

Agilyx

Master Services Agreement

[Insert Customer Name]

Prepared on insert date

Master Services Agreement (MSA)

Date 27 June 2023

Parties **Agilyx EMEA Limited Company Number 13427137** of 400 Thames Valley Park Drive, Thames Valley Park, Reading, RG6 1PT ('Agilyx')

[Insert Customer Name] Company Number [Insert Company Number] of **[Insert Registered Address]** (Customer)

Background

- A The Customer has, or intends to, purchase elements of the **[Insert Solution]** solution for use as a core back-office system within its business.
- B Agilyx is an authorised implementation partner of **[Insert Solution]** and is authorised to provide professional software consulting services for **[Insert Solution]**.
- C The Customer wishes to engage Agilyx to provide professional consulting services on an as-needed basis, on the terms and conditions set out within this Agreement.

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1 Interpretation

Definitions

1.1 The following words and phrases have these meanings in this Agreement, unless the contrary intention appears:

Active Statement of Work has its meaning as in **clause 9.2**.

Agreement means this agreement and includes any schedules attached to this agreement.

Agilyx Material means any Material produced by Agilyx (either before or after the date of this Agreement), which is not:

- (a) Deliverable Material; or
- (b) The ERP System.

API means Application Programming Interface, a set of methods and protocols used in the exchange of information between one or more software applications.

Business Day means any day that is not a Saturday or Sunday or a public holiday in the United Kingdom.

Confidential Information of a Disclosing Party means any information in any or for media, whether given or acquired directly or indirectly before or after the date of this Agreement, that is by its nature confidential or that is marked, designated or confirmed by the Disclosing Party as confidential, proprietary or 'Commercial in Confidence' at the time of its disclosure, including, without limitation, information relating to the Disclosing Party or its Related Bodies Corporate:

- (c) *business structuring* — including the nature of its business, its past, present or future structure, business activities, strategies, assets and financial affairs;
- (d) *products and services* — including its products and their methods of production and distribution, trade secrets and know-how, product designs, capabilities, specifications, program code, software systems and processes, information regarding existing and future technical, business and marketing plans and product strategies, any analysis reports or results from the testing of any products; data model(s), data integrators;
- (e) *commercial terms and information* — including its pricing, mailing lists, proprietary data, and the identity of actual and potential customers, data providers and suppliers;
- (f) *customer and supplier information* — including its clients, customers, suppliers, distributors and their financial affairs; and
- (g) *technology systems* — including the network, communications, software and other technology systems and processes in use within its business or operations.

Commencement Date means the date the last party to execute this Agreement does so.

Companies Act means the *Companies Act 2006*.

Claim means all claims, demands, complaints, actions, suits, proceedings and causes of action of every description whatsoever, both at law and in equity, including for damages, interest and the costs thereof, and includes any legal, administrative, government, arbitral or other proceedings or investigations irrespective of whether the facts, matters and circumstances giving rise to those same claims, demands, complaints, actions, suits,

proceedings and causes of action are known or unknown to the parties at the date of the Agreement.

Customer Data means all Data (whether or not Confidential Information) relating to the Customer and its business, operations, facilities, customers, members, personnel, assets, products, sales and transactions in whatever form such information may exist and whether entered into, stored in, generated by or processed as part of any services provided by Agilyx.

Customer Material means any Material produced by the Customer (either before or after the Commencement Date) and, for the avoidance of doubt, includes Customer Data.

Data means any data, records, database entries, or information (whether in soft or hard copy form) which:

- (a) is processed by means of equipment operating automatically (such as Software) in response to instructions given for that purpose;
- (b) is recorded with the intention that it should be processed by means of such equipment; and
- (c) results from such processing and is produced for an end-user to read, view or consume.

Deliverable means a deliverable particularised in a Statement of Work.

Disclosing Party has its meaning as in **clause 10.1**.

Deliverable Material means any Software and/or Documentation which is created or developed by Agilyx:

- (a) after the Commencement Date;
- (b) in order to satisfy the specific requirements of the Customer; and
- (c) for the purpose, or as a result, of performing its obligations under a Statement of Work.

Documentation means documentation, manuals, guides, designs, drawings, reports, notes, calculations, photographs, audio-visual materials, recordings which describes or records the existence, operation, design, intention, function or specification of anything or series of things (such as a process).

Enterprise Resource Planning or **ERP** means the integrated management of core internal business processes and includes, but is not limited to, managing processes for finance and projects.

ERP System means all Material which comprises of the commercial-off-the-shelf ERP system known as **[Insert Solution]** which includes:

- (a) Software for performing Enterprise Resource Planning;
- (b) Documentation for the general operation of its common elements; and
- (c) sample Data which may be initially present but is ultimately intended to be replaced by Customer Data.

Expense Policy means the policy on chargeable Agilyx professional services expenses provided in **Schedule 2**.

Force Majeure Event means, in relation to either party (**Affected Party**), an event or circumstance beyond the reasonable control of the Affected Party, including:

- (a) an extreme force of nature;
- (b) an act of public enemy, or declared or undeclared war or threat of war; or
- (c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party),

but not including any labour dispute.

VAT has its meaning from the VAT Act.

VAT Act means the *Value-Added Tax Act 1994*.

Insolvent Under Management in relation to a party, means where:

- (a) a proposal is made for the voluntary arrangement or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) of the party's creditors;
- (b) a trustee, receiver, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the party;
- (c) a petition is presented (and not discharged within 30 calendar days) or a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the party, or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
- (d) the party suffers any event in a foreign jurisdiction analogous to or comparable with any of paragraphs (a) to (c) above.

Intellectual Property Rights means all intellectual property rights, at law or in equity, including the following rights:

- (a) rights in relation to inventions (such as patents), copyright, designs, rights in relation to trademarks, service marks, design rights, database rights, trade or business names, trade secrets and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in the United Kingdom or elsewhere,

whether or not such rights are registered or capable of being registered.

Material means any Data, Software and/or Documentation (irrespective of whether Intellectual Property Rights subsist in it).

Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work and the right not to have authorship of a work falsely attributed, as defined in the *Copyright, Designs and Patents Act 1988* and including any amended or replaced definition.

Notifiable Event has its meaning in **clause 9.5**.

Professional Services Rates means the rates for professional services outlined in the rate card in **Schedule 1**.

Proposal has its meaning as in **clause 2.2**.

Related Body Corporate has its meaning as defined in the Companies Act.

Software means software, scripts (including API scripts) and code (whether source code or binary/compiled code) and includes the creation of configuration settings (which is often stored as code or scripts but not readily discernible as being stored that way).

Services means any Agilyx professional services particularised on, and performed pursuant to or in connection with, a Statement of Work.

Statement of Work means a document describing services to be performed by Agilyx for the Customer and governed by the terms of this Agreement, created in accordance with **clause 2**.

Receiving Party has its meaning as in **clause 10.1**.

Rules of Interpretation

1.2 In this Agreement, unless it is provided otherwise:

- (a) another grammatical form of a defined word or expression has its corresponding meaning;
- (b) words in the singular include their plural form and vice versa, and one gender includes the other gender;
- (c) a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule or attachment or annexure to, this Agreement, and a reference to this Agreement includes any schedule, attachment or annexure;
- (d) a reference to a clause, section or paragraph includes a reference to a subclause of that clause; subsection of that section or subparagraph of that paragraph;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference '£' or 'pound' is to United Kingdom currency;
- (g) a reference to time is to the time in the place where the obligation is to be performed;
- (h) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (i) a reference to a person includes a natural person, body corporate, partnership, joint venture, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (m) any agreement, representation or warranty made, or indemnity given, in favour of two or more parties (including where two or more people are included in the same defined term), is made or given for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (o) if a day on or by which an obligation must be performed, or an event must occur, is not a Business Day, the obligation must be performed, or the event must occur, on or by the next Business Day;
- (p) headings are for ease of reference only and do not affect interpretation; and
- (q) headings may be used in the body of this Agreement adjacent to a clause reference, when used in this way they are also intended as ease of reference and do not affect interpretation.

Priority of Agreement Documents

- 1.3 To the extent of any conflict between the terms of this Agreement and any other documents attached, annexed or incorporated by reference, the following order of precedence applies (where documents listed above take precedence over the documents below):
- (a) the body of this Agreement; then
 - (b) a Statement of Work; then
 - (c) documents incorporated by reference.

2 Technology Professional Services

Appointment of Agilyx as a Technology Professional Services Supplier

- 2.1 The Customer appoints Agilyx as an official supplier of technology professional services on an as-required and non-exclusive basis for the term of this Agreement.

Proposal for services to be issued

- 2.2 Agilyx or the Customer may at any time during the term of this Agreement propose in writing the provision of technology professional services to the Customer (**Proposal**).

Preparation of Statements of Work

- 2.3 When a Proposal is acceptable to the Customer:
- (a) If the parties agree that the Proposal is suitably detailed giving regard to the nature of the services being proposed, the Customer and Agilyx may execute that Proposal; or
 - (b) If the parties do not agree that there is yet sufficient definition as to the nature, limitations, scope or other commercial and/or legal terms of the services, upon receiving a written request from the Customer, Agilyx will prepare a first draft of a Statement of Work encapsulating the terms of the Services to be provided to the Customer as well as any Deliverables.
- 2.4 Where the Customer and Agilyx execute a Proposal in accordance with **clause 2.3(a)** above, that Proposal will be deemed in every way to be a Statement of Work duly executed in accordance with **clause 2.7** of this Agreement. For the avoidance of doubt, this means that terms in this Agreement which are expressed to apply and/or be implied into a Statement of Work, apply and/or are implied into that Proposal.

Mutual refinement of Statements of Work

- 2.5 The refinement of the Statement of Work is to be done at the mutual expense of the Customer and Agilyx meaning both parties contribute to the contents of the Statement of Work as necessary to reach a mutually agreeable document that reflects the scope and nature of the services or Deliverables required by the Customer.

Execution and effect of a Statement of Work

- 2.6 Once the Statement of Work is agreed between the parties, the Customer and Agilyx must execute it.
- 2.7 Once executed, a Statement of Work will constitute a separate and binding agreement between the parties and will import those terms of this Agreement which are expressed to, or by their nature, apply to a Statement of Work, and the Statement of Work will be interpreted in accordance with the rules of interpretation in **clause 1.2** of this Agreement. The terms of the Statement of Work will prevail over the terms of any document incorporated into it by reference to the extent of any inconsistency.
- 2.8 If there is any uncertainty, ambiguity or lack of clarity in terms contained within a Statement of Work which purport to modify a term expressed in this Agreement, the terms as expressed in this Agreement will, to the extent of the inconsistency, supersede those in the Statement of Work. The parties may resolve any such uncertainty, ambiguity or lack of clarity by further written agreement.

Professional Services Rates in a Statement of Work

- 2.9 Unless otherwise provided in a Statement of Work, and subject to **clause 5.4**, the Professional Services Rates in **Schedule 1** apply to all services performed under a Statement of Work.

3 Obligations under a Statement of Work

The obligations expressed in this **clause 3** apply severally to each Statement of Work entered into between Agilyx and the Customer, unless they are modified expressly in that particular Statement of Work.

Joint Obligations and Warranties

- 3.1 Unless expressly modified in a Statement of Work, both parties must, for the term of a Statement of Work:
- (a) ensure that adequate personnel and resources are available to maintain the scheduling requirements contained in the Statement of Work; and
 - (b) use reasonable endeavours to prevent the introduction of any virus, disabling device or code, worm, trojan, time bomb or other harmful or destructive code (**Harmful Code**) to the Customer's information technology infrastructure, and if any Harmful Code is introduced, use all reasonable endeavours promptly to report that introduction to the Customer and to take all necessary action to eliminate the Harmful Code and promptly repair any harm or destruction caused by that Harmful Code.
- 3.2 Unless expressly modified in a Statement of Work, both parties warrant, in relation to that Statement of Work, that they:
- (a) have the right and is duly authorised to enter into or execute that Statement of Work; and
 - (b) have all rights, title, licences (including rights to grant licenses), interests and property necessary to lawfully exercise its obligations.

Agilyx's Obligations and Warranties

3.3 Unless expressly modified in a Statement of Work, Agilyx must, for the term of the Statement of Work:

- (a) perform the services outlined in the Statement of Work in accordance with good industry practice for a technology services consultancy working in a skilful, diligent, responsive and professional manner;
- (b) comply with all reasonable directions and procedures of the Customer relating to workplace health, safety and security in operation at those premises or facilities;
- (c) comply with its statutory obligations in the delivery of the services under the Statement of Work, including but not limited to compliance with:
 - i. minimum terms and conditions of employment including those in respect of annual leave, parental leave and sick leave;
 - ii. applicable industrial relations and anti-discrimination legislation; and
 - iii. occupational health and safety and workers compensation legislation, and
- (d) Co-operate in a collaborative manner with any other contractors of the Customer working on related services to those under the Statement of Work.

Customer's Obligations and Warranties

3.4 Unless expressly modified in a Statement of Work, the Customer must, for the term of the Statement of Work:

- (a) perform its obligations under a Statement of Work, which may include producing Deliverables that Agilyx's services or Deliverables under the Statement of Work are contingent on or otherwise required as inputs, and perform those obligations promptly;
- (b) provide Agilyx or its subcontractors with appropriate access to its property or premises duly required for the performance of any services or obligations under a Statement of Work;
- (c) provide any reasonable assistance, in the spirit of mutual co-operation, with Agilyx's efforts to perform any services, including fully co-operating with Agilyx personnel and any subcontractors;
- (d) provide Agilyx with full and frank disclosure of material matters which may impact the timely delivery of any services or Deliverables by Agilyx to the Customer;
- (e) ensure a safe working environment for any personnel visiting the Customer premises or facilities, including complying with best practice and laws regarding workplace health, safety and security; and
- (f) pay all invoices for fees and expenses in accordance with **clause 5**.

Disclaimer of Software Services Warranty

3.5 Agilyx does not warrant or represent that:

- (a) the functions contained within any Software will operate, in all the combinations which may be selected for use by the Customer or will meet all of the Customer's business requirements;

- (b) the operation of the Software will always be error-free or uninterrupted by reason of defect therein; or
- (c) all programming errors can be found in order to be corrected.

Other warranties excluded

- 3.6 Other than the warranties expressly provided for in this Agreement each party excludes all implied terms and warranties whether statutory or otherwise, relating to the subject matter of this Agreement including any warranties of merchantability or fitness for any purpose.

Mandatory CCA statutory compliance unaffected

- 3.7 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Customer by the *Consumer Rights Act 2015* ('CRA') or any other applicable law that cannot be excluded, restricted or modified by agreement.

4 Intellectual Property Rights

Scope of Provision

- 4.1 Nothing in this Agreement confers a right or licence of any Intellectual Property Rights in the ERP System. Such rights or licenses would only be granted under a separate agreement. This section deals only with Intellectual Property Rights and licensing of Materials produced in the implementation, customisation, or configuration of the ERP System or with any ancillary services.

Agilyx's Retention of Intellectual Property Rights in Agilyx Materials

- 4.2 All Intellectual Property Rights in the Agilyx Materials are retained by, and remain, Agilyx's and/or its licensors rights and are not, except as expressly provided for in this Agreement, transferred, assigned or granted to the Customer.

Agilyx Materials to be Licensed to the Customer

- 4.3 Agilyx grants the Customer an irrevocable, perpetual, non-exclusive, worldwide, paid-up licence to hold, reproduce, publish, adapt or otherwise use any Agilyx Material to perform Enterprise Resource Planning for:

- (a) the Customer; and
- (b) subject to **clause 4.4** below, the Customer's Related Bodies Corporate,
(together the **Customer Entities**),

such a licence expressly prohibiting any use of the Agilyx Material for any commercial purpose (such as resale).

- 4.4 Acceptance of the terms of the licence granted in **clause 4.3(b)** above by the Customer's Related Bodies Corporate is obtained by the Customer as an agent of Agilyx and the resulting agreement (including any chose in action available to Agilyx to enforce the terms of such licence) is held on trust for the benefit of Agilyx. This clause applies wherever a licence is granted by Agilyx to the Customer's Related Bodies Corporate under this Agreement.

Agilyx's Warranty as to Ability to Licence

- 4.5 Agilyx warrants that it has the rights to grant, license, or sub-license all parts of the Agilyx Materials to the Customer that it is required to grant, license, or sub-license (as applicable) under this Agreement.

Third Party Intellectual Property Claim Indemnity

- 4.6 Subject to the Customer's compliance with **clause 4.7**, Agilyx will indemnify the Customer against all liability, losses, damages, costs and expenses suffered or incurred by the Customer as a result of any Claim alleging that any of the:

- (a) Agilyx Materials; or
- (b) Deliverable Materials, except where they are provided by a third party (such as for example if third-party Software is particularised in a Statement of Work as a Deliverable),

or the Customer's use or possession of any of them, infringes the Intellectual Property Rights or Moral Rights of any third party (**IP Claim**).

Customer's Conduct in an IP Claim

- 4.7 Upon becoming aware of any actual or anticipated IP Claim, the Customer must:

- (a) promptly notify Agilyx in writing;
- (b) allow Agilyx to take control of the conduct of any IP Claim and all negotiations for its settlement or compromise, with Agilyx consulting with the Customer to keep it fully informed of the conduct of the IP Claim; and
- (c) at its own cost, co-operate with Agilyx in defending or settling any IP Claim and make its employees available to give any statements, information and evidence that Agilyx reasonably requests.

Remedies to Infringement for Agilyx in an IP Claim

- 4.8 If Agilyx is of the reasonable view that an IP Claim is likely to result in any Loss or Liability, then either as pre-emptive measure to, or during, the conduct of any IP Claim, the Customer must allow Agilyx, at its own cost, to:

- (a) obtain for the Customer the right to continue to use any infringing Material; or
- (b) to either:
 - i. modify the appropriate aspect of any infringing Material so it becomes non-infringing; or
 - ii. replace the appropriate aspect of the Material with other non-infringing material,

without causing a material diminution in performance or function.

Customer Retention of IP Rights in Customer Materials

- 4.9 All Intellectual Property Rights in the Customer Materials are retained by, and remain, the Customers and/or its licensors rights and are not, except as expressly provided for in this Agreement, transferred, assigned or granted to Agilyx.

Grant of licences to facilitate performance of the Agreement

- 4.10 The Customer grants Agilyx an irrevocable, perpetual, non-exclusive, worldwide, paid-up licence to hold, reproduce, adapt or otherwise use any Customer Material for any acts required in the performance of:

- (a) this Agreement;

- (b) any Statement of Work (including for inclusion in any Deliverable or any Deliverable Material); or
 - (c) any obligation under any other agreement between the parties (such as for support and maintenance purposes under a separate support and/or maintenance agreement).
- 4.11 If the Customer requires Agilyx to use any Materials from its Related Bodies Corporate under or in connection with this Agreement, the Customer must, on or before those Materials are to be used by Agilyx, procure a licence on the same terms as **clause 4.10** above from the relevant Related Body Corporate prior to Agilyx's use of those Materials.

Customer's Third-Party Intellectual Property Warranty to Agilyx

- 4.12 The Customer warrants that Agilyx's use or possession of any of Customer Materials will not infringe the Intellectual Property Rights or Moral Rights of any person

Customer's Licence to Deliverable Materials

- 4.13 Agilyx grants the Customer Entities an irrevocable, perpetual, non-exclusive, worldwide, paid-up licence to hold, reproduce, adapt or otherwise use any Deliverable Material to perform Enterprise Resource Planning for the Customer Entities, such a licence expressly prohibiting any use of the Deliverable Material for any commercial purpose (such as resale).

5 Payment Terms

Invoice & payment terms under a Statement of Work

- 5.1 All fees payable pursuant to a Statement of Work will be invoiced by Agilyx monthly in arrears and will be due and payable by the Customer within twenty (20) days of date of invoice. Charges for applicable taxes, duties or other sales charges will be added to the services invoice.

Payment of expenses

- 5.2 In addition to the fees payable under any Statement of Work, Agilyx will be reimbursed, by the Customer for all Agilyx staff travel time at half the Professional Services Rates plus all reasonable out-of-pocket expenses as set out in Expense Policy in **Schedule 2**, plus applicable taxes. These expenses will be invoiced on a weekly basis and are only payable where Agilyx staff are required to travel outside of their regular metro area of work.

Interest payable on overdue payments

- 5.3 If the Customer should fail to pay any invoice within thirty (30) days of the date of the invoice, Agilyx may charge the Customer interest on any overdue amount, from the date such amount became due, at the rate of 7% per annum, until the invoice is paid in full.

Indexation of Professional Services Rates

- 5.4 On each anniversary of the Commencement Date, the Professional Services Rates may, at Agilyx's discretion, increase in accordance with this clause. The increase will be greater of:
- (a) 2%; or
 - (b) The amount that is the sum of:
 - i. the percentage change in the United Kingdom Consumer Price Index (weighted average all groups index), as published by the Office for

National Statistics for the preceding year, as at the date of the increase;
and

- ii. 2%.

6 Insurance

Agilyx to maintain insurance policies

6.1 Agilyx must, unless specified otherwise in a Statement of Work, have and maintain valid and enforceable insurance policies to the following levels:

- (a) for the term of this Agreement and while there are any Active Statements of Work:
 - i. minimum £5,000,000 per claim and in aggregate for public liability;
 - ii. minimum £2,000,000 per claim for either professional indemnity or errors and omissions;
 - iii. minimum £10,000,000 per claim for product liability; and
 - iv. workers' compensation as required by law.
- (b) for three (3) years following the expiry or termination of the Contract, £2,000,000 per claim for professional indemnity or errors and omissions.

Proof of currency of insurance

6.2 Agilyx must, on request by the Customer, provide to the Customer within five Business Days proof of the currency of the required insurances, in the form of an insurance certificate from the insurer certifying that the insurance required by this **clause 6** is in force.

Survival (No Merger)

6.3 The provisions of this **clause 6** shall survive termination or expiry of this Agreement for any reason.

7 Liability

Liability Cap

7.1 The total aggregate liability of Agilyx (whether under statute, in contract or in tort, including for negligence, or otherwise) for loss or liability suffered or incurred by the Customer:

- (a) under or in connection with any Statement of Work, is limited to an amount equal 1.5 times the total fees paid or payable by the Customer pursuant to that Statement of Work; or
- (b) under or in connection with this Agreement generally but not specifically attributable, connected or pursuant to a Statement of Work, is limited to £500,000;

(the **Liability Cap**).

Exclusions from Liability Cap

7.2 Unless specified otherwise in a Statement of Work, the Liability Cap does not apply to any liability arising out of:

- (a) **clause 4.6 (Third Party Intellectual Property Claim Indemnity);**

- (b) personal injury (including sickness or death of a person);
- (c) loss of, or damage to, tangible property; or
- (d) any fraud or any unlawful act or omission.

No liability for consequential loss

- 7.3 To the extent permitted by law, under no circumstances whether in tort, contract, or otherwise, shall either party be liable to the other for any indirect, special, incidental, or consequential damages of any character, or any claims, losses or damages (whether actual or anticipated) for loss of goodwill, revenue, profit, contracts, opportunity, anticipated savings, loss or corruption of data or equipment, work stoppage, computer failure or malfunction, regardless of whether or not such losses or damages were foreseeable, known or may have reasonably been within the contemplation of the parties before, during or after this Agreement was made.

Parties to take reasonable steps to mitigate loss/damage/costs/expenses

- 7.4 Each party shall take reasonable steps to mitigate any losses, damages, costs or expenses sustained or incurred as a result of any act or omission (including any breach or default of this Agreement) by the other party.

Proportionate liability

- 7.5 The liability of a party (**Primarily Liable Party**) for any losses, costs or damages suffered or incurred by the other party arising out of any breach by the Primarily Liable Party of, or negligent act or omission of the Primarily Liable Party relating to this Agreement will be reduced to the extent that the other party caused or contributed to such losses, costs or damages through the other party's:

- (a) breach of this Agreement; or
- (b) negligent act or omission relating to this Agreement,

regardless of whether a Claim is made by the other party for breach of contract or for negligence.

Survival (No Merger)

- 7.6 The provisions of this **clause 7** shall survive termination or expiry of this Agreement for any reason.

8 VAT

Interpretation of VAT Clause

- 8.1 In this **clause** Error! Reference source not found.:

- (a) **VAT Law** has the meaning given to that expression in the VAT Act;
- (b) words and expressions which are not defined in this Agreement, but which have a defined meaning in VAT Law, have the same meaning as in the VAT Law; and
- (c) references to VAT payable and input tax credit entitlement include VAT payable by, and the input tax credit entitlement of, the representative member for a VAT group of which the entity is a member.

Consideration VAT exclusive

- 8.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement or a Statement of Work are exclusive of VAT.

Payment of VAT

- 8.3 If VAT is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Agreement or a Statement of Work, the recipient will pay to the Supplier an amount equal to the VAT payable on the supply.

Timing of VAT payment

- 8.4 The recipient will pay the amount referred to in **clause 8.3** in addition to, and at the same time, that the consideration for the supply is to be provided under the Agreement or a Statement of Work.

Adjustment event

- 8.5 If an adjustment event arises in respect of a taxable supply made by a Supplier under the Agreement or a Statement of Work, the amount payable by the recipient under **clause 8.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

Reimbursements

- 8.6 Where a party is required under the Agreement or a Statement of Work to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a VAT group of which the other party is a member, is entitled; and
 - (b) if the payment or reimbursement is subject to VAT, an amount equal to that VAT.

Survival (No Merger)

- 8.7 The obligations contained in the provisions of this **clause** Error! Reference source not found. (**VAT**) shall survive termination or expiry of this Agreement or the applicable Statement of Work.

9 Term and Termination

The rights of termination in this **clause 9** are granted without limiting any other rights or remedies a party may have against the other party arising out of or in connection with this Agreement.

Term of Agreement

- 9.1 This Agreement begins on the Commencement Date and will continue in full force and effect unless it is earlier terminated in accordance with its terms.

Agreement not to be terminated where Active Statements of Work exist

- 9.2 Subject to **clause 9.4**, where any Statement of Work has:
- (a) been duly executed by Agilyx and the Customer pursuant to **clause 2.6**;

- (b) still has outstanding work (including any Deliverables or Services which remain unperformed) or payments due,

(each being an **Active Statement of Work**),

this Agreement may not be terminated until completion of every Active Statement of Work. For the avoidance of doubt, each Active Statement of Work will continue in full force and effect irrespective of whether this Agreement has been terminated or expired as though this Agreement was still in full force and its terms applied to the relevant Active Statement of Work.

Ordinary termination where no Active Statements of Work

- 9.3 If there are no Active Statements of Work, this Agreement may be terminated by either party, giving 20 Business Days' written notice to the other party.

Termination by Agilyx for failure of Customer to pay invoice

- 9.4 Despite **clause 9.2** and without prejudice to any other right or remedy it may have, Agilyx may immediately terminate a Statement of Work at any time by giving to the Customer notice in writing if:
 - (a) the Customer fails to pay any fees under that Statement of Work; and
 - (b) the failure to pay is not remedied within 20 Business Days of the Customer receiving written notice from Agilyx specifying the failure to pay and requiring payment.

Notifiable Events

- 9.5 A party must notify the other party in writing immediately if one or more of the following occurs or is proposed (each a **Notifiable Event**), the party:
 - (a) ceases to carry on business;
 - (b) ceases to be able to pay its debts as they become due;
 - (c) is the subject of any application or proceedings before a court or tribunal, or an action by a creditor or other person, in the United Kingdom or overseas which may result in the party becoming Insolvent Under Management; or
 - (d) becomes an Insolvent Under Management.

Termination because of a Notifiable Event

- 9.6 If a Notifiable Event happens to the party and the other party reasonably considers that such an event will prevent the party from performing its obligations under this Agreement, this Agreement may be terminated immediately.

10 Confidentiality

Mutual Confidentiality Obligations

- 10.1 A party to this Agreement that receives Confidential Information (the **Receiving Party**) from the other party (the **Disclosing Party**) must:
 - (a) use the Disclosing Party's Confidential Information solely for the purpose of, and solely to the extent necessary for, exercising the Receiving Party's rights and complying with the Receiving Party's obligations under this Agreement;

- (b) only disclose the Disclosing Party's Confidential Information to those of the Receiving Party's employees, agents, Associates and contractors to whom, and to the extent that, such disclosure is reasonably necessary for the purpose of exercising the Receiving Party's rights and complying with the Receiving Party's obligations under this Agreement; and
- (c) take steps (so far as is reasonably practicable) to maintain effective and adequate security measures to:
 - i. safeguard the Disclosing Party's Confidential Information from access or use by unauthorised persons;
 - ii. keep the Disclosing Party's Confidential Information under the Receiving Party's control; and
 - iii. ensure that any of the Receiving Party's employees, agents and contractors (or those of the Receiving Party's Related Bodies Corporate) who receive Confidential Information are subject to documented confidentiality obligations which are at least as restrictive/onerous as the provisions of this Agreement.

Exceptions to Obligations

10.2 The provisions of the above **clause 10.1** will not apply to Confidential Information, to the extent that the Confidential Information:

- (a) was, before the Receiving Party received such Confidential Information from the Disclosing Party, in the Receiving Party's possession without any obligations of confidence;
- (b) is independently acquired or developed by the Receiving Party without breaching any of the Receiving Party's obligations under this Agreement and without use of any other Confidential Information of the Disclosing Party;
- (c) is subsequently disclosed to the Receiving Party, without any obligations of confidence, by a third party who has not derived it, directly or indirectly, from the Disclosing Party;
- (d) becomes available to the Receiving Party on a non-confidential basis, from a person who is entitled to possess the information and disclose it; or
- (e) is or becomes generally available to the public through no act or default of the Receiving Party or any of the Receiving Party's or their Related Bodies Corporate's employees, agents or subcontractors; or
- (f) is used in relation to legal proceedings or is required to be disclosed by law or to the courts of any competent jurisdiction, to any government regulatory or financial authority.

Survival (No Merger)

10.3 The obligations contained in the provisions of this **clause 10** shall survive termination or expiry of this Agreement.

11 Non-solicitation of Agilyx Professional Services

Customer restrained from soliciting Agilyx Professional Services

11.1 In order to protect the business and commercial interests of Agilyx, the Customer agrees that it will not, either directly or indirectly, during and after the term of this Agreement:

- (a) solicit, canvass, induce or encourage (or attempt to do any of these things) any employee or agent of Agilyx to terminate their contracts of employment or agency with Agilyx whether for the purposes of becoming an employee of the Customer or otherwise; or
- (b) interfere, or seek to interfere with, the relationship between Agilyx and any subcontractors, suppliers or employees of Agilyx.

Time periods of restraint

11.2 The restraints in this **clause 11** apply during the entire term of this Agreement and following termination or expiry of this Agreement within any of the following time periods:

- (a) 3 months;
- (b) 6 months; and
- (c) 12 months.

Individual nature of restraints

11.3 Each of the time periods in **clause 11.2** comprise of a separate restraint and take effect as if each is separate and independent from the others. Each separate restraint consists of the:

- (a) obligations in **clause 11.1**;
- (b) acknowledgements in **clause 11.5**; and
- (c) one of the time periods referred to in **clause 11.2**.

Separate restraints specifically severable

11.4 If any of the separate and independent restraints described in **clause 11.3** are invalid or otherwise unenforceable for any reason, without limiting any provision in this Agreement concerning severance/severability (in particular, **clause 12.16**), the invalidity or unenforceability shall not affect the validity or enforceability of any of the other separate and independent restraints and time periods.

Acknowledgements regarding restraints

11.5 It is specifically acknowledged by the Customer that:

- (a) Agilyx's rights under this **clause 11** are in addition to, and do not derogate from, or affect, Agilyx's common law or equitable rights;
- (b) the restraints in this **clause 11** are reasonable, and that injunctive relief may be sought by Agilyx to enforce them; and
- (c) in the event that any of the restraints in this **clause 11**, or parts of them, are found not to be enforceable then it is agreed that the remainder of the restraints shall apply and remain unaffected.

Liquidated damages for breach

11.6 The Customer acknowledges that a breach by it of the provisions of this **clause 11** requires the expenditure of time and expense by Agilyx in replacing such employee for which Agilyx is entitled to recover as liquidated damages an amount equal to 50% of the gross annual salary or fee of the individual concerned as at the time of the breach (which is acknowledged to be a genuine pre-estimate of the loss and damage suffered by Agilyx). This provision shall be without prejudice to Agilyx's right to seek injunctive relief.

Survival (No Merger)

- 11.7 The provisions of this **clause 11** shall survive termination or expiry of this Agreement for any reason.

12 General

Warranties as to rights and status in entering Agreement

- 12.1 The parties each warrant that they:
- (a) have the right and are duly authorised to enter into this Agreement;
 - (b) are not acting as the trustee of any trust in relation to this Agreement

Assignment

- 12.2 No party may assign its rights or obligations under this agreement without the prior written consent of the other parties, which consent may be given or withheld, or given on conditions, in the absolute discretion of those other parties.

Waiver or variation

- 12.3 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 12.4 The exercise of a power or right does not preclude:
- (a) its future exercise; or
 - (b) the exercise of any other power or right.
- 12.5 The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing and executed by the parties.

Costs

- 12.6 Each party will pay its own costs of, and incidental to, the preparation, negotiation, drafting and execution of this Agreement.

Dispute Resolution

- 12.7 Should a dispute arise between the parties in relation to this Agreement then prior to pursuing any legal rights, other than seeking urgent interlocutory rights, the aggrieved party must provide written notification of the problem to the Managing Director (or equivalent position) of the other party, the details of whom are notified in writing by that other party. Both parties shall then use all reasonable endeavours to resolve the dispute within 30 days of receiving this notice. Should there still be no resolution then the aggrieved party is entitled to pursue its legal rights.

Notices

- 12.8 A notice or other communication to a party in connection with this Agreement must be written in English and delivered to that party in one of the following ways:
- (a) delivered personally, where the party which sent the notice or communication holds a receipt for it, signed by a person employed by the intended recipient;

- (b) posted to their physical address, where it will be treated as having been received on the third Business Day after posting; or
- (c) sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

Governing law and jurisdiction

- 12.9 This Agreement is governed by the laws of the United Kingdom. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the United Kingdom and any courts which have jurisdiction to hear appeals from any of those courts in respect of any proceedings in connection with this Agreement.

Non-derogation of jurisdiction

- 12.10 In the event that this Agreement is considered, or an action, Claim or dispute arises in connection with this Agreement outside of the jurisdiction of the United Kingdom, the Customer agrees to indemnify Agilyx for:
- (a) All loss, costs, expenses, damage, Liability (direct or indirect), interest, fees or penalties;
 - (b) All costs (legal and other costs including logistical costs incurred in defending the action, Claim or dispute) associated with the defence or resolution of the dispute on an indemnity basis;
 - (c) the reasonable costs of defending the action, Claim or dispute in Agilyx's discretion; and
 - (d) the reasonable costs of defending the action, Claim or dispute as assessed independently,
- 12.11 Where the above subparagraphs (a) to (d) are expressly severable and apply independently of one another, without limiting any provision in this Agreement concerning severance/severability (in particular, **clause 12.16** below)

Counterparts

- 12.12 This Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of this Agreement will be the date on which it is executed by the last party.

Further Assurances

- 12.13 Each party will do, sign, execute and deliver all Agreements, documents, instruments and acts reasonably required of it by notice from another party to effectively carry out and give full effect to this Agreement and the rights and Obligations of the parties under it.

Whole Agreement

- 12.14 This Agreement is the whole and entire agreement in relation to its subject matter between the parties and supersedes all oral and written communications by or on behalf of any of the parties.
- 12.15 The terms of each Statement of Work are the whole and entire agreement in relation to its subject matter and supersede all oral and written communications by or on behalf of the parties leading up to its creation and execution.

Severance

12.16 Any provision of, or the application of any provision of this Agreement, which is prohibited, void, illegal or unenforceable in any jurisdiction:

- (a) is, in that jurisdiction, ineffective only to the extent to which it is void, illegal, unenforceable or prohibited;
- (b) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Agreement in that or any other jurisdiction; and
- (c) is severable from this Agreement and will not affect the remaining provisions of this Agreement, and

the application of this clause is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

Executed as an Agreement

EXECUTED for and on behalf of **AGILYX EMEA LIMITED COMPANY NUMBER 13427137** in accordance with section 44 of the *Companies Act 2006*:

Signature of duly authorised agent

Name of duly authorised agent

EXECUTED for and on behalf of the **[Insert Company Name] NUMBER [Insert Company Number]** in accordance with section 44 of the *Companies Act 2006*:

Signature of duly authorised agent

Name of duly authorised agent

Schedule 1 — Professional Services Rates

The section below outlines the rates which apply to Agilyx professional services and other personnel in accordance with the terms of this Agreement.

Daily Rates

The table below applies for any activities in a Statement of Work where it is indicated that daily rates or half-daily rates apply.

Agilyx Role	Daily Rate (£GBP per working day, exclusive of VAT)
Blended Rate for all Roles	[Insert Rate]

Hourly Rates

The table below applies for any activities in a Statement of Work where it is indicated that hourly rates apply.

Agilyx Role	Hourly Rate (£GBP per hour, exclusive of VAT)
Blended Rate for all Roles	[Insert Rate]

Time & Materials

All professional services amounts included in a Statement of Work are estimates and will be invoiced on a time and material basis.

The Customer will be invoiced for works performed at the applicable rate form the above tables.

For invoicing and payment terms please reference **clause 5.1**

Schedule 2 — Expense Policy

Travel Expenses

Public Transportation

Air, ferry, bus and taxi fares and toll charges are claimable. For air travel, the most economical airfare that can be reasonably scheduled must be purchased unless prior authorisation has been given.

Car Rental

Cost of rented vehicles may be claimed if required to perform the Services and if prior authorisation has been given.

Private Vehicle

Private vehicle travel costs (mileage) rate is the then current per mile rate set by the HMRC. This rate is subject to change by the HMRC from time to time.

Parking

Parking costs are an allowable expense where the use of a private or rental vehicle is directly related to this Agreement.

Overnight Accommodation

Agilyx's employees will arrange for accommodations through our corporate travel coordinator who will arrange for the best rates possible (Agilyx EMEA Limited preferred hotels, apartments). If the Customer has a corporate account with nominated and preferred hotel chain, Agilyx's employees will be accommodated in accordance with the arrangement, provided the standard of accommodation meets an acceptable standard noted in this policy.

Weekend Allowance

When the Agilyx employee travels on a Saturday or Sunday to save on airfare, he/she may claim one £50.00 entertainment expense as well as standard travel expenses.

Per Diem Expenses

Daily Per Diem allowances are payable for work performed onsite when the Agilyx employee is travelling away more than 30mls from 'home-base' defined as local Metropolitan area. The Daily Per Diem Rate for locations outside the local Metropolitan area are set as gazetted by the HMRC at prevailing published rates.