



Maintenance Transfer Agreement

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**").

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

1. BACKGROUND

The **CUSTOMER** desires to engage **NDBS** to provide software maintenance services.

NDBS agrees to provide such services under the terms and conditions set forth herein.

2. GENERAL

The licensing of the software described in Schedule 1 shall continue under the terms granted by the original licensor.

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter.

3. SCHEDULES

Schedule 1 describes the software to which the software maintenance services apply.

Schedule 2 describes the software maintenance services.

Schedule 3 describes the Parties' data processing obligations.

Schedule 4 contains our standard terms of service.



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:



SCHEDULES

SCHEDULE 1 - SOFTWARE

SCHEDULE 2 - MAINTENANCE AND SUPPORT TERMS

1. DEFINITIONS

Incident	means any failure of the Software to perform in material accordance with its specifications, which the Customer may report to NDBS for investigation and resolution.
Priority 1 Incident	means an Incident that has very serious consequences for normal business transactions, and urgent, business-critical work cannot be performed. This is generally caused by the following circumstances: complete system outage or malfunctions of central Software functions in the Production System.
Priority 2 Incident	means an Incident that causes normal business transactions in a Production System to be seriously affected and results in necessary tasks not being performed. This is caused by incorrect or inoperable functions in the Software that are required to perform such transactions and/or tasks.
Priority 3 Incident	means an Incident that causes a function required for daily business not to be available from time to time or not to work as it should.
Priority 4 Incident	means an Incident that causes a function not to be available from time to time or not to work as it should. The function is not required for daily business.
SAP Solution Manager	means the SAP software solution that NDBS uses to maintain its Support.
Support (or Maintenance)	means support services provided by NDBS, including services procured by NDBS from SAP or another third party, as described in Schedule 1 to this Agreement. For SAP's On-Premise Software, this service is called Enterprise Support.

2. SCOPE OF SUPPORT

- 2.1 NDBS, as the primary support provider for the CUSTOMER's Software, will receive all requests for Support from the CUSTOMER but may, under NDBS's agreement with its subcontractors, subcontract the provision of Support to a subcontractor for processing.
- 2.2 The following are included in Support:
- 2.2.1 New releases of the Software, as well as tools and procedures for upgrades;

- 2.2.2 Support packages to correct errors in the Software and to adapt existing functionality to changed legal and regulatory requirements;
 - 2.2.3 Technology updates to support third-party operating systems and databases;
 - 2.2.4 Tools and documents to support Software upgrades and change management;
 - 2.2.5 Access to obtain Software documentation via a portal; and
 - 2.2.6 As appropriate, access to websites and online communities that provide information and guidance concerning the use and administration of the Software.
- 2.3 For the avoidance of doubt, professional services to support installing new releases of the Software, applying support packages, and technology updates are not included.

3. INCREASE IN CHARGES

NDBS reserves the right to increase the price of the maintenance services effective 1 January each year, or on each anniversary of the commencement of this Agreement if that is the renewal date, by an amount announced by SAP from time to time.

An "Incident" occurs when the Software fails to perform according to its specification, and the CUSTOMER may report the Incident to NDBS for resolution.

4. SERVICE LEVELS

- 4.1 NDBS shall use its best endeavours to meet the following service levels ("Service Levels"):
- 4.1.1 For Priority 1 Incidents raised during a business day, NDBS shall respond to the CUSTOMER within 30 minutes of receiving notification of the Incident in Solution Manager. Within four hours, NDBS shall provide either a solution, a workaround, or an action plan for resolution ("Corrective Action");
 - 4.1.2 For Priority 2 Incidents, NDBS shall respond within four Working Hours;
 - 4.1.3 For Priority 3 Incidents, NDBS shall respond within eight Working Hours; and
 - 4.1.4 For Priority 4 Incidents, NDBS shall respond within sixteen Working Hours.
- 4.2 Time taken by the CUSTOMER to evaluate and apply any solutions, workarounds, or action plans shall be excluded for the purposes of calculating the Service Levels.
- 4.3 NDBS shall not be liable in respect of the Service Level targets in Clause **Error! Reference source not found.** above if:
- 4.3.1 The CUSTOMER has been unable to provide direct access to its systems to enable the correction of the Incident;
 - 4.3.2 The CUSTOMER has been unable to provide access to a contact person with sufficient training and experience to support NDBS in resolving Incidents; or

- 4.3.3 The Incident has been caused by a custom application developed by or for the CUSTOMER (except such applications developed by NDBS), or a third-party application not provided by NDBS.

5. SAP SOLUTION MANAGER

The CUSTOMER may access remotely and use NDBS's SAP Solution Manager for Incident management and to obtain Software updates.

6. CUSTOMER'S RESPONSIBILITIES

The CUSTOMER shall:

- 6.1 provide and maintain remote access to installations of the Software to enable NDBS to provide Support at all times;
- 6.2 use NDBS's SAP Solution Manager to raise support tickets for Incidents and to manage the Incident resolution process;
- 6.3 ensure that appropriately skilled and knowledgeable people who speak English are accessible as required by NDBS to provide Support;
- 6.4 to act reasonably on any advice provided by NDBS in connection with the provision of Support;
- 6.5 to maintain and provide NDBS with any modifications to the Software made by the CUSTOMER, as reasonably requested by NDBS in connection with the provision of Support;
- 6.6 to inform NDBS as soon as practicable of any changes to its computing environment that may impact the provision of Support; and
- 6.7 to ensure that identifiable personal and sensitive personal data is not present in any test, quality assurance or development instances of the Software that NDBS would access in connection with the provision of Support.

SCHEDULE 3 - 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.

1. Ordering of Services

- 1.1 The Customer may order Services from time to time by placing an Order.
 1.2 An Order shall not be legally binding, nor have any other effect unless that Order has been signed by the authorised representatives of both the Customer and NDBS.
 1.3 This Agreement consists of the Order Form and these Conditions and applies from the date of signature by both parties or from such alternative date as may be specified on the Order Form as the "Effective Date", to the exclusion of any other terms that the Customer seeks to incorporate or which are implied by trade, custom, practice or course of dealing.

2. NDBS Obligations

- 2.1 NDBS shall:
 2.1.1 use reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services;
 2.1.2 provide the Services with reasonable skill and care;
 2.1.3 have the right to make any changes to Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and NDBS shall notify the Customer in any such event.
 2.2 Where the Services involve the development of new software by NDBS, NDBS warrants that such new software will perform substantially in compliance with its specification for 3 months from delivery.
 2.3 NDBS does not warrant that the use of any software, including third party software will be uninterrupted or error-free.

3. Customer's Obligations

- 3.1 The Customer shall, at its own cost, on the request of NDBS (i) 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) as required for the performance of the Services; (ii) obtain such licences, consents and permissions as are necessary for the performance of the Services by NDBS; (iii) ensure its employees provide co-operation reasonably required by NDBS; and (iv) promptly provide to NDBS such information and documents it may reasonably request.

4. Fees

- 4.1 NDBS shall invoice the 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.
 4.2 Where the Customer disputes any invoice in good faith it shall give NDBS written notice of the amount disputed and the reason for the dispute within 30 days of the date of the relevant invoice, and the Customer shall pay any undisputed portion of the disputed invoice. The parties shall seek to resolve the dispute promptly.
 4.3 All Fees are exclusive of value added tax and any other applicable sales or withholding taxes which will be charged to Customer at the then current rate.
 4.4 Customer shall pay to or reimburse NDBS (on production of such receipts, invoices and/or other evidence as may be available) all reasonable and proper expenses incurred in connection with the provision of the Services including but not limited to travel and accommodation expenses.
 4.5 NDBS reserves the right to increase its Fees on each anniversary of the Effective Date by an amount no greater than the increase in the UK Consumer Prices Index (CPI) for the preceding 12 months.

5. Data Protection Act 2018 UK GDPR and other applicable data protection laws

SCHEDULE 4 – STANDARD TERMS

- 5.1 In respect of any personal data provided to NDBS by the Customer in accordance with this Agreement, save as otherwise agreed, NDBS is the processor and the Customer is the data controller. Customer warrants that it has complied with all applicable laws and obtained all necessary consents or grounds for providing NDBS with the personal data and authorises NDBS to appoint sub-processors subject to the provisions of Clause 5.2 below.
 5.2 NDBS shall (and shall ensure that its sub-processors): (i) process personal data only to perform its obligations under this Agreement and for no other purpose, save as required by law; (ii) ensure that anyone authorised by NDBS to access personal data is subject to obligations of confidentiality and that any sub-processor is subject to similar data processing obligations; (iii) at the Customer's cost, provide assistance to the Customer in connection with the fulfilment of data subject rights and Articles 32–36 of the UK GDPR; (iv) provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction of, or damage to, the personal data; and (v) on termination of the Agreement, either return or destroy the personal data (including all copies of it) as soon as reasonably practicable.

6. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

- 6.1 The Customer warrants to NDBS that no persons are intended to transfer to NDBS by virtue of the application of TUPE or otherwise as at the Effective Date. The Customer shall indemnify and keep indemnified NDBS against any and all employment liabilities it may suffer or incur in relation to the Customer's breach of this clause.
 6.2 NDBS warrants to Customer that no persons are intended to transfer to Customer by virtue of the application of TUPE or otherwise as at the date of termination of this agreement. NDBS shall indemnify and keep indemnified Customer against any and all employment liabilities it may suffer or incur in relation to NDBS's breach of this clause.

7. Force Majeure

- 7.1 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 a contract which is due to an event outside the reasonable control of that party. If such event subsists for a period of 30 days or more the other party may, forthwith by notice, terminate the Agreement with immediate effect without any cost or liability whatsoever.

8. Intellectual Property

- 8.1 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.
 8.2 To the extent NDBS owns the Intellectual Property rights in any Deliverables and use of such Deliverables necessary to make use of the Services, NDBS grants the Customer a non-exclusive licence to use any Deliverables (including, for the avoidance of doubt, any software) for the Term for the purpose of receiving the Services. Such licence is subject to such terms as are set out in the Order.

9. Limitation of Liability

- 9.1 Except to the extent that such liability cannot be excluded by law:
 9.1.1 neither Party shall be liable to the other or any other person for loss of revenue; loss of profits; loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of or unauthorised access to data; or loss of reputation; and
 9.1.2 neither Party shall be liable for any indirect, special, or consequential loss or damage howsoever caused.
 9.2 Either Party's total aggregate liability to the other or any person arising out of or in connection with the Agreement, whether for negligence, breach of contract,

or otherwise, shall in no event exceed the greater of £250,000 or 140% of the sums paid by the Customer to NDBS under the Agreement over the previous 12 months.

10. Termination and Consequences of Termination

- 10.1 The Agreement may be terminated immediately by either party giving written notice to the other if:
 10.1.1 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;
 10.1.2 the other party ceases, or threatens to cease, carrying on business; or
 10.1.3 the other party becomes insolvent or, in the other party's reasonable opinion, is likely to become insolvent.
 10.2 Termination of the Agreement shall be without prejudice to the rights of either party in respect of any prior breach. On termination all sums owing pursuant to the Agreement shall become due.

11. General

- 11.1 The Customer may not assign, transfer, charge, subcontract, declare a trust over, or deal in any other manner with any or all of its rights or obligations under the Agreement without NDBS's prior written consent.
 11.2 No one other than a party to the Agreement shall have any right to enforce its terms.
 11.3 Each party shall, during the term of the Agreement and thereafter, keep confidential all information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party. Each party shall not use such information for its own purposes (other than for the implementation of the Agreement) nor, without the prior written consent of the other, disclose it to any third party (except its professional advisers or as may be required by law or any legal or regulatory authority), unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use reasonable endeavours to prevent unauthorised disclosure of any such information.
 11.4 The 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 the Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.
 11.5 Any variation to the Agreement must be in writing and signed by the authorised signatories of both parties.
 11.6 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.
 11.7 Both parties agree that, for the Term and for a period of one year after it has terminated, they will not, directly or indirectly, employ or contract for the services of any employees of the other party at any time engaged in the performance of the Agreement without the prior written consent of the other party.
 11.8 If any provision of the Agreement is ruled to be invalid for any reason, that invalidity will not affect the rest of the Agreement, which will remain valid and enforceable in all respects.
 11.9 The 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).