



Master Services Agreement

Client's full name

Subject (optional) - Additional title line

Client reference

CONTENTS

1.	BACKGROUND	4
2.	DEFINITIONS AND INTERPRETATION	4
3.	TERMS OF THIS AGREEMENT	6
4.	NDBS'S OBLIGATIONS.....	6
5.	CUSTOMER'S OBLIGATIONS	7
6.	FEES AND PAYMENT TERMS	7
7.	INTELLECTUAL PROPERTY	8
8.	DATA PROTECTION	8
9.	CONFIDENTIALITY	8
10.	LIMITATION OF LIABILITY	9
11.	INDEMNITY.....	10
12.	TERMINATION AND CONSEQUENCES OF TERMINATION	11
13.	FORCE MAJEURE	11
14.	CHANGE CONTROL PROCESS.....	11
15.	DISPUTE RESOLUTION.....	12
16.	NOTICES.....	12
17.	TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")	13
18.	NO PARTNERSHIP OR AGENCY	13
19.	CONFLICTS WITHIN AGREEMENT	13
20.	GENERAL PROVISIONS	14



21. **SIGNATURES** 16

22. **SCHEDULES** 17

EFFECTIVE DATE: [DATE]

This Agreement is made between:

[**CUSTOMER NAME**], with company number [Company Number], with its registered office [Company Registered Address] ("**CUSTOMER**").

and

NTT DATA BUSINESS SOLUTIONS LIMITED company number 03689001, with its registered office at 12 Gough Square, London EC4A 3DW, United Kingdom ("**NDBS**").

Each is referred to as a "Party" and collectively as the "Parties".

1. BACKGROUND

- 1.1 NDBS is in the business of providing consultancy and other services.
- 1.2 CUSTOMER wishes NDBS to provide it with certain Services (defined below) and has agreed to provide the same in accordance with the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:**2. DEFINITIONS AND INTERPRETATION**

The following definitions and rules of interpretation apply to this Agreement:

Affiliate	means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity. For the purposes of this definition, "control" refers to the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management and policies of the company, whether through the ownership of voting securities, by contract or otherwise.
Agreement	means this Master Services Agreement together with its annexes and schedules.
Confidential Information	means information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party.
Deliverables	means any software and non-software deliverables (including any New Software) as set out in the Order

	developed by NDBS for CUSTOMER under this Agreement.
Effective Date	means the date in the head section above. If no date is shown, then it means the date of the last signature to this Agreement.
Fees	means the charges for the Services as set out in the Order.
Force Majeure	means any event outside the reasonable control of either Party preventing it from performing any of its obligations under this Agreement, including, but not limited to, acts of God, fire, flood, lightning, war, revolution, loss of power, pandemic, cyberattack, act of terrorism, riot or civil commotion, but excluding lack of finance, strikes, lock-outs or other industrial action of the affected Party's own employees, or failure or delay by any sub-contractor or NDBS of the affected Party.
Good Industry Practice	means that degree of skill, diligence, and foresight which would reasonably and ordinarily be expected from a skilled operator in the relevant industry.
Intellectual Property Rights	means rights arising by virtue of copyright or in relation to trademarks (registered or unregistered), registered designs or patents and any other similar rights in any country and all rights in any trade secrets applicable thereto and the rights to any knowledge, know how or product (either in physical or electronic form), developed or learnt, as part of the provision of this Agreement.
New Software	means the software developed by NDBS over the course of providing the Services.
Order	means CUSTOMER's order for Services as may be subsequently agreed in writing between the Parties.
Pre-Contractual Statement	means any undertaking, promise, assurance, statement, representation (other than a fraudulent misrepresentation), warranty or understanding (whether in writing or not) of any person (whether Party to this Agreement or not) relating to this Agreement other than

	as expressly set out in this Agreement or any documents referred to in it.
Services	means such Services to be provided by the NDBS to CUSTOMER as are set out in the Order.
Termination Date	means the date of termination of this Agreement.
Working Day	refers to a period of 7.5 hours, observed during UK business hours of 9:00 AM to 5:00 PM, Monday to Friday, excluding UK bank holidays and travel time.

References to the singular shall include the plural and vice versa.

Use of the words "includes" or "including" means without limitation.

The provisions of this Agreement shall prevail exclusively, superseding any other terms that the Parties may seek to impose or incorporate, whether arising from trade, custom, practice, or prior course of dealing.

3. TERMS OF THIS AGREEMENT

This Agreement shall commence on the Effective Date and remain in effect for an initial term of one year. Thereafter, it shall continue in force until terminated in accordance with Clause 12 or upon either Party providing the other with no less than three (3) months' written notice.

4. NDBS'S OBLIGATIONS

4.1 NDBS shall:

- 4.1.1 use reasonable endeavours to meet any performance dates agreed between the Parties in respect of the Services, but any such dates shall be estimates only unless expressly agreed otherwise;
- 4.1.2 provide the Services in accordance with Good Industry Practice;
- 4.1.3 retain the right to modify the Services as required to comply with applicable laws or safety regulations, or to implement changes that do not significantly impact the nature or quality of the Services. NDBS will notify the CUSTOMER of any such modifications;
- 4.1.4 work in accordance with all reasonable policies and procedures provided to it by the CUSTOMER from time to time; and
- 4.1.5 promptly make available to CUSTOMER such information as is reasonably required to demonstrate NDBS's compliance with its respective obligations under this Clause 4 and the Data Protection Laws. NDBS shall allow for, permit, and contribute to audits, including inspections, by the CUSTOMER or another auditor mandated by the CUSTOMER for this purpose, limited to once per year. NDBS shall provide access to all relevant premises, systems, and records during normal

business hours for the purposes of each such audit or inspection upon reasonable prior notice and provide and procure all further reasonable cooperation, access, and assistance in relation to any such audit or inspection.

- 4.2 Where the Services involve the development of New Software by NDBS, this one shall warrant that such New Software will perform substantially in compliance with its specification for a period of three (3) months from the date of delivery.
- 4.3 NDBS does not warrant that the use of any software (including New Software or third-party software) will be uninterrupted or error-free.

5. CUSTOMER'S OBLIGATIONS

- 5.1 CUSTOMER shall, at its own cost, on the request of NDBS:
 - 5.1.1 allow NDBS's employees, agents and contractors engaged in the provision of the Services access to its premises and make available reasonable office services and facilities (including computer facilities such as storage, computer consumables and data preparation facilities) necessary for the performance of the Services;
 - 5.1.2 obtain all licences, consents and permissions required for NDBS to perform the Services and ensure that any third-party software necessary for the delivery of the Services operates substantially in accordance with its published specifications;
 - 5.1.3 ensure its employees provide co-operation reasonably required by NDBS; and
 - 5.1.4 promptly supply NDBS with any information and documentation reasonably requested to facilitate the performance of the Services.

6. FEES AND PAYMENT TERMS

- 6.1 NDBS shall invoice CUSTOMER for the Fees in accordance with the frequency set out in the Order. All undisputed invoices shall be payable within 30 days of date of invoice.
- 6.2 If CUSTOMER disputes any invoice in good faith, it shall provide NDBS with written notice specifying the disputed amount and the reasons for the dispute within 30 days of the date of the relevant invoice. CUSTOMER shall promptly pay any undisputed portion of the invoice. The Parties shall work together in good faith to resolve the dispute promptly.
- 6.3 All Fees are exclusive of value-added tax (VAT) and any other applicable sales or withholding taxes, which will be charged to CUSTOMER at the prevailing rate unless otherwise stated in the Order.
- 6.4 CUSTOMER shall reimburse NDBS for all reasonable and properly incurred expenses related to the provision of the Services, including, but not limited to, travel and accommodation costs, upon receipt of appropriate supporting documentation such as receipts or invoices.

7. INTELLECTUAL PROPERTY

- 7.1 Unless expressly agreed otherwise in writing, Intellectual Property Rights arising out of or in connection with the Services (including in any Deliverables) shall be owned by NDBS.
- 7.2 To the extent that NDBS owns the Intellectual Property rights in any Deliverables and use of such Deliverables is necessary to make use of the Services, NDBS grants CUSTOMER a perpetual, non-exclusive licence to use any Deliverables (including, for the avoidance of doubt, any software). Such licence will be subject to such terms as may be set out in the Order.
- 7.3 To the extent that NDBS requires access to software that CUSTOMER either owns or has a licence to use, CUSTOMER hereby grants NDBS a non-exclusive licence to use the software for the purpose of providing the Services to CUSTOMER.

8. DATA PROTECTION

Each Party shall comply with the provisions of Schedule 1 (Data Protection).

8.1 INCIDENT REPORT

NDBS shall promptly and, in any event within 24 hours:

- 8.1.1 notify the CUSTOMER if it, or any of its Sub-Processors or NDBS Personnel, suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data; and
- 8.1.2 provide all information as the CUSTOMER requires to report the circumstances referred to in Clause 8.1.1 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

9. CONFIDENTIALITY

- 9.1 Each Party (the "Receiving Party") shall maintain the confidentiality of the other Party's (the "Disclosing Party") Confidential Information and shall not, without the prior written consent of the Disclosing Party, disclose, copy, or modify the Confidential Information (or permit others to do so), except as necessary for the exercise of its rights and the performance of its obligations under this Agreement.
- 9.2 The Receiving Party undertakes to disclose the Disclosing Party's Confidential Information only to those of its officers, employees, agents, and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.
- 9.3 The Receiving Party shall notify the Disclosing Party immediately upon becoming aware of any unauthorised misuse, disclosure, theft, or loss of the Disclosing Party's Confidential Information.
- 9.4 The provisions of this Clause 9 shall not apply to information which:

- 9.4.1 is or becomes part of the public domain through no fault of the Receiving Party or its officers, employees, agents, or contractors;
 - 9.4.2 is lawfully received by the Receiving Party from a third party free of any obligation of confidence at the time of its disclosure;
 - 9.4.3 is independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information; or
 - 9.4.4 is required to be disclosed by law, court order, or governmental or regulatory authority, provided that the Receiving Party, where possible, notifies the Disclosing Party at the earliest opportunity prior to making any such disclosure.
- 9.5 The obligations under this Clause 9 shall survive the termination or expiry of this Agreement for a period of six (6) years.

10. **LIMITATION OF LIABILITY**

- 10.1 The extent of either Party's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 10.
- 10.2 Subject to Clause 10.6, either Party's total aggregate liability to the other Party (whether arising from negligence, breach of contract, or any other cause whatsoever) shall, in no event, exceed the greater of £250,000 or 140% of the Fees paid or payable in the twelve months immediately preceding the date on which the claim first arose.
- 10.3 Neither party shall be liable for any indirect, special or consequential loss or damage howsoever caused.
- 10.4 Neither Party shall be liable to the other for any
- 10.4.1 loss of revenue; or
 - 10.4.2 loss of profits; or
 - 10.4.3 loss of the use of money; or
 - 10.4.4 loss of anticipated savings; or
 - 10.4.5 loss of business; or
 - 10.4.6 loss of opportunity; or
 - 10.4.7 loss of goodwill; or
 - 10.4.8 loss of or unauthorised access to data; or
 - 10.4.9 loss of reputation.

- 10.5 Except as expressly stated in this Agreement, and subject to Clause 10.6, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 10.6 Notwithstanding any other provision of this Agreement, neither Party's liability shall be limited in any way in respect of the following:
- 10.6.1 death or personal injury caused by negligence;
 - 10.6.2 fraud or fraudulent misrepresentation; and/or
 - 10.6.3 any other losses which cannot be excluded or limited by applicable law.

11. INDEMNITY

- 11.1 NDBS shall indemnify the CUSTOMER for any direct losses, damages, liability, costs and expenses incurred by it as a result of any action, demand or claim that the provision of the Services or the Deliverables infringes the Intellectual Property Rights of any third party (an IPR Claim).
- 11.2 In the event that CUSTOMER receives notice of any IPR Claim, it shall:
- 11.2.1 notify the NDBS in writing as soon as reasonably practicable;
 - 11.2.2 not make any admission of liability or agree any settlement or compromise of the IPR Claim without the prior written consent of the NDBS;
 - 11.2.3 let NDBS at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion provided that if NDBS fails to conduct the IPR Claim in a timely or proper manner the CUSTOMER may conduct the IPR Claim at the expense of the NDBS;
 - 11.2.4 take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim; and
 - 11.2.5 provide NDBS with all reasonable assistance in relation to the IPR Claim (at the CUSTOMER's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the CUSTOMER.
- 11.3 If any IPR Claim is made or is reasonably likely to be made, NDBS may at its option:
- 11.3.1 procure for the CUSTOMER the right to continue receiving the relevant Services or using and possessing the relevant Deliverables; or
 - 11.3.2 re-perform the infringing part of the Services or modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Services or the Deliverables remain in conformance to the specification.

- 11.4 NDBS's obligations under Clause 11.1 shall not apply to any Deliverables modified or used by the CUSTOMER other than in accordance with this Agreement or NDBS's reasonable written instructions.

12. TERMINATION AND CONSEQUENCES OF TERMINATION

- 12.1 This Agreement may be terminated immediately by a Party giving written notice to the other if:
- 12.1.1 the other Party is in material breach which is either not capable of remedy; or if it is capable of remedy not remedied within 30 days of receipt of notice specifying the nature of the material breach;
 - 12.1.2 the other Party ceases, or threatens to cease, carrying on business; or
 - 12.1.3 the other Party becomes insolvent or, in the other Party's reasonable opinion, is likely to become insolvent.
- 12.2 Termination of this Agreement shall be without prejudice to the rights of either Party in respect of any prior breach.
- 12.3 On termination of this Agreement for any reason, the CUSTOMER shall immediately pay all valid outstanding invoices issued by NDBS, and termination of this Agreement shall automatically result in the termination of all associated Orders.

13. FORCE MAJEURE

No Party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations under this Agreement which is due to a Force Majeure event. If such event subsists for a period of 30 days or more the other Party may, forthwith by notice to the affected Party, terminate this Agreement with immediate effect without any cost or liability whatsoever.

14. CHANGE CONTROL PROCESS

- 14.1 Unless otherwise provided herein, all proposed changes, additions or modifications by either Party to the services, including all proposals by service recipient for additional services (such changes, additions, modifications and additional services, collectively, "changes") shall be subject to the formal change control process set forth in this Clause 14 (the "Change Control Process"). The Party seeking a change will document the proposed change in writing, deliver such writing to the other Party, and specify a desired implementation date. The receiving Party shall evaluate the proposal.
- 14.2 No change shall be effective unless and until the Parties in their own discretion, mutually agree on the changes and reflect such agreed upon changes in writing on amended terms or an amended schedule which shall include the following information, as applicable:
- 14.2.1 the date and term of effectiveness of the changes;
 - 14.2.2 a description of the changes;

- 14.2.3 the applicable Fees, if any, for such changes; and
- 14.2.4 any additional provisions applicable to the changes that are not otherwise set forth in this Agreement or that are exceptions to the provisions set forth in this Agreement.
- 14.3 Amended terms or an amended schedule reflecting changes made pursuant to this Clause 15 shall become effective only when executed in writing by both of the Parties.

15. DISPUTE RESOLUTION

- 15.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "Dispute"), either Party may serve written notice of the Dispute on the other Party (a "Dispute Notice").
- 15.2 Following service of a Dispute Notice, the Dispute shall be referred in the first instance to the Account Manager for NDBS and the person responsible for acquiring the Services for the CUSTOMER. These representatives shall meet (in person or via teleconference) within five (5) Business Days of service of the Dispute Notice to attempt to resolve the Dispute through good faith negotiations. Consent to such a meeting proposed by one Party shall not be unreasonably withheld by the other. The Account Manager and the person responsible for acquiring the Services for the CUSTOMER shall each have full authority to conduct negotiations and to enter into a settlement agreement on behalf of their respective Party.
- 15.3 If the Dispute is not resolved within five (5) Business Days of the initial meeting (or such other period as the Parties may agree in writing), the Dispute shall be escalated to the Chief Operating Officer of NDBS and, for the CUSTOMER, a director or other individual of equivalent or higher seniority. These individuals shall meet (in person or via teleconference) within five (5) Business Days following the escalation to attempt to resolve the Dispute through further good faith negotiations.
- 15.4 If the Dispute remains unresolved following the negotiation escalation process and no resolution is reached within ten (10) Business Days of such escalation (or such other period as may be agreed in writing), either Party may refer the matter to litigation.

16. NOTICES

- 16.1 Any notice given by a party under this Agreement shall be:
 - 16.1.1 in writing and in English;
 - 16.1.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and,
 - 16.1.3 sent to the relevant party at the address set out in Clause 16.3.
- 16.2 Notices may be given, and are deemed received:

- 16.2.1 by hand: on receipt of a signature at the time of delivery;
- 16.2.2 by post: on receipt of a signature at the time of delivery; or
- 16.2.3 by email: provided confirmation is sent by first class post on receipt of a read receipt email from the correct address.

16.3 Notices shall be sent to:

For NDBS:

For the attention of: Commercial Team at 12 Gough Square, London, EC4A 3DW, United Kingdom

Email: commercial-solutions-uk@nttdata.com

For the CUSTOMER:

For the attention of: [insert name], [address], [city], [post code], [country]

Email: [Email]

- 16.4 Any change to the contact details of a party as set out in Clause 16.3 shall be notified to the other party in writing.

17. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

- 17.1 Each Party warrants to the other that no persons are intended to transfer to the other Party under the application of TUPE or otherwise as at the Effective Date or at the date of termination of this Agreement, as applicable.
- 17.2 Each Party shall indemnify and keep indemnified the other Party against any and all employment liabilities, claims, costs, or expenses arising from or connected with:
 - 17.2.1 its breach of the warranties in this Clause 17; or
 - 17.2.2 any claim by an employee or third party asserting a transfer of employment to the other Party by virtue of TUPE or otherwise, contrary to the warranties provided in this Clause 18.

18. NO PARTNERSHIP OR AGENCY

The Parties are independent businesses and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the Parties shall have, nor shall represent that they have, any authority to make any commitments on the other Party's behalf.

19. CONFLICTS WITHIN AGREEMENT

In the event of any conflict or inconsistency between the provisions of this Agreement and its associated documents, the order of priority shall be as follows (in descending order):

- 19.1 the Order;
- 19.2 the Statement of Work (SOW);
- 19.3 the terms and conditions in the main body of this Agreement; and
- 19.4 the Schedules and exhibits.

20. GENERAL PROVISIONS

- 20.1 Neither Party may assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement, without the other's prior written consent.
- 20.2 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.
- 20.3 Each Party shall comply with all applicable laws, statutes, and regulations relevant to this Agreement, including, without limitation, the Bribery Act 2010, the Modern Slavery Act 2015, and any other anti-bribery, anti-corruption, anti-slavery, or human trafficking laws, as amended from time to time.
- 20.4 This Agreement sets out the entire agreement between the Parties relating to its subject matter and overrides any prior correspondence or representations. All warranties and conditions not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.
- 20.5 In entering into this Agreement and any Orders associated with it, neither Party has relied on any Pre-Contractual Statement save to the extent that such statement or representation is included in this Agreement or other documents referred to by it.
- 20.6 This Agreement shall become effective and enforceable only upon execution by all signatories.
- 20.7 Any variation to this Agreement must be in writing and signed by the authorised signatories of both Parties.
- 20.8 No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.9 The Parties agree that, during the Term of this Agreement and for a period of one (1) year following its termination, neither Party shall, directly or indirectly, employ or engage the services of any employee of the other Party who was involved in the performance of this Agreement, without obtaining the prior written consent of the other Party.

- 20.10 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 20.11 This Agreement is intended to be legally binding and shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

21. **SIGNATURES**

Signed for and on behalf of: CUSTOMER	Signed for and on behalf of: NDBS
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
Signed for and on behalf of: CUSTOMER (optional)	Signed for and on behalf of: NDBS
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

22. SCHEDULES

SCHEDULE 1 – DATA PROTECTION

1. DEFINITIONS

Data Controller	has the meaning given to “Data Controller”, or “Controller” as appropriate, in the Data Protection Laws.
Data Breach	means a “personal data breach” as defined in the Data Protection Laws, being a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
Data Processor	has the meaning given to “Data Processor”, or “Processor” as appropriate, in the Data Protection Laws.
Data Protection Laws	means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Agreement, including where applicable the Data Protection Act 2018, the Data Protection Bill, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended or superseded and the EU GDPR (Regulation (EU) 2016/679) and the UK GDPR.
EU GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time.
GDPR	means either the EU GDPR or UK GDPR, depending on which is applicable to the processing.
Personal Data	has the meaning given in the Data Protection Laws.
UK GDPR	means the EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as updated or amended and including any subordinate or replacement legislation.

2. COMPLIANCE WITH DATA PROTECTION LAWS

The Parties shall each comply with their respective obligations under the applicable Data Protection Laws.

3. PROCESSING OBLIGATIONS

In respect of any Personal Data to be processed by a Party acting as Data Processor pursuant to this Agreement for which the other Party is Data Controller, the Data Processor shall:

- 3.1 provide appropriate technical and organisational measures in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk;
- 3.2 not engage any sub-processor without the prior specific or general written authorisation of the Data Controller (and in the case of general written authorisation; the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other processors, thereby giving the Data Controller the opportunity to object to such changes);
- 3.3 ensure that any sub-processor that is engaged to process such Personal Data by the Data Processor is subject to data protection obligations that are similar to those applicable to the Data Processor under this Schedule;
- 3.4 process the Personal Data only to perform its obligations under this Agreement or other documented instructions and for no other purpose save to the limited extent required by law;
- 3.5 on termination of this Agreement, at the Data Controller's option either return or destroy the personal data (including all copies of it) immediately;
- 3.6 ensure that all persons authorised to access the personal data are subject to obligations of confidentiality;
- 3.7 make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller; provided that, in respect of this provision the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes Data Protection Laws;
- 3.8 taking into account the nature of the processing, provide assistance to the Data Controller, insofar as possible, in connection with the fulfilment of the Data Controller's obligation to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the UK GDPR to the extent applicable. Such assistance to be chargeable at Data Processor's standard rates or rates agreed by the Parties from time to time;
- 3.9 provide the Data Controller with assistance in ensuring compliance with Articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification,

communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Data Controller, taking into account the nature of the processing and the information available to the Data Processor. Such assistance to be chargeable at Data Processor's standard rates or rates agreed by the Parties from time to time;

- 3.10 notify the Data Controller without undue delay (and in any event, within 24 hours of becoming aware of a security breach in respect of Personal Data that it processes on behalf of the Data Controller) in writing if the Data Processor becomes aware of a Data Breach;
- 3.11 maintain a record of its processing activities in accordance with Article 30(1) of the GDPR; and
- 3.12 allow the Data Controller (or its appointed third-party auditor) to conduct an audit of compliance with this Schedule by the Data Processor pursuant to this Agreement (including by way of physical inspection) no more frequently than once per year during the term and on at least 10 days' notice to the Data Processor in advance (provided that the Data Processor shall be entitled to require that any third-party auditor appointed to conduct such an audit enters into a confidentiality agreement with the Data Processor prior to such audit being conducted). Support for audits to be chargeable at Data Processor's standard rates or at rates agreed by the Parties from time to time.

4. INTERNATIONAL DATA TRANSFER

In respect of any Personal Data to be processed by a Party acting as Data Processor pursuant to this Agreement for which the other Party is Data Controller, the Data Processor shall not, save as set out below, transfer the Personal Data outside the territory comprising the UK and EEA or to an international organisation without first:

- 4.1 ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;
- 4.2 notifying the Data Controller of the protections and adequate safeguards in Clause 4.1 above; and
- 4.3 documenting and evidencing the protections and adequate safeguards in Clause 4.1 above and allowing the Data Controller access to any relevant documents and evidence.

5. DETAILS OF PROCESSING ACTIVITIES

The following table sets out the details of processing as required by Article 28 of GDPR:

Purposes for which the Personal Data shall be processed	Solely in connection with providing Services under this Agreement.
Description of the categories of the data subjects	CUSTOMER's employees and subcontractors.
Description of the categories of Personal Data	The minimum required contact data and personal data required to provide the Services: employee name, business address, business phone number, business mobile number, business e-mail address, system login details and such other personal data as it required to provide the Services.
Description of transfers of Personal Data to a country outside of the UK	The following NTT Data organisations may process data as sub-processors. NTT DATA Business Solutions AG Königsbreede 1 33605 Bielefeld, Germany NTT DATA Business Solutions sp. z o.o. Business Garden Poznań ul. Pastelowa 8 PL-60-198 Poznań, Poland NTT DATA Business Solutions Holding B.V. Utopialaan 50 5232 CE 's-Hertogenbosch, Netherlands

	intelligence Outsourcing MSC Sdn Bhd (H.Q) c/o NTT MSC, Momiji (West) Building No. 43000 Persiaran APEC MY-63000 Cyberjaya, Selangor, Malaysia NTT DATA Business Solutions Pvt. Ltd. Plot no. 4, Softsol Tower - 2, 3rd floor, Software Units Layout Madhapur, Hi-Tech City Hyderabad - 500081, Telangana, India FH S.A. 100 SCN QD 04, Bloco B #1201 Brasilia, Distrito Federal 70714-900, Brazil NTT DATA Business Solutions Türkiye Nidakule Ataşehir Kuzey İş Merkezi, Barbaros Mah. Begonya Sok. No:3/A Ataşehir 34746 İstanbul, Turkey NTT DATA Business Solutions Inc. 10856 Reed Hartman Highway, Cincinnati, OH 45242, USA
The envisaged time limits for erasure of the different categories of Personal Data Please specify how long you think the Personal Data will be retained for, where possible.	Personal Data will be erased within six months of the completion of the Services, unless otherwise agreed with the CUSTOMER, or if retention is required by law.

General description of technical and organisational security measures Where possible, please describe the measures put in place under Article 32(1) GDPR.	All data held on CUSTOMER laptops is permanently encrypted. Access to data held in CUSTOMER networks is restricted to CUSTOMER employees or subcontractors under the control of CUSTOMER.
Authorised Sub-Processors List the sub-processors who will process Personal Data.	Subcontractors under the control of NDBS.

Software Agreement

NDBS IP

Client's full name

Subject (optional) - Additional title line

Client reference

EFFECTIVE DATE: [DATE]

This Agreement is made between:

[**CUSTOMER NAME**], with company number [Company Number], with its registered office [Company Registered Address] ("**CUSTOMER**").

and

NTT DATA BUSINESS SOLUTIONS LIMITED, company number 03689001, with its registered office at 12 Gough Square, London EC4A 3DW, United Kingdom ("**NDBS**").

IT IS AGREED

6. This Agreement and the licence granted hereunder shall commence on the Effective Date and continue until [Date] ("Initial Term"), and shall automatically renew for successive periods of one (1) year (each a "Renewal Period"), unless terminated in accordance with paragraph 11 or unless either party provides the other with written notice of non-renewal at least ninety (90) days prior to the commencement of the applicable Renewal Period.
7. During the term of this Agreement, NDBS shall supply, and the CUSTOMER shall purchase, an end-user licence for the Software in accordance with this Agreement.
8. The specific details of the Software to be provided under this Agreement, together with the applicable commercial terms, are set out in Schedule 1.
9. The Software shall be licensed to the CUSTOMER in accordance with the terms set forth in Schedules 1, and 2. All references to "Customer" shall be interpreted as references to the CUSTOMER for the purposes of this Agreement. In the event of any conflict or ambiguity between the provisions of Schedule 2 and other provisions of this Agreement, the provisions of Schedule 2 shall take precedence.
10. As between the CUSTOMER and NDBS, all rights and obligations of Infor as set out in Schedule 2 shall be exercised or performed by NDBS, except for any rights reserved to NTT DATA Business Solutions Group, which shall remain reserved to NTT DATA Business Solutions Group unless otherwise agreed between NDBS and NTT DATA Business Solutions Group.
11. The provisions of Schedule 2 may be amended by NDBS as stipulated in Schedule 2.
12. The fees for the licence to use the Software under this Agreement shall be detailed or determined in accordance with Schedule 1. All sums payable under this Agreement are exclusive of VAT. The CUSTOMER shall pay NDBS all amounts due in pounds sterling within 30 days of the relevant invoice date.
13. NDBS shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment.
14. The aggregate liability of NDBS arising out of or in relation to this Agreement, whether in contract, tort (including negligence and breach of statutory duty), or otherwise, shall not exceed the fees paid to NDBS during the twelve (12) month period immediately preceding the date on which the liability first arose. In the case of default due to impossibility by NDBS, the total liability is limited to a maximum of twenty percent (20%) of the fees paid to NDBS within the past twelve (12) months. Nothing in this Agreement shall limit either Party's liability for death or personal injury arising from negligence or fraudulent misrepresentation.

15. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other, its Affiliates, or any third party for any indirect, incidental, consequential, special, or punitive loss or damage, including, without limitation, loss of profit, loss of revenue, loss of anticipated savings, loss of business opportunity, loss of use, loss or corruption of data, loss of production, loss of goodwill or reputation, or costs of capital, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise, and whether or not foreseeable or notified as a possibility, arising out of or in connection with this Agreement or the performance or non-performance of obligations hereunder.
16. Either Party may terminate this Agreement and the licence granted hereunder by providing written notice with immediate effect if:
 - a. the other Party becomes, or is likely to become, insolvent;
 - b. the other Party materially breaches this Agreement;
 - c. any sum payable under this Agreement is not paid within thirty (30) days of its due date; or
 - d. termination is permitted under any provision in Schedules 2 of this Agreement.
17. Termination of this Agreement shall be without prejudice to the rights and remedies of either Party that may have accrued up to the date of termination. Upon termination, all sums owing under this Agreement shall become immediately due.
18. Termination of this Agreement shall terminate all licences granted hereunder.
19. The CUSTOMER shall not assign this Agreement without the prior written consent of NDBS.
20. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and no third party shall have the benefit of or the right to enforce any term of this Agreement.
21. This Agreement (including its Schedules and any referenced documents) constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior discussions, correspondence, negotiations, drafts, or representations, whether written or oral, relating to such subject matter.
22. If any provision of this Agreement is found to be invalid, that invalidity shall not affect the validity and enforceability of the remaining provisions.
23. No variation of this Agreement shall be effective unless it is in writing and signed by authorised representatives of both Parties.
24. The CUSTOMER shall not be entitled to withhold, set off or deduct any amount from any sum due to NDBS under this Agreement, whether by way of set-off, counterclaim, abatement or otherwise.
25. The terms of this Agreement, including its content and any information exchanged between the Parties in connection with it, shall be treated as confidential and shall not be disclosed to any third party without the prior written consent of the other Party, except as required by law, regulation, or a competent authority, or as otherwise permitted under this Agreement.
26. This Agreement shall become effective and enforceable only upon execution by all signatories.
27. Each Party agrees, to the extent they apply to this Agreement, to comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including (without limitation), all applicable Data Protection Laws, the Bribery Act 2010 and with all applicable anti-slavery and

human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015.

28. This Agreement is intended to be legally binding and shall be governed by, and construed in accordance with, the laws of England and Wales. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

29. Signatures

Signed for and on behalf of: CUSTOMER	Signed for and on behalf of: NDBS
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
Signed for and on behalf of: CUSTOMER (optional)	Signed for and on behalf of: NDBS
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

SCHEDULE 1 – SOFTWARE AND COMMERCIAL TERMS

1. Software Description

Software Name	Description	Quantity	Licence Type
[Insert Name]	[Insert functional description]	[e.g. 50 users]	[e.g. Subscription / Term-based / Named User]

2. Licence Term

- Initial Term: [Insert duration, e.g. "12 months from Effective Date"].
- Renewal: Automatically renews for successive [e.g. 12-month] periods unless terminated in accordance with Clauses 1 and 12.

3. Licence Fees

Fee Type	Amount	Frequency	Payment Terms
Licence Fee	£[amount]	[e.g. Annual / Monthly]	Payable within 30 days of invoice date

- All fees are exclusive of VAT.

SCHEDULE 1 – END USER LICENSE AGREEMENT

1. Overview

This End User License Agreement ("EULA") is between the respective NTT DATA Business Solutions Group company (hereinafter referred to as "NTT DATA") and the Customer (defined in Section 1.2 below) for the provisioning and use of NTT DATA Software, or Third Party Software (collectively "Software") and related Services as described in the following period:

- On-premise perpetual software license (one time license fees for unlimited period of time)
- On-premise leased software license (subscription license for fixed period of time)
- Cloud Services
- Use of Documentation or other materials, limited or unlimited in time

The provisions of this EULA shall apply in respect only insofar as the corresponding Software, or Cloud Services have been ordered by Customer through a separate order form, software terms and conditions, license and software maintenance agreement or other contractual document with the respective contracting NTT DATA company (the "Agreement"). This EULA is hence part of this Agreement.

- 1.1 In all (also future) contractual relationships in which NTT DATA (i) provides Software and related services to other companies, legal entities under public law or special funds under public law (hereinafter referred to as "Customer") and (ii) grant rights of use thereto for an unlimited or limited period of time and/or this EULA shall apply in its respective valid version at the time of the respective conclusion of the Agreement and unless otherwise expressly agreed in writing between the parties the Agreement. The EULA is in addition, to the Agreement and the respective documents relevant to the use or service, such as product or service descriptions or other applicable supplemental terms, which shall be made available to the Customer at any time upon request. In case of other Third Party Software the respective conditions of the third party shall apply.
- 1.2 Counter-confirmations and/or general terms and conditions of business or purchase of Customer shall not be recognised or valid unless NTT DATA has expressly agreed to their validity in writing. This EULA shall also apply if the services of NTT DATA are rendered without reservation in the knowledge of conflicting or deviating conditions of the Customer. The provisions shall apply accordingly to pre-contractual relationships. In the event of a conflict between the terms of the EULA and the Agreement, the Agreement shall prevail for only the Software or Cloud Services order under such Agreement. In all instances the Third Party Software conditions shall prevail in the event of a conflict with the EULA or Agreement.
- 1.3 1.3 The Agreement and this EULA shall become effective upon Customer's acceptance of the contractual documents required by NTT DATA's provisioning of the Software and/or access to the Services.

2. General Definitions

- 2.1 "Agreement" (also Contract) means the offer or the license and software maintenance agreement pertaining to this EULA concluded between the Customer and NTT DATA.
- 2.2 "Add-On" means any software created by NTT DATA or a third party that communicates with, adds or enhances functionality to, and is not a Modification of, the provided Software.
- 2.3 "Affiliate" means a any corporation, partnership or legal entity under applicable corporate law that is owned or controlled, directly or indirectly, by the Customer, NTT DATA, or other NTT DATA third party licensor (as the case may be through ownership of more than 50% of the voting or management rights and located in the Territory.
- 2.4 "Cloud Service" means any specific on-demand solution (including Support) provided by NTT DATA under an Agreement.
- 2.5 "Cloud Materials" means all materials provided to the Customer prior to or as part of the provision of the Cloud Services, including materials generated by the provision of support services to the Customer. Cloud Materials include materials created in collaboration with the Customer but do not include Customer Data, Customer

Confidential Information or the Cloud Service itself.

- 2.6 "Customer Data" means all content, materials, data, personal data and information captured by Defined Users in the production system of a Cloud Service or derived from its use and stored in the Cloud Service (e.g. Customer-specific reports). The Customer Data and the data derived therefrom do not contain any Confidential Information of NTT DATA, NTT DATA's licensors or partners.
- 2.7 "Data Center Operation" means the use of or access to the Software by or for third parties, in particular to operate or manage the business of a third party, or the provision of outsourcing services.
- 2.8 "Defined User (also "Authorized User")" means an employee of Customer, its Affiliates or a Third-Party Business Partner who is authorized to directly or indirectly access the Licensed Software.
- 2.9 "Designated Unit" means each individual computer or server on which the Software and the Third-Party Database are installed.
- 2.10 "Documentation" means the technical and/or functional documentation belonging to the Software and, if applicable, descriptions of roles and responsibilities, as amended from time to time, of the respective manufacturer, which is provided or made available to the Customer together with the Software. Manuals are not included in the scope of delivery.
- 2.11 "Export Law" means all applicable import, export control and sanctions law, in particular without limitation the law of the United States of America (US), the European Union (EU) and Germany.
- 2.12 "Licensed Software" means the NTT DATA Software or Third Party Software that Customer has acquired through NTT DATA via an executed Agreement including for the avoidance of doubt software that is part of Cloud Services.
- 2.13 "Maintenance" means the Software support/maintenance provided by NTT DATA as agreed in the Agreement for the Software.
- 2.14 "Modification" means developments/changes to the Software that potentially could jeopardize or prevent the release capability of the Software. For the avoidance of doubt, customizing and parameterization of the On-Premise Software do not constitute a Modification, but are generally permissible within the framework of the Agreements.
- 2.15 "NTT DATA Software" means (i) all standard software products and related Documentation developed for or by NTT DATA or its Affiliates; (ii) all new versions (including, without limitation, Releases, updates, patches, corrections) of such NTT DATA Software made available to Customer in performance of the Agreement (through Maintenance); and (iii) all complete or partial copies thereof. If components of the NTT DATA Software contain Open-Source Software ("OSS"), such OSS components shall also be disclosed to Customer upon request at any time prior to the conclusion of the Agreement. Upon delivery of the NTT DATA Software or within the scope of the product description, Customer shall receive an Open-Source description which lists the respective Open-Source components used and identifies them in accordance with the applicable provisions of the respective OSS license with the necessary information obligations.
- 2.16 "Non-Productive Use" means the use of the Software solely for the Customer's internal training purposes to enable the Customer's permanent employees to use the Software to process the Customer's internal business transactions or for internal testing or development work in support of the Customer's productive environment.
- 2.17 "On Premise Software" means Software that is licensed (either for a limited or unlimited time period) and provided for installation and Use from Client provided Designated Unit.
- 2.18 "Partner or NTT DATA's licensor" means any other party whose software or services are distributed, sold, loaned, offered as a service, or otherwise made available by NTT DATA.
- 2.19 "Productive Use" means the use of the Software exclusively for the processing of Customer's internal business transactions. Preparation for productive operation shall also constitute productive use.
- 2.20 "Proprietary Information" means (i) in relation to the Software and Documentation and any full or partial copies thereof, the program concepts, the Third Party Database, any other Third Party Software provided with or as part of the Software and results of comparative tests and (ii) any information which NTT DATA, Partner or NTT DATA licensor or Customer protect against unrestricted disclosure to third parties or which, in the circumstances of disclosure or according to its content, is to be regarded as confidential ("Confidential Information"). Excluded

from this is such Confidential Information that (a) is or becomes publicly known without any act or omission by the other party or (b) is or becomes lawfully acquired by the other party from a source other than the disclosing party prior to disclosure by the disclosing party or (c) lawfully and independently becomes available to the other party.

- 2.21 "Release" means any edition of the Software.
- 2.22 "Software Development Tools" means all development tools (software in object code and documentation as softcopy and/or hardcopy) provided by NTT DATA in connection with the Software for non-productive use in the development of extensions based on the relevant Agreements. The Software Development Tools may include the Software Development Kit development version ("SDK") or may be included in the licensed ABAP workbench. The term "Software Development Tool" includes (i) all Releases, versions or correction levels of a Software Development Tool and (ii) all complete or partial copies thereof.
- 2.23 "Software" means standard software of NTT DATA and other partners or licensors.
- 2.24 "Supplemental Terms" (or "Supplement") means the product-specific supplemental terms and conditions applicable to the Cloud Service and referenced in an Agreement.
- 2.25 "Territory" means the territory in which the Software is installed, provided that the installation may only be made in one country at any one time.
- 2.26 "Term" means the agreed term of a Use right, Cloud Service or Maintenance Agreement, consisting of minimum term and renewal terms.
- 2.27 "Third Party Database" means any third-party proprietary database software, if any, for which NTT DATA has licensed the Customer.
- 2.28 "Third Party Business Partner" means any third party that requires access to the Software or Cloud Services in connection with the conduct of Customer's or its Affiliates' internal business, including, without limitation, Customer's auditors, distributors, Customers, service providers and/or suppliers.
- 2.29 "Third Party Software" means (i) all software products and related documentation to which Customer acquires rights of use under the Agreement, but which have been developed for or by companies other than NTT DATA or their affiliates and are not NTT DATA Software; (ii) all new versions (including, without limitation, releases, updates, patches, corrections) of such Third Party Software made available to Customer in performance of the Agreement; and (iii) all full or partial copies thereof.
- 2.30 "Use" means the execution of the process functions of the Software, loading, executing, accessing, using the Software or displaying data resulting from those functions. Use may occur through an interface provided with or as part of the Software, through a customer or Third-Party interface, or through another intermediary system.
- 2.31 "Usage Metric" (or "Usage Metric") means the usage parameters for determining the agreed usage volume and calculating the relevant remuneration for a Cloud Service or Software under the Agreement

3. Ownership and Intellectual Property Rights

All rights to the Software, regardless of whether it is offered on a permanent, temporary or service basis, - in particular the copyright, trade secret and all other intellectual property rights with all powers to all programs, documentation, documents, program concepts (such as concepts, methods, best practices, ideas and know-how) and other protected information provided within the scope of delivery, Agreement initiation and execution including subsequent performance and/or Maintenance – are and shall remain exclusively vested in and be the sole and exclusive property of NTT DATA and/or the respective Partners or NTT DATA licensors (e.g. Microsoft). NTT DATA and its Partners or NTT DATA licensors retain all rights to the Software and Proprietary Information not expressly granted to Customer under this EULA or an Agreement. All rights going beyond the rights of Use described below, in particular the right to distribute the Software, including the right to lease, translate, edit, arrange and make the Software available to the public, shall remain exclusively with NTT DATA or the respective Partner or licensor. The Customer is not granted any rights to or in relation to the source code of a Software. The Customer shall only be granted the following non-exclusive rights to the Software that is the subject matter of the Agreement.

4. Granting of use rights / license

- 4.1 Against payment of the fee agreed in the Agreement NTT DATA grants the Customer use rights on the Software

to the agreed extent as specified in the Agreement. Depending on which model the Customer chooses for the Software, the following conditions apply accordingly. General conditions

- 4.1.1 Extent of Use and Users - Without prejudice to the following conditions, the Customer may only Use the Licensed Software or Cloud Services to the extent stipulated in the Agreement. The right of Use is limited to the contractual software or services (functions) to the extent regulated therein, even if the Customer could technically access other software or service components. The Customer must have the necessary rights of Use for all persons (Customer employees, Affiliates and Customer Third Party Business Partners) who use the Software or Cloud Services (directly and/or indirectly). The Customer may permit Authorized Users to use the Software or Cloud Service to the contractually agreed extent, which may not exceed the licensed maximum number of Defined Users or the Usage Metric and must correspond to the details in the Agreement submitted by the Customer. Access data for the Cloud Service or a Defined User license may not be used more than once or by more than one person at the same time, except otherwise contractually agreed. However, they may be transferred from one person to another if the original user is no longer authorized to use the Cloud Service or the Software (e.g. because of termination of the employment contract).

The Customer shall be liable for acts and omissions of its Authorized Users, Affiliates and Third Party Business Partners as for its own acts and omissions and shall oblige them to use the provided Cloud Services, Software and/or Documentation or other Materials in accordance with this EULA and the Agreement.

It is not possible to return or exchange Usage Metrics and Defined Users if the actual usage turns out to be less than expected or if actual usage changes.

A license key may be required for use of other Licensed Software as well. Access data is required for the Use of and Cloud Services:

a) Authorization of the Customer to Use the Software or Services for the Benefit of Affiliated Companies – Customer is authorized to Use the Software and the Third Party Database and the Cloud Services for Productive Use for its Affiliates provided that (i) the Affiliate has previously signed and delivered to NTT DATA an contract to comply with the EULA in the form set out in the Agreement and confirms this contract to NTT DATA, (ii) rights of Use have been acquired for all persons using the Software directly and/or indirectly for the Affiliate, (iii) the Software and the Third Party Database are not installed at the Affiliate's sites. Customer shall provide NTT DATA with a list of its Affiliates in writing prior to the conclusion of the Agreement, which forms an integral part of the Agreement.

b) Authorization of Third Party Business Partners to Access the Software -Customer is authorized to allow Customer's Third Party Business Partners to access the Software or Cloud Services to assist Customer in conducting its internal business transactions, provided that (i) all Third Party Business Partner's persons accessing the Software or Cloud Services directly or indirectly shall be consider an Authorized User, (ii) Third Party Business Partners access to the Software or Cloud Services is expressly limited to screen access only, (iii) s Third Parties Business Partners will not have access to the source code of the Software, (iv) Third Party Business Partners will not use the Software or Cloud Services to conduct their internal business transactions or to operate or man-age their own business.

- 4.1.2 Prohibits of use and obligations of Customer - Customer is prohibited from using the Licensed Software or Cloud Services:

(a) copy, translate, disassemble, decompile, reverse engineer, or otherwise modify (except as required by law or permitted under the applicable terms of the EULA or Agreement) all or any portion of the Software or Cloud Services and the source code, Documentation, or other materials thereunder, or create derivative works thereof; provided, however, that Documentation may be copied for internal use to the extent necessary; (b) use any Software or Cloud Services in a manner that violates any applicable law, including but not limited to the transmission of information or data that is unlawful or infringes any third party proprietary rights; (c) use the Software or Cloud Services to develop application or interface functionality with, or provide access to, the functionality of the Software or Cloud Services or any database used with the Software or Cloud Services, except through the use of permitted software development tool and in those cases where the Cloud Services is developed to use as an interface (e.g. it.xEDICloud or it.capture); (d) use the Software or Cloud Services in excess of the usage rights granted, both quantitatively and qualitatively; and (e) interfere with or circumvent

the operation or security of the Cloud Service; and (f) sublicense, license, sell, lease, lease or otherwise make the Software or Cloud Services available to any third party, except as expressly permitted under this EULA.

4.1.3 Intellectual Property Rights & Infringement of Intellectual Property Rights The Software, including without limitation, any and all related source code, object code, materials, designs, techniques, methods, inventions, forms, formulas, and other works of authorship and any extracts or derivatives shall remain the sole and exclusive property of NTT DATA or its licensors with NTT DATA or its licensor, as appropriate, owning and retaining all rights, title and interest in and to the foregoing under copyright, trade secret, trademark, patent and other intellectual property laws. Customer shall in no event infringe the rights of NTT DATA or its licensors or other partners in the Software or Cloud Services. Customer is responsible for monitoring proper use. If Customer recognizes, suspects or becomes aware that a breach of contract or rights is imminent, or has occurred, NTT DATA must be informed immediately. NTT DATA or its licensors or other partners and their vicarious agents shall be indemnified against all claims of third parties that are based on an illegal use of the Software or Cloud Services by the Customer or that have been made with the Customer's approval. In any case NTT DATA shall be entitled to assert the rights under section 13.

4.1.4 In the case of Cloud Services, NTT DATA shall be entitled to temporarily block Customer's access (e.g. usernames and passwords or VPN connections) to the Cloud Service for the purpose of loss prevention if and, to the extent there is a reasonable likelihood that the continued use of the Cloud Service by Customer, Authorized Users or any third party in breach of this Agreement could adversely affect the Cloud Service, other Customers or the rights of third parties in a manner that requires immediate action for loss prevention. NTT DATA will promptly notify Customer of any such suspension. To the extent circumstances permit, Customer will be notified in advance in writing or by email. NTT DATA shall limit the blocking in time and scope as is reasonable under the circumstances of the individual case. Conditions for On- Premise (perpetual or leased) Software:

General - NTT DATA grants to the Customer the non-exclusive right to Use the Licensed Software (whether delivered in source or object code), either perpetual or terminable in accordance with section 14 hereof. If the Customer leases the Licensed Software for a certain period, the right of Use shall only apply for the agreed lease period. This right applies including the Documentation, as well as other Proprietary Information and the Third-Party Database (if licensed by NTT DATA) provided by NTT DATA to Customer for Productive and Non-Productive Use at the specified location(s) in the Agreement Territory. The Customer accepts this granting of rights of use and declares that Customer has read and understood the conditions of use before signing. In particular, Customer is not permitted (i) to use the Software, other Proprietary Information and the Third-Party Database other than for itself and its Affiliates without permission in Data Center Operations (see section 4.2 b), (ii) to provide training to third parties except to the extent expressly provided for in this EULA or (iv) to use the Software for the control of power plants or means of mass transportation. The Use right always refers only to the current version of the Software.

Software may be used via an interface supplied with or as part of the Software, via an interface of the Customer, a third- party supplier or via another intermediary system. The interface chosen to access the functions and data of the Software is irrelevant for the determination of the price. The decisive factor is the Use of the Software by the Customer.

The Customer may transfer the Software and the Third-Party Database from one Designated Unit to another without additional remuneration. The Customer shall notify NTT DATA in writing of such installation within five business days following the date of the transfers. The Software and Third-Party Database shall be immediately and completely deleted from the Designated Unit no longer in use and from any backup copies for that Designated Unit.

a) Resale of perpetual Licensed Software to third parties - In the case of Software licensed on a perpetual basis (not leased), the following shall apply:

Customer may transfer the rights granted to it in respect of perpetual Licensed Software (including Software acquired through any subsequent licenses or through Maintenance) to a third party (the new user) only uniformly and with complete and final abandonment of its own Use and only if it has notified the new user of the transfer in writing without undue delay, stating its name and address, and has paid the fees for the Software and Maintenance in full to NTT DATA. Transfer of the Licensed Software is conditioned upon (i)

Customer providing the new user with the terms and conditions of Use and transfer of the Software, (ii) Customer completely and permanently discontinuing and abandoning Use of the Software, and (iii) Customer promptly deleting all copies of the Software in their entirety and from all backup copies and not retaining any copies of the Software or Proprietary Information. A temporary or partial transfer to third parties or a transfer to several third parties is not permitted. The restrictions of the preceding sentences shall also apply in the event of corporate transformations and legal successions. The Customer may not pass on to third parties' Software which Customer acquired in a manner other than according to the contract purchase. The above mentions only applicable under the scope of application of the European Regulatory EU2009/24. For Third Party Database and other Third-Party Software, deviating provisions may apply be made as identified When Customer's requests a transfer.

For the avoidance of doubt leased software and cloud service shall be not subject to any resale to third parties.

b) Archival copy, copy restrictions, origin notes to be reproduced - Customer may make one (1) copy of the Software for archival purposes and such number of backup copies of the Software as is consistent with Customer's usual, regular backup procedures. Customer shall document the number and location of all originals and copies of the Software. The Customer may copy or reproduce parts of the Documentation for internal purposes in machine-readable or printed form, but only to the extent necessary to exercise its rights under this EULA. Customer shall affix notices of copyrights, trademarks, service marks or other proprietary rights of NTT DATA or its licensors or other partners to all copies, in whole or in part, of the Software, Documentation, Third Party Database or Proprietary Information in the same form and location as such notices appear on the originals. Under no circumstances may Customer remove such notices.

c) Modifications, Changes, Extensions and Add-Ons. For the avoidance of doubt, any Modifications or Add-Ons developed for Customer or available as a product or Software by NTT DATA, or any other third party licensor or any of their Affiliates shall be governed exclusively by the terms of the applicable Agreement and shall not be subject to this Section 4.2 (e).

The Customer is not entitled to create, use or make available to third parties' Modifications or Add-Ons to the Licensed Software unless expressly permitted to do so by mandatory law or in accordance with this section. Modifications may only be made in relation to the Software supplied to the Customer by NTT DATA in source code.

NTT DATA points out that even minor changes, extensions, Modifications of the Software or other interventions may lead to unforeseeable and considerable disruptions in the operation of the Software and other programs or in the communication between the Software and other programs. Disruptions may also result from changes, extensions or Modifications not being compatible with later versions of the Software. Customer shall be responsible for any disruptions in the operation, security or performance of the Licensed Software and other programs, or in the communication of the Licensed Software and other programs (collectively, "Disruptions") caused by Modifications or Add-Ons to the Licensed Software. NTT DATA shall not be obliged to remedy any malfunctions arising in connection with changes, extensions, Modifications, Add-Ons or other interventions or otherwise be responsible for such malfunctions or Disruptions. In particular, NTT DATA shall be entitled to modify the Software at any time without ensuring that Modifications used by Customer are compatible with later versions of the Software. The foregoing provisions of this section shall apply mutatis mutandis to the use of the Software together with Add-Ons.

NTT DATA is also not obliged to provide Maintenance services if and to the extent that their provision is impeded by Modifications or Add-Ons to the Licensed Software.

These Modifications and Add-Ons may only be used together with the Licensed Software and only in accordance with the right to Use the Licensed Software. Modifications and Add-Ons may not (subject to the further restrictions regulated herein) be suitable for the following: circumvent the contractually agreed restrictions and/or enable Customer to access Software for which it has not licensed or otherwise acquired any rights of use; nor make accessible or available any information about the Software itself.

Customer is aware that the Software is continuously developed and modified by NTT DATA, its licensors and/or other partners in accordance with their release and development strategy. NTT DATA, its licensors and/or the partners shall be entitled at any time to develop, use and distribute Modifications or developments whose functions are wholly or partially identical to Modifications or developments that may be developed by or for the Customer; neither party being entitled to copy the Customer's source codes. Customer agrees not to assert any IP rights in such Modifications/ or developments against NTT DATA, its Affiliates and/or its licensors and its Affiliates or other partners.

If Customer opts for certain pre-set solutions, Add-Ons or other best practice solutions, full functionality, or compatibility of the Licensed Software with pre-set solutions, Add-Ons or best practice solutions may not be guaranteed.

- e) **Decompiling** - The Customer may not disassemble, decompile, reverse engineer or use any other method to obtain the source code of the Software. However, the Customer shall have the right to decompile the Software to the extent necessary to achieve interoperability with another program, if it complies with the limits of Article 6 ("Decompilation") of Directive 2009/24 of EU or other applicable local legislation and with the provisions of below.

To this end, prior to any decompilation of the Licensed Software, Customer shall request NTT DATA or its licensors or other partners in writing, setting a reasonable deadline, to provide the information and documents necessary to establish interoperability. Only after fruitless expiry of the time limit shall the Customer be entitled within the limits of Article 6 ("Decompilation") of Directive 2009/24/or other the applicable local legislation. Prior to the involvement of third parties, the Customer shall provide NTT DATA or its licensors or other partners with a written declaration by the third party that the latter undertakes directly vis-à-vis NTT DATA or its licensors or other partners to comply with the provisions contained in section 3 and 4.

- f) **Rights to new versions of the On-Premise Software** - If the Customer receives from NTT DATA copies of new versions of a Licensed Software (e.g. within the scope of rectification or Maintenance), which replace a previously provided Software version, the right of use granted to the Customer shall exist exclusively regarding the most recently received version. The right of use with respect to the previously provided version shall expire as soon as the Customer implements the new version for Productive Use. However, the Customer may use the new version for test purposes alongside the old version in productive use for a period of three (3) consecutive calendar months.

4.2 Prerequisites for Use, delivery of Software

In order to use the On-Premise Software certain requirements must be met by the hardware used by the Customer. The Customer shall be responsible for sufficient server hardware and, if applicable, system software. NTT DATA can provide release dependent minimum requirements upon request by the Customer. NTT DATA reserves the right to adapt these requirements.

Delivery shall be effected, at NTT DATA's option, by (i) NTT DATA making the Licensed Software available to Customer for download, or, (ii) in the case of NTT DATA Software, by making it available to Customer by means of access to the relevant system (Electronic Delivery); or (iii) by shipping the Licensed Software on DVD or other data carriers to the agreed delivery address (Physical Delivery). In the case of physical delivery, the time at which NTT DATA hands over the Licensed Software to the data carrier shall be decisive for compliance with delivery dates and the passing of risk. In the case of Electronic Delivery, the time at which the Licensed Software is made available for download, and this is communicated to Customer (download letter) and delivery shall be deemed to have taken place upon notification to Customer that the Licensed Software is available for download.

If the Customer does not accept the Licensed Software on the agreed date despite the setting and expiry of a reasonable grace period (receiving), NTT DATA may – without prejudice to its statutory rights arising from default – withdraw from the Agreement and demand liquidated damages (due immediately in one sum in lieu of performance) in the amount of twenty-five percent (25%) of the total remuneration accruing up to the date on which the Customer could have terminated the Agreement as well as compensation for services already rendered. The amount shall be set higher or lower if NTT

DATA demonstrates to the Customer that NTT DATA has incurred a higher or lower damage. NTT DATA is entitled to exercise other claims owing to late payments.

4.3 Conditions for Cloud Services

4.1.1 Use Rights - NTT DATA grants the Customer the simple non-transferable worldwide right to use the Cloud Service (including its implementation and configuration), the Cloud Materials and Documentation exclusively for the processing of the internal business transactions of the Customer and its Affiliates in each case in accordance with the Agreement and conditions, in particular product-specific supplementary terms and conditions, the product description and other associated documentation.

a) If the Cloud Service contains links to web services or mobile applications of other partners or providers, NTT DATA shall only provide technical access to the contents of such integrated websites, for whose contents these third parties are exclusively responsible. Any additional terms and conditions in the link to web services or mobile applications are directly between the third party and the Customer.

b) If NTT DATA procures Cloud Services from other providers, the specific terms and conditions of the respective third party licensors shall apply.

c) Access via apps and On-premise Software components - Authorized Users can access certain Cloud Services via mobile applications (mobile apps) that are made available through third-party websites such as the Android or Apple App Store. The use of the mobile apps in itself is subject to the terms and conditions agreed upon when downloading/accessing the mobile application and not to the provisions of the Agreement.

The Cloud Service may contain On-Premise Software components that can be downloaded and installed by the Customer (including updates). If On-Premise Software components are delivered from NTT DATA, the conditions for On-Premise Software apply.

4.1.2 Free of Charge Services - NTT DATA shall provide the Cloud Service and related support as stated in the Agreement. For any Cloud Services provided free of charge, NTT DATA shall not provide any support for such Cloud Service, shall not make any service level commitments or other performance commitments and may discontinue a free Cloud Service at any time.

4.1.3 Service Level Agreements - Unless otherwise provided in the Agreement or supplemental documents, NTT DATA will maintain an average monthly system availability for the Cloud Service Productive Use system as set forth in the related Service Level Agreement ("SLA"). To the extent that Productive Use system availability does not meet the SLA for an extended period, NTT DATA may, at its sole discretion, issue a credit to Customer, provided that such failure has not insignificantly impacted Customer's use of the Services. To the extent NTT DATA fails to achieve a Productive Use system availability of at least ninety-five percent (95%) in any calendar month for four (4) consecutive calendar months or five (5) or more calendar months in any twelve (12) consecutive month period, Customer shall have the right to terminate the affected Cloud Service upon thirty (30) days prior written notice to NTT DATA after the conditions occur, with the burden of proof on Customer. Termination shall be effective as of the end of the calendar month following the thirty (30) day notice.

4.1.4 Customer Data - NTT DATA and its Affiliates may perform analyses using (partially) anonymized or aggregated Customer Data and information resulting from Customer's use of the Cloud Service for the following purposes:

- (a) Product improvement or development (including, without limitation, product features and functionality, performance, workflows and user interfaces);
- (b) Services planning and improvement;
- (c) Training and development of machine learning algorithms;
- (d) Reviewing security and data integrity

Unless otherwise agreed, personal data in the Customer Data will only be used to provide the Cloud Service.

4.1.5 Controls - NTT DATA shall implement and maintain appropriate technical and organizational measures to protect the personal data processed by NTT DATA as part of the Cloud Service, as set forth in the Data Processing Agreement of NTT DATA, which is referred to in the Agreement, in accordance with the applicable

data protection data protection regulations.

- 4.1.6 Access to Data - During the term of the Cloud Service, the Customer has the option to access, retrieve and export the Customer Data in a standard format at any time. Retrieval and export may be subject to technical limitations and requirements (such as described in the Documentation). In such case, NTT DATA and Customer shall agree on a reasonable method for enabling the party making the request (ordering party) access to the ordering party data. Prior to the end of the Agreement, the Customer may perform a final export of the Customer Data from the Cloud Service in accordance with the agreed method with NTT DATA. After the end of the Agreement, NTT DATA shall delete or overwrite the Customer Data remaining on the servers used to host the Cloud Service, unless its retention is required by mandatory law. The retained data is subject to the Confidentiality obligations rules.

5. Overuse, system measurement (license audit), additional purchase

- 5.1 Customer shall be responsible for monitoring proper use and shall immediately notify NTT DATA in writing of any use in excess of any Agreement, including but not limited to any exceeding of the Usage Metrics. In this case, Customer shall be obligated to sign an extension agreement showing the additional usage and the additional remuneration. The corresponding remuneration shall be due as of the day on which the overrun exists.
- 5.2 Any use of the Licensed Software or Cloud Services that goes beyond the Agreements shall be notified to NTT DATA in writing in advance. It requires a separate agreement on the additional scope of use (additional purchase). The additional purchase shall be made on the basis of the price lists and metrics of NTT DATA, its licensors or partners valid at the time of the additional purchase.
- 5.3 NTT DATA or a third party authorized by NTT DATA, in particular NTT DATA's licensors or partners, shall be entitled to verify the use of the Licensed Software (in principle once a year) and in accordance with applicable standard procedures of the Software owner by measurement. Surveys shall take place regularly in the form of self-reports using surveying tools or similar procedures. Customer undertakes in particular to draw up the surveying protocol at the latest two (2) weeks after request by NTT DATA and/or a third party authorized by NTT DATA, in particular NTT DATA's licensors or partners. The result of the survey shall be transmitted to NTT DATA in unchanged form in writing and in file form (e.g. txt.pdf). may also carry out remote surveys if the self-disclosure by the Customer was refused, did not provide any meaningful results or and there are objective indications of a violation of rights by the Customer exist. NTT DATA or a third party authorized by NTT DATA, in particular NTT DATA's licensors or partners, may exceptionally carry out on-site surveys if he remote survey was refused, did not provide meaningful results or there are objective indications of an infringement of rights by the Customer.
- 5.4 The Customer shall cooperate in an appropriate manner with NTT DATA and/or the third party authorized by NTT DATA in the performance of such surveys, by granting insight into its systems to the required extent in the case of remote surveys and on- site surveys. NTT DATA shall give Customer reasonable notice of on-site surveys. Customer's confidentiality interests as well as the protection of its business operations against impairment shall be considered in an appropriate manner. The reasonable costs of the survey shall be borne by the Customer if the results of the survey reveal Customer Use not in accordance with the Agreement.
- 5.5 If it becomes apparent during the measurement or in any other way that the use of the Licensed Software by the Customer exceeds the Agreements, a contract on additional purchase shall be concluded. Any special, previously agreed to purchase terms of the parties, including agreed discounts, shall not be applicable as Section 5.1, sentences 2 and 3 shall apply accordingly. NTT DATA reserves the right to claim damages and interest on arrears.
- 5.6 Purchases increase the contract price and thus the Software license or service fees in total. The Software license or service fees are based on the prices for the Software valid at the time of the additional purchase.

6. Country versions/language versions and restrictions on availability and use in multinational environments

- 6.1 Software or parts thereof may be subject to restrictions with regard to their availability. No rights of use for valid country/language versions of the Software are acquired from the Customer unless expressly agreed otherwise in the Agreement. Packages may be subject to certain restrictions on availability. Information on these restrictions, including, for example, availability in certain countries, supported languages, supported operating systems and databases, will be made available to the Customer upon request.
- 6.2 Unless otherwise expressly agreed in the Agreement, in the case of NTT DATA Software, Customer shall only

acquire the usage rights for the country/language version specified in the Agreement. In countries where such use is not permitted due to Export Law, the use of the Software or Cloud Services is not allowed.

- 6.3 Software may only be used in the country in which they were purchased unless otherwise agreed in the Agreement.

7. Condition of the Software and Services and obligations of Customer

- 7.1 The product description in the Agreement and the Documentation are conclusively authoritative for the quality of the Software or the Cloud Services. NTT DATA does not owe and will not provide any further quality statements concerning the Software. In particular, the Customer cannot derive obligations from public statements or in advertising for the Software. Any warranties shall be specified in this EULA and/or the Agreement.
- 7.2 The Customer is responsible for understanding the essential functional features of the Software or the Cloud Services and their technical requirements (e.g. with regard to database, operating system, hardware and data carriers, internet connection). Customer bears the risk that the Software or Cloud Services meeting their requirements and areas of use. The Customer may seek advice or inquire on Software licensors' websites at any time for information.
- 7.3 Customer shall provide for the working infrastructure and IT environment of the Software or Cloud Services covered by the Agreement, if applicable, in accordance with the specifications of NTT DATA and the Software licensors. It is Customer's responsibility to create the necessary IT requirements and to ensure the proper operation of the necessary IT infrastructure environment, if necessary, through maintenance contracts with third parties. The Customer shall observe the specifications of the Documentation and notes made available. NTT DATA shall not be responsible for any loss of function if the customer provided infrastructure and IT environment requirements are not met or in the event of Internet connection failures.
- 7.4 Customer shall cooperate in the performance of the Agreement free of charge to the extent reasonably required, e.g. by providing NTT DATA and authorized third parties with employees, work rooms, IT infrastructure systems, data and telecommunication facilities or by granting access to the Licensed Software (application) or to the IT infrastructure systems directly and by means of remote data transmission. The Customer shall name in writing a contact person for NTT DATA and an address, (mobile) telephone number and email address at which the contact person can be reached. Customer's contact person must be able to make the necessary decisions for the Customer or to bring them about without delay. In case of a change of the contact person, Customer shall inform NTT DATA immediately in writing.
- 7.5 The Customer shall thoroughly test the Licensed Software for freedom from defects before commencing its operational use immediately after receipt of or receipt of access authorization to the Software, usually within 10 days after receipt at the latest. This shall also apply to Software which Customer receives within the scope of subsequent performance and Maintenance. The Customer shall declare complaints immediately in writing with a detailed description of the problem by Customer's dedicated contact person according to section 7.4.
- 7.6 The Customer shall take reasonable precautions if Customer believes the Licensed Software does not work properly in whole or in part (e.g. by means of data backup, fault diagnosis, regular checking of results). In the absence of an express written notice in the individual case, all persons involved by NTT DATA in the performance of the services shall assume that the Customer Data with which they may come into contact are secured.
- 7.7 The Customer shall bear any disadvantages and additional costs arising from Customer's breach of its obligations.
- 7.8 Any delay or non-performance of any provision of this EULA (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this EULA, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

8. Remuneration, payment, taxes, reservation

- 8.1 Customer shall pay NTT DATA the contractually agreed remuneration for (a) the Licensed Software and for the Maintenance of the Licensed Software or (b) the agreed Cloud Services. No discount shall be granted. Software Maintenance fees and the annual remuneration shall be calculated as a percentage of the respective contract price of Software (Maintenance Base). The Maintenance Base does not depend on the actual use of the Software.

- 8.2 All prices are subject to the applicable statutory value added tax or other country specific sales or use tax. If NTT DATA is required to pay taxes, Customer shall reimburse NTT DATA for such amounts. Customer hereby agrees to indemnify NTT DATA for any Taxes and related costs, interest and penalties paid or payable by NTT DATA.
- 8.3 In the case of On Premise perpetual Software Agreements, the invoice shall be issued after delivery of the Licensed Software.
- 8.4 Software Maintenance, On Premise leased Software and Cloud Services represent recurring fees which are invoiced in advance as specified in the Agreement. For any partial period, the billing shall be on a pro rata basis. The payment obligation begins with the start of the respective Agreement.
- 8.5 NTT DATA and the respective licensors reserve all rights to the delivered Software, in particular to versions made available within the scope of the Maintenance Agreement, until full settlement of their claims under the Agreement. Customer shall immediately notify NTT DATA in writing in the event of access by third parties to Software subject to retention of title and inform the third party of the rights of NTT DATA and the respective licensors.
- 8.6 Payments shall be made to the account specified in the invoice and shall be due and payable within ten (10) calendar days of the invoice date. Upon the due date, NTT DATA may charge default interest in the amount of the applicable statutory default interest rate. After prior written notice, NTT DATA may suspend Customer's use of the Cloud Service or Maintenance or leased On Premise until payment is made.
- 8.7 The Customer may only offset undisputed or legally established claims and may only base a right of retention on undisputed or legally established claims. The Customer may not assign its claims to third parties without prejudice to mandatory statutory provisions.
- 8.8 NTT DATA may change the remuneration for Maintenance or Cloud Services in each case by sending written notice to Customer in accordance within a notice period specified in the Agreement. The new remuneration will be effective starting January 1st of the next calendar year in compliance with the principles. NTT DATA shall change the remuneration at most to the extent that the change framework has changed - index mentioned under b) for Agreements subject to German law or under c) for all other contracts under different law.

a) The index of the average gross monthly earnings of full-time employees in Germany for the economic sector of the provision of information technology services (currently published in quarterly figures by the Federal Statistical Office in Fachserie 16, Reihe 2.4, Gruppe J 62) shall be used as the basis for determining the change framework. Should this index no longer be published, the index published by the Federal Statistical Office which most closely reflects the development of average gross monthly earnings in the aforementioned sector of the economy shall be decisive for the determination of the change framework. If this is the first compensation adjustment, the index development between the index level published at the time of the conclusion of the agreement and the index level last published at the time of the adjustment declaration shall be decisive for the change framework. If a remuneration adjustment has already taken place previously, the change framework shall be defined by the index development between the index level last published at the time of the preceding adjustment declaration and the index level last published at the time of the new adjustment declaration.

b) at its discretion, up to three percentage (3 %) points of the respective annual remuneration or as specified in the Agreement.

If the Customer does not terminate the respective Agreement at the end of the calendar year by providing the termination notice within the time period specified in the Agreement (special right of termination), the new remuneration shall be deemed to have been agreed. NTT DATA shall point this out in the adjustment declaration. The regulations for termination shall apply accordingly.

9. Warranties, Defects as to Quality, Defects in title, other faults

- 9.1 Exclusions - The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by NTT DATA or its licensors or partners, which is provided through NTT DATA support or under a services warranty), by Customer or its third-party software provider; or (iii) to any Customer unlicensed activities. NTT DATA does

not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Customer's business requirements.

9.2 Warranties on On-Premise Software

- 9.2.1 Applicability for all countries under this EULA - NTT DATA warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The Customer has the remedies set forth in Section 9.4. This is Customer's sole and exclusive warranty and remedy for the Licensed Software.

Express Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, NTT DATA AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, OR ORAL OR WRITTEN) INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

- 9.2.2 Conditions for Agreements under German Law – NTT DATA warrants, in accordance with the rules of the law on the sale of goods, the agreed quality of the Software that is the subject matter of the agreement and that the transfer of the agreed rights of use to the Customer (cf. Section 4) does not conflict with any rights of third parties. The limitation period for claims in course of defects of software is one year and begins with the delivery of the contractual Software. This shall also apply to claims for withdrawal and mitigation. The reduction of the limitation period does not apply in the event of intent or gross negligence by NTT DATA, fraudulent concealment of defects, personal injuries or legal deficiencies in accordance with Section 438(1) (1a) BGB. For defects with regard to rectification services, workarounds or new deliveries as part of subsequent performance, the limitation shall end at the same time. However, if NTT DATA checks the presence of a defect or provides subsequent performance with the Customer's agreement, the limitation period shall be suspended until NTT DATA informs the Customer of the results of its inspections or declares that the subsequent performance has ended or rejects the subsequent performance. The limitation takes effect three months after the end of the suspension at the earliest.

9.3 Warranties on leased Software (On-Premise), and Cloud Services

NTT DATA warrants that the leased Software (On-Premise) or the Cloud Service will meet the specifications stated in the Agreement during its term. NTT DATA shall remedy defects in accordance with Section 9.4. Warranty regardless of fault for defects already existing at the time of conclusion of the Agreement shall be excluded. If NTT DATA has not remedied the defect even after expiration of a cure period of reasonable length, and if Customer's use of the leased Software (on- Premise) or Cloud Service is reduced more than insignificantly, the Customer shall be entitled to the rights under section 9.4.

a) Remedies - In the event of proven material defect, NTT DATA will, at its sole option repair or replace the nonconforming Software or reperform the deficient Cloud Service. The rectification of defects may also consist of NTT DATA offering the Customer reasonable options to avoid the effects of the defect. The foregoing remedy can also be effected via telephone, written or electronic instructions provided to the Customer which the Customer is reasonably expected to be capable of implementing. If the subsequent remedy performance ultimately fails after an appropriate and agreed cure period minimum of 10 days, the Customer may withdraw from the Agreement in case of On Premise Software or terminate the Agreement for cause with thirty (30) days prior written notice in case of leased Software or Cloud Services provided that the defect is not inconsiderable, or to reduce the remuneration by an agreed to amount. The remuneration owed under a Maintenance or Cloud Service or leased Software subscription shall be the subject of any potential right of reduction if agreed to by the parties. The Customer has explicitly to indicate in writing in this respect that it reserves the right to withdraw from or terminate the Agreement in the event of repeated failure. The requirements of Section 9.4 must be satisfied in the grace period. The limits stipulated in Section 11 shall apply to claims for damages and reimbursement of expenditure incurred as a result of a defect.

b) Reporting - Customer shall promptly notify NTT DATA in writing of any breach of duty, describing in detail

the reason for such defect. If the Customer reports a defect that is not demonstrable or not attributable to NTT DATA, or if the Licensed Software is not used in compliance with the Documentation, NTT DATA can claim the expenses for troubleshooting or rectification the reported defect from the Customer. In particular, the additional expenses incurred by NTT DATA as a result of rectifying the defects shall be compensated where NTT DATA incurs these expenses as a result of the Customer (a) not satisfying its duties of cooperation properly, operating the contractual Software improperly, (b) not using the support or other services recommended by NTT DATA, or (c) itself and/or a third party interfering with the Software.

- 9.4 Maintenance and Cloud Services - Should NTT DATA not provide Maintenance or Cloud Services in accordance with the Agreement terms, the Customer must notify NTT DATA in writing of the non-conformance and provided NTT DATA a cure period of minimum ten (10) days, within which NTT DATA shall be given the opportunity to perform the service properly or to otherwise remedy the situation. Section 16 shall apply for notices. Section 11 shall apply to claims for damages and reimbursement of expenses. Section 14 applies accordingly to material damage and defects of title or disrupted performance of Maintenance services. The termination of the Maintenance agreement takes the place of the withdrawal from the Agreement unless otherwise agreed to in writing by the parties. The remuneration owed under a Maintenance agreement may be the subject of any potential right of reduction.

10. Third Party claims

In the event of proven defects in title or right and authority to provide the Licensed Software, NTT DATA shall provide remedy the matter by obtaining the right for Customer to use the Licensed Software or replace or modified with an equivalent software. The Customer must adopt a new Software version if need to preserve the scope of functions under the Agreement remains and provided that such adoption is not unreasonable.

If a third party asserts claims, which are opposed to the exercise of the authorization to Use, the Customer shall inform NTT DATA completely and immediately in writing. Customer shall not acknowledge any claim prior to a written confirmation by NTT DATA. If the Customer discontinues the Use of the Licensed Software due to mitigation measures or for other valid reasons, Customer shall notify the third party that such discontinuation does not constitute acknowledgement of the claimed infringement. Customer entitles NTT DATA, as far as permitted, to settle the dispute with the third party alone both in and outside of the courts; or else only to conduct the discussion in agreement with NTT DATA. Making use of this authorization shall be at the discretion of NTT DATA. The Customer shall provide the required support as well as the necessary information during the dispute with the third party. NTT DATA shall hold the Customer harmless from costs and damages, which are resulting from the defence against such claim by NTT DATA if the Customer has complied with the conditions stated herein and if the claim is not based on or contributed to the behaviour of the Customer. The conditions of section 11 shall apply accordingly.

11. Liability

- 11.1 In any case of contractual or non-contractual liability, only the following apply:
- 11.2 Unless otherwise specified in the Agreement, each Party is fully liable for wilful misconduct and fraudulent intent, body damages, unauthorized use or disclosure of Confidential Information or granted license, either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data, according to relevant mandatory laws, or any failure by Customer to pay any fees due under the Agreement.
- 11.3 In cases of gross negligence and failure to meet warranty standards, NTT DATA shall only be liable in the amount of foreseeable, direct damages that should have been prevented by the breached obligation or guarantee.
- 11.4 In all other cases, NTT DATA shall only be liable for breaches of material obligations (cardinal obligations) and to the extent stated in the liability limits indicated in the following subparagraph. Cardinal obligations are those obligations that must be fulfilled for the proper execution of the Agreement in the first place, or breach of which jeopardizes achievement of the contractual purpose and compliance with which the Customer may regularly rely upon. In such case, liability is limited to foreseeable, direct and typical damages. Moreover, total liability in such cases is limited to the fees paid under this Agreement within the past twelve months for all damages. In the case of default due to impossibility by NTT DATA, total liability is limited to a maximum of the twenty percent

(20 %) of the fees paid under the Agreement within the past twelve (12) months.

- 11.5 The option of a plea of contributory negligence remains open. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 11, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INDICENTIAL OR PUNITIVE DAMAGES HOWEVER ARISING OUT OR RELATING TO THIS EULA.
- 11.6 In the event of a loss of data, NTT DATA shall be liable only for the expenses that would have been necessary for the recovery of the data at reasonable expense given the regular and proper backup of the data by the Customer, however not exceeding the maximum limits specified in Section 11.2. The limitation shall not apply if and provided that NTT DATA is responsible for data backup within the context of the Cloud Services to be rendered by it.
- 11.7 A limitation period of up to one (1) year shall apply to all claims for damages or reimbursement of expenses against NTT DATA arising from this EULA. The limitation period shall commence at the end of the calendar year in which the claim arose, or the Customer should have become aware of it. The provisions in this section shall not apply to liability in cases of wilful misconduct, fraudulent intent or gross negligence or in cases of bodily injury or under mandatory law.

12. Confidentiality and Data Protection

- 12.1 In accordance with the statutory provisions, in particular trade secret laws, the parties undertake to treat all Proprietary Information of the other party obtained prior to and in the course of the performance of the contract as confidential for an unlimited period of time in the same way as they protect their own comparable Proprietary Information, but at least with reasonable care. Disclosure by the receiving party to third parties shall only be permitted to the extent necessary for the exercise of the receiving party's rights or for the performance of the Agreement and such persons are subject to substantially similar obligations of confidentiality as set forth herein. Reproductions of Proprietary Information of the other party shall contain, to the extent technically possible, all notices and legends as to its confidential or secret nature contained in the original.
- 12.2 NTT DATA and its Affiliates use the data of the Customer and/or the contact person (name, business address and email address) to send to the Customer product information, service offers, event information, news of interest to the Customer, and other information about NTT DATA goods and services. In order to address advertisements to the Customer, NTT DATA may share names and addresses with processors (e.g. shipping service providers, media agencies) that process this data for the purpose of compiling advertising material and sending this to the Customer. The processing of the aforementioned data is required for the legitimate interests of NTT DATA and is justified by weighing interests in favour of NTT DATA. In choosing the channels of communication for advertising (by mail and, for self-promotion to existing Customers, via email), NTT DATA shall take all due care to ensure that such communication represents the lowest possible level of disturbance to the Customer. The Customer or the person addressed in the advertising material may object to receiving such advertising at any time.
- 12.3 NTT DATA shall observe the rules of data protection law. Insofar as NTT DATA receives access to the Customer's hardware and software (e.g. for remote maintenance), this does not require any processing or use of personal data by NTT DATA for business purposes. NTT DATA shall handle any personal data in accordance with currently applicable data protection regulations and other applicable protection regulations. The final provisions of the contractual parties' data protection obligations in the context of potential order processing (in particular as part of maintenance services) result from an order processing agreement to be entered into between the parties.
- 12.4 Customer is responsible for the content of Customer Data and its collection in the Cloud Service or Maintenance. Subject to this Section, Customer grants NTT DATA (and its Affiliates and subcontractors) the non-exclusive right to use Customer Data solely and to the extent necessary (i) for the purpose of providing the Cloud Service or Maintenance (including, without limitation, making backup copies and performing penetration testing) and related support, and (ii) to verify Customer's compliance with the terms of the Agreement.

13. Export control

The Software is subject to the export control laws of various countries, in particular the laws of the United States of America and the Federal Republic of Germany. Customer agrees not to transfer the Software subject to this Agreement to any governmental authority for review of a possible grant of rights of use or for other regulatory approval without the

prior written consent of NTT DATA or NTT DATA's licensors or partners, and not to export it to any country or to any person or entity subject to export prohibitions under the applicable export laws. Furthermore, the Customer shall be responsible for compliance with all applicable legal provisions of the country in which the Customer's head office is located and of other countries regarding the use of the contractual software by the Customer and its Affiliated Companies. The Customer is prohibited from using the Software or having it used in countries or having it used by persons or associations of persons for which restrictions (e.g. embargoes or sanctions) exist under the export control laws of various countries, in particular the laws of the United States of America and the Federal Republic of Germany.

14. Duration and termination of the software transfer

14.1 In principle, Software usage rights to On-Premise Software, unless leased, are perpetual usage rights which remain with the Customer in perpetuity. With an unlimited right of use, the Customer is entitled to use the rights of use to software for an unlimited period if the authorization is not revoked or terminated for good cause. Good cause shall only exist if it is unreasonable for NTT DATA to maintain the contract in view of the circumstances of the individual case and after weighing the interests of the parties. For example, good cause shall be deemed to exist if a case of software piracy can be traced back to the Customer in which the persons acting have committed a criminal offence.

14.1 In the case of leased Software, Cloud Services or Maintenance, if not otherwise specified, the following applies:

14.2 The arrangement will be effective the signing of the Agreement and ends with the expiration of the Agreement term or contract period.

14.3 Unless otherwise stated in the Agreement, the initial term or contract period shall be the end of the third full calendar year following the effective date of the Agreement (minimum term). If the Agreement begins on January 1 of a calendar year, the minimum period for the agreement shall be until December 31 of the third calendar year. Should no termination take place by the time the end of the initial term, the Agreement shall be extended automatically by a further calendar year (extension).

14.4 An acquisition automatically extends the term of the Maintenance or Cloud Services Agreement by a further full calendar year. This does not apply if (i) the purchase takes place before the last calendar year of the initial term or if (ii) the Customer has terminated the relevant Agreement in due time and the purchase takes place after confirmation of the termination but before termination of the Agreement, e.g. during a measurement.

14.5 After the initial terms, all Agreements may be terminated in writing with four (4) months prior notice before the end of a calendar year. Separate termination rights and termination for cause shall remain unaffected. Section 16.3 remains unaffected.

14.6 If the Customer is in default with the payment of fees for the License Software, Maintenance or Cloud Services or of a not insignificant part of the prices for two (2) consecutive months, or in a period extending over more than two (f) months with Customer's non payment of the fees in an amount that reaches the basic price for one quarter, NTT DATA may terminate the Agreement extraordinarily without notice. NTT DATA reserves the right to terminate for good cause, especially in the case of multiple instances or gross neglect of essential contractual obligations (e.g. Sections 3, 4, 7, 11, 13, 16). In this case, NTT DATA reserves the claim to remuneration that has accrued prior to termination and can demand an immediate claim to flat rate compensation in the amount of 60% of the remuneration accrued to the point at which the Customer could have ordinarily terminated the Agreement for the first time. The amount shall be set higher or lower if NTT DATA demonstrates higher or lower damage to the Customer. NTT DATA is entitled to exercise other claims owing to late payments.

14.7 In all cases of termination of Customer's right of Use, the Customer is obliged to immediately cease using the Licensed Software and the Confidential Information. No later than one month after the end of the right of Use, Customer shall immediately irrevocably and permanently discontinue Use of the Software and destroy all copies of the Licensed Software in any form in an unrecoverable manner or - at the request of NTT DATA or the licensors hand over all copies of the Licensed Software to NTT DATA and the licensors. A right of retention shall be excluded. This shall also apply to any copies of the Software, the codes and any backup copies that may have been made, unless their retention for a longer period is strictly required by law; in this case the return or destruction shall take place with the end of this period. Any use of the Software by the Customer, its Affiliates or Third Party Business Partners is strictly prohibited from this point in time. Customer shall assure NTT DATA and licensor in writing that it and all of its Affiliates and third Party Business Partners have complied with the obligations set forth herein.

15. Modifications to the EULA, Business and Service Descriptions and Pricing

NTT DATA shall be entitled to adapt the EULA, prices and product descriptions, including the scope of Maintenance or Cloud Services, to technical, economic and legal progress or for ongoing compliance with applicable mandatory laws. NTT DATA shall notify the Customer by email or by other suitable means about any intended changes to the EULA, the specifications of Maintenance or Cloud Services and/or the prices at least two (2) months before the change takes effect. In this case, the Customer is entitled to an extraordinary right of termination at the date the changes take effect. If the Customer does not give written notice of termination within two (2) weeks after receipt of the notice of change, the changes shall become part of the contract at the date the announced modification comes into effect and the contract shall be continued with the changed conditions. In its notice, NTT DATA shall point this out.

NTT DATA is entitled to adapt the scope of services of Maintenance or Cloud Services to the development of software and technical advances. If a change in services could negatively affect the legitimate interests of the Customer, NTT DATA shall inform the Customer of this change in services in writing or electronically no later than three (3) months before its entry into force and, in this notification, shall refer to its subsequent right of termination and the consequences of not exercising the right to termination. In this case, the Customer is entitled to terminate the Maintenance or Cloud Services agreement early within two (2) months following the date that the amendment entered into force (extraordinary right of termination). Should the Customer not assert its right to terminate, the Maintenance or Cloud Services shall continue with the amended scope of services.

16. General Provisions

- 16.1 It is the intent of the parties that in case any one or more of the provisions contained in this EULA shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this EULA, and this EULA shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 16.2 If either party should waive any breach of any provision of this EULA, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 16.3 Amendments and supplements to the EULA and Agreement as well as all notices or reports which are required or may be given pursuant to this EULA and Agreement, in particular notices of termination, reminders or setting of deadlines, must be made in writing. This shall also apply to the waiver of the written form requirement. The written form requirement may also be complied can be met by facsimile transmission, exchange of letters or other written form, including email (except for notices of termination or notice of a material breach). Notices of termination or material breach must be delivered via postal delivery to the respective executive offices of the parties.
- 16.4 Deadlines set by the Customer provided for by law or contract must except in urgent cases be at least ten (10) working days. If the fruitless expiry of a set deadline is to entitle the Customer to dissolve the contract (e.g. by rescission, termination or damages instead of performance) or to reduce the remuneration, the Customer must threaten these consequences of the fruitless expiry of the deadline in writing together with the setting of the deadline.
- 16.5 Offers made by NTT DATA shall be subject to change without notice unless it has agreed in writing to be bound by them. The order form or order confirmation of NTT DATA shall be decisive for the acceptance of Customer's offer.
- 16.6 The parties agree that all disputes between them shall be promptly submitted for informal resolution to their respective executives with power to bind their respective company. The foregoing process shall not require a party to delay obtaining any injunctive relief or equitable remedies based on a claim arising from the other party's breach of intellectual property rights, or confidentiality obligations hereunder. The whole Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed exclusively by the law of the country in which the contracting NTT DATA entity, has its registered office (local NTT DATA office), without reference to its conflicts. In the event of any conflict between foreign laws, rules and regulations the laws, rules and regulations of the local NTT DATA office, shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as amended, do not apply. All disputes will be subject to the exclusive jurisdiction of the courts located in the city of the registered office of the local NTT DATA office.
- 16.7 All contractual and non-contractual claims shall be governed exclusively by the law of the country in which NTT

DATA has its registered local office, without application of the UN Convention on Contracts for the International Sale of Goods (if applicable). The conflict of laws shall not apply. The exclusive place of jurisdiction for all disputes arising from or in connection with the Agreement shall be the registered local office of NTT DATA, provided that the Customer is a merchant, a legal entity under public law or a special fund under public law.

- 16.8 The Customer may transfer the rights and obligations under this EULA and the Agreement (e.g. in the case of leasing) to a third party only with the prior written consent of the NTT DATA.
- 16.9 Other services that are not covered by the express descriptions of the On–Premise perpetual or leased Software license, Cloud Service or Maintenance Agreements must be agreed separately and are not the subject of this EULA or the Agreement.

17. Additional Software Maintenance services provisions

- 17.1 The Customer shall receive the rights of Use in accordance with Section 4 for new versions/releases that are delivered as part of Maintenance.
- 17.2 Maintenance for NTT DATA Software always refers to the Customer's overall inventory of maintenance-related NTT DATA Software or the Customer's respective NTT DATA Software. The Customer must always keep all installations of NTT DATA Software for which maintenance is offered (including by potential later acquisitions or NTT DATA Software acquired as part of maintenance) completely maintained by NTT DATA in order to claim Maintenance services. The Customer may terminate the Maintenance agreement for NTT DATA Software altogether or only for individual NTT DATA Software products (e.g. it.x- press). If the Customer cancels the Maintenance services for a single NTT DATA Software product, the remaining Maintenance services for any other NTT DATA software products shall remain unaffected.

In cases in which Software Maintenance is not in effect from delivery of the Software but rather is only agreed later, to keep the Software updated, the Customer shall pay the Maintenance fees retroactively that it would have paid for the Maintenance services as of delivery. The retroactive payment is due and payable immediately and in its entirety. This shall equally apply in the case of a termination and subsequent reactivation of Maintenance.

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