and data communications equipment and any other hardware and related documentation used in the provision of the Services;

**"Exit Management Services"** has the meaning given to it in clause 21.1;

**"Force Majeure Events"** has the meaning given to it in clause 25.1;

**"Impacted Personnel"** as at:

- (a) the Effective Date, shall mean employees, officers, consultants or agents of the Customer or any existing or previous supplier to the Customer, which are or have been providing services similar to the Services which NTT DATA will be providing under the relevant SoW; and
- (b) the cessation of the relevant SoW or on termination or expiry of the Agreement, shall mean employees, officers, consultants or agents of NTT DATA or Subcontractor to NTT DATA, in each case if involved in providing the Services;

**"Indemnified Party"** has the meaning given to it in clause 9.7;

**"Indemnifying Party"** has the meaning given to it in clause 9.7;

**"Initial Term"** has the meaning given to it in clause 15.1.1;

**"IPR"** means:

- (a) patents, utility models, supplementary protection certificates, petty patents, inventions (whether patentable or not), know-how, registered designs, rights in copyright database rights, design rights, semiconductor topography rights, trademarks and service marks;
- (b) all registrations or applications to register any of the items referred to in paragraph (a) of this definition; and
- (c) all rights in the nature of any of the items referred to in paragraphs (a) or (b) including continuations, continuations in part and divisional applications, rights in unfair competition and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction;

**"IPR Claim"** has the meaning given to it in clause 9.7;

**"Knock-on Default"** has the meaning given to it in clause 4.2;

**"Licence Agreement"** means any agreement between the Customer and a Licensor whereby Software is licensed by a third party for use by Customer pursuant to this Agreement;

**"Licensor"** means a third party service provider granting a Software licence to the Customer;

**"New IPR"** has the meaning given to it in clause 9.2;

**"NTT DATA IP"** means the Software (other than Customer Proprietary Software) and other IPR owned, licensed or used by NTT DATA in order to provide the Services;

**"Products"** means the Equipment, Software and/or other information technology products listed in a SoW to be procured by NTT DATA from a third party and supplied to the Customer on the terms of this Agreement;

**"Relevant Policies"** has the meaning given to it in clause 19;

**"Renewal Period"** has the meaning given to it in clause 15.1.2;

**"Service Levels"** means the section within a SoW which describes the Services and associated service levels to be provided by NTT DATA to the Customer;

**"Services"** means the services, functions and responsibilities to be provided by NTT DATA to the Customer, as specified in a SoW;

**"Software"** means computer programs in object code or source code together with any technical information and documentation necessary for the use of such programs;

**"SoW"** or **"Statement of Work"** means a detailed plan, agreed in accordance with clause 0, describing the Services Products and/or Deliverables to be provided by NTT DATA, the timetable for their performance and other related matters listed therein;

**"Sub-Contractor"** means a person to whom NTT DATA sub-contracts any of its obligations under this Agreement;

**"Term"** has the meaning given to it in clause 15.1 (being the Initial Term together with any subsequent Renewal Periods, as applicable);

**"Termination Compensation"** means the sums specified as such in the relevant SoW or, where not specified, such sums as are reasonably calculated by NTT DATA in order to compensate it for the loss of this Agreement (including without limitation unpaid Charges, work in progress, stranded costs and loss of forecast profit); and

**"Third Party Products"** has the meaning given to it in clause 9.5.

## 2. **INTERPRETATION**

2.1 Headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2.2 In this Agreement, except where the context requires otherwise:

2.2.1 a reference to one gender includes all genders;

2.2.2 any reference to a 'person' includes legal or natural persons recognised in law;

2.2.3 the singular includes the plural and vice versa;

2.2.4 the words 'including' or 'in particular' shall not limit the generality of any preceding words; and

2.2.5 a reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date and shall include all subordinate legislation made as at the Effective Date under that statute or statutory provision.