

Master Services Agreement

IT Auxilium Ltd

1. ENGAGEMENT AND SERVICES

- 1.1. The Customer engages IT Auxilium to perform the services (the “**Services**”) and/or supply the third-party software and/or hardware (the “**Products**”) as set out in the attached Schedule and/or Quotation as amended from time to time in accordance with the terms of this Agreement.
- 1.2. The Schedule and/or Quotation shall (as amended from time to time in accordance with the Change Control Procedure) set out:
 - 1.2.1. details of the Services to be performed and the Fees to be paid to IT Auxilium by the Customer;
 - 1.2.2. details of the Products to be supplied by IT Auxilium and the Fees to be paid by the Customer; and
 - 1.2.3. any special terms different from the terms of this MSA.
- 1.3. The Services shall commence on the date set out in the Schedule (the “**Commencement Date**”) and shall continue, unless terminated earlier in accordance with this Agreement for an initial term of **{{term}}** months (the “**Initial Term**”).
- 1.4. The Initial Term shall automatically be extended for successive **{{months}}** month periods (“**Renewed Term**”) at the end of the Initial Term and at the end of each Renewed Term, unless either party gives written notice to the other party, not later than 30 days before the end of the Initial Term or the relevant Renewed Term, to terminate the Services at the end of the Initial Term or the relevant Renewed Term (as the case may be).
- 1.5. This MSA, the Schedules and Quotation shall prevail over any inconsistent terms or agreement contained in, or referred to in or on any document issued by the Customer, or as may be implied by law, trade custom, practice or course of dealing.
- 1.6. The Schedule and Quotation shall form part of this MSA and shall be deemed incorporated into the Agreement and the supply of the Services and/or Products shall be governed by the Agreement. Where the terms of the Schedule and/or Quotation conflict with the terms of this MSA, the terms of the MSA shall prevail.

2. IT AUXILIUM GENERAL OBLIGATIONS

- 2.1. IT Auxilium shall:
 - 2.1.1. use reasonable endeavours to deliver the Products and/or Services to the Customer, in accordance in all material respects with the Schedule and/or Quotation;
 - 2.1.2. use reasonable endeavours to meet the performance dates specified in the Schedule, but any such dates shall be estimates only and time shall not be of the essence of the Agreement;
 - 2.1.3. appoint a representative who shall have authority to act on behalf of IT Auxilium on all matters relating to the delivery of the Services (the “**IT Auxilium Representative**”); and
 - 2.1.4. perform such other duties in relation to the Services (if applicable) as may be mutually agreed in writing from time to time.
- 2.2. IT Auxilium warrants that the Services will be performed:
 - 2.2.1. with reasonable skill and care;
 - 2.2.2. in accordance with generally accepted industry standards applicable to such services; and
 - 2.2.3. substantially in accordance with the Schedule and/or Quotation.
- 2.3. If the Services do not conform with the warranties in this clause, IT Auxilium will, at its expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or

substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty in this clause.

- 2.4. Any claim for breach of the warranty must be made in writing and notified to IT Auxilium within thirty (30) days of performance of the Services at issue.
- 2.5. The warranties in this clause shall not apply to the extent of any non-conformance which is caused by the Customer's use of the Services contrary to IT Auxilium's instructions.
- 2.6. Notwithstanding the foregoing, IT Auxilium does not warrant that the Customer's use of the Services will be uninterrupted or error free.
- 2.7. IT Auxilium reserves the right to modify IT Auxilium's System, its network, system configurations or routing configuration or modify/replace any hardware or software in its network or in equipment used to deliver any of the Support Services over its network.
- 2.8. In this Agreement, "**IT Auxilium System**" means the information and communications technology system to be used by IT Auxilium in performing the service, including all hardware, software, and communications links between such hardware and the Customer's equipment and the Customer's operating environment.

3. CUSTOMER'S GENERAL OBLIGATIONS

- 3.1. The Customer shall:
 - 3.1.1. provide IT Auxilium with all necessary co-operation reasonably requested by IT Auxilium in relation to the Services and/or supply of the Products;
 - 3.1.2. provide all necessary access to such information as may be reasonably required by IT Auxilium to enable IT Auxilium to perform the Services, including Customer Personal Data, security access information and software interfaces to the Customer's other business applications;
 - 3.1.3. provide such personnel assistance and make available such Customer personnel, as may be reasonably requested by IT Auxilium from time to time;
 - 3.1.4. appoint a representative who shall have authority to act on behalf of the Customer and bind the Customer on all matters relating to the Services and/or Products (the "**Customer Representative**");
 - 3.1.5. comply with all applicable laws and regulations with respect to its activities under the Agreement;
 - 3.1.6. carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, IT Auxilium may adjust any timetable or delivery schedule set out in the Agreement as reasonably necessary.
- 3.2. If IT Auxilium's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractor or employees, the Customer shall pay to IT Auxilium all reasonable costs, charges or losses sustained or incurred by IT Auxilium.

4. PROVISION OF PRODUCTS (HARDWARE AND SOFTWARE)

- 4.1. The Customer acknowledges and agrees that IT Auxilium relies on the supply of the Products (the "**Product**") to it by third party providers of Products and that it is reasonable that the supply of Products to the Customer by IT Auxilium by a specified date shall not be of the essence of the Agreement.

- 4.2. Any hardware Product shall be delivered by IT Auxilium to the delivery address provided by the Customer (the **"Delivery Address"**). The risk of loss and/or damage to the Product passes to Customer at the time of delivery by or on behalf of IT Auxilium to the Delivery Address.
- 4.3. Title to the Product shall be retained by IT Auxilium (or any applicable third-party vendor) until payment in full is made by the Customer for the relevant Product in accordance with this Agreement. Products delivered to the Customer with retention of title may not be resold, pledged or proposed as security for a claim of a third party.
- 4.4. IT Auxilium may make Product(s) substitutions and modifications that do not cause a material adverse effect in overall Product performance (and any such substitution or modification shall not amount to a Change).
- 4.5. The Customer shall immediately check the Product(s) delivered for deficiencies in quantity and for external damage to the packaging and indicate any deficiencies and/or damage on the accompanying transport documents. Failure by the Customer to make such indication shall render any claims relating to quantity or damage (other than for latent damage) null and void.
- 4.6. The Customer will have three (3) working days after delivery of hardware Products at the Delivery Address to inspect and test the Products. In the absence of any written notice to IT Auxilium reporting any defects, Products will be deemed accepted by the Customer three (3) working days after receipt at the Delivery Address. In the event that IT Auxilium installs the Products for the Customer, acceptance will be deemed to occur upon successful completion of the manufacturer's standard diagnostic testing by IT Auxilium of the installed Product(s). If a defect is reported to IT Auxilium within the period specified above, the provisions below will apply.
- 4.7. IT Auxilium warrants that it will use its reasonable endeavours to assign to, or procure for the benefit of the Customer, any warranties generally made available by any third-party manufacturer or vendor of the Products. As expressly stated in the Agreement, IT Auxilium does not provide any warranty relating to the Products and all Products are provided without any obligation for IT Auxilium to maintain or support such Products.
- 4.8. The Customer's sole and exclusive remedy and IT Auxilium's entire liability for breach of any warranties, Agreement, terms, representations, statements, undertakings and/or obligations in relation to the Products will be (at IT Auxilium's option): (a) the repair of defective Products; (b) the replacement of defective Products; or (c) the issuance of a credit note to the Customer in respect of such Products. As between the Customer and IT Auxilium, title in all defective Products (or parts thereof) which are removed shall transfer back to IT Auxilium.
- 4.9. No warranty will apply to any Products which have been:
 - 4.9.1. modified, altered or adapted by or on behalf of the Customer without IT Auxilium's written consent;
 - 4.9.2. abused or used in a manner other than in accordance with the relevant manual;
 - 4.9.3. repaired by any third party (other than by IT Auxilium or any third party agreed by IT Auxilium to perform any of IT Auxilium obligations under any Agreement);
 - 4.9.4. improperly installed by any party other than IT Auxilium (or any third party agreed by IT Auxilium to perform any of IT Auxilium obligations under any Agreement); or
 - 4.9.5. used with equipment or software other than that which is advised in the Product literature, to the extent that the problems are attributable to such use.

5. CHANGE CONTROL

- 5.1. If either party wishes to change any Product and/or Services (**"Change"**), it shall submit details of the requested Change to the other in writing and IT Auxilium shall provide a written estimate to the Customer of (i) the likely time required to implement the Change, (ii) any variations to IT Auxilium's charges arising from the Change, (iii) the likely effect of the Change on the Services and (iv) any other impact of the change on the terms of the Agreement.

- 5.2. If IT Auxilium requests a Change, the Customer shall not unreasonably withhold or delay consent to it.
- 5.3. If the Customer wishes IT Auxilium to proceed with the Change, IT Auxilium has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the charges, the Schedule and any other relevant terms of the Agreement.
- 5.4. All agreed variations to this Agreement shall be recorded in the form of the variation agreement (the “**Variation Agreement**”) appended to this Agreement.

6. FEES AND EXPENSES

- 6.1. The Customer shall pay IT Auxilium the fees and expenses for the Services and/or Products as set out in the Schedule (including any on-boarding fees) in accordance with the Agreement (the “**Fees**”).
- 6.2. IT Auxilium shall submit a valid VAT invoice for all Fees (in the case of the Services on a monthly basis). The Customer will pay all Fees properly invoiced (unless the subject of a bona fide dispute) in full, without deduction or set-off, and in cleared funds by direct debit within 14 days of the date the invoice in question was raised unless otherwise expressly agreed between the parties in writing.
- 6.3. If the parties agree to the provision of any services in addition to the Services, such services shall be invoiced on a time and materials basis in accordance with IT Auxilium’s standard daily fee rates as amended from time to time.
- 6.4. IT Auxilium may adjust the fees payable for the Products at any time on giving reasonable notice to the Customer to reflect increases or decreases in the costs charged by third party vendors. IT Auxilium shall give the Customer not less than 14 days’ prior notice in writing of the proposed change.
- 6.5. In the event that any on-boarding fees are not paid in one lump sum on commencement of the Services, the on-boarding fee will be payable pro rata on a monthly basis from the Commencement Date until the second anniversary of the Commencement Date. In the event that the Agreement is terminated [before the first anniversary of the Commencement Date] [or] [during the first nine months of the Agreement], the balance of the on-boarding Fee shall become immediately due and payable by the Customer on termination.
- 6.6. The amounts specified in the Schedule do not include VAT or any other taxes on supplies and the Customer will pay these to IT Auxilium as well as the amounts concerned.
- 6.7. IT Auxilium may increase the Fee for Services on an annual basis with effect from the expiry of the Initial Term and each anniversary thereof in line with the percentage increase in the UK Retail Prices Index in the preceding 12-month period.
- 6.8. Without prejudice to any other right or remedy that IT Auxilium may have, if the Customer fails to pay IT Auxilium on the due date IT Auxilium may:
 - 6.8.1. charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Lloyds TSB Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. IT Auxilium may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
 - 6.8.2. suspend the delivery and remove the Products and/or performance of all Services until due payment has been made in full.
- 6.9. IT Auxilium may, without prejudice to any other rights it may have, set off any liability of the Customer to IT Auxilium against any liability of IT Auxilium to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. As between the Customer and IT Auxilium, all Intellectual Property Rights and all other rights in all materials developed or supplied by IT Auxilium in relation to the Services in any media, including,

without limitation, software, data, diagrams, reports and specifications (including drafts) (the “**Deliverables**”) shall be owned by IT Auxilium.

- 7.2. IT Auxilium hereby licenses all such rights to the Customer free of charge and on a non-exclusive, revocable, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. Except as expressly stated in the Agreement, the Agreement does not grant the Customer any rights to such Intellectual Property and any licence will automatically terminate on termination of the Agreement.
- 7.3. The Customer acknowledges that the Customer's use of rights in the Products is conditional on IT Auxilium obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle IT Auxilium to license such rights to the Customer.
- 7.4. In this agreement, “**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

8. CONFIDENTIALITY

- 8.1. The Customer and IT Auxilium will keep confidential and will not divulge the same to any person (other than to those of their employees who require the confidential information on a “need to know” basis) the Confidential Information without the consent of the other party, except as provided in this clause.
- 8.2. The obligations set out in this clause will not apply to Confidential Information which:
 - 8.2.1. is already in, or which subsequently comes into, the public domain other than through a breach of the Agreement;
 - 8.2.2. is in the possession of the receiving party before disclosure (IT Auxilium Ltd);
 - 8.2.3. is obtained from a third party who is free to divulge or disclose the same;
 - 8.2.4. is required to be disclosed by law or by any governmental or other regulatory or supervisory body; or
 - 8.2.5. is or has been independently developed by one party without access to the Confidential Information.
- 8.2. This clause will remain in full force and effect for a period of five years after termination of the Agreement, howsoever arising.
- 8.4. In this Agreement “**Confidential Information**” means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or sub-contractors involved in the provision or receipt of the Services to the other party and that party's representatives in connection with the provision or receipt of the Services which information is either labelled as such or else which should reasonably to be considered as confidential because of its nature and the manner of its disclosure.

9. DATA PROTECTION

- 9.1. If IT Auxilium processes any personal data on the Customer’s behalf when performing its obligations under the Agreement, the parties record their intention that the Customer shall be the data controller and IT Auxilium shall be a data processor.
- 9.2. The Parties shall and shall procure that their employees and sub-contractors shall, at all times during and following the ending of this Agreement comply with all relevant obligations of the Data Protection Act 1998 as amended from time to time and any other applicable data protection and privacy legislation including the General Data Protection Regulation (, which shall supersede the Data Protection Act with effect from 25 May 2018, (together, “**DP Law**”). Terms used in the DP Law

including "personal data", "processing", "processor" and "controller" shall have the same meaning in this Agreement.

- 9.3. IT Auxilium shall:
- 9.3.1. only process the personal data in accordance with the written instructions of the Customer for the purposes, scope and duration limitations set out in this Agreement (as amended by mutual agreement) to the extent and in such manner as is necessary for the performance of its obligations under this Agreement;
 - 9.3.2. ensure that it has in place appropriate technical and organisational measures, to prevent unauthorised or unlawful processing of any personal data and against accidental loss or destruction of, or damage to, the Customer Personal Data having regard to the state of technological development and the cost of implementing any measures. Such measures may include where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted;
 - 9.3.3. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and it takes such measures as are necessary to ensure the transfer is in accordance with DP Law;
 - 9.3.4. notify the Customer without undue delay:
 - (i) becoming aware of any unauthorised access to or disclosure or unlawful processing of the personal data or of any event which may constitute a breach of the security of the personal data; or
 - (ii) the receipt by IT Auxilium (or by any of its authorized agents) of any subject access request from a data subject (as defined in DP Law); and provide the Customer with full cooperation and assistance in relation to any such matter (recording all incidents falling within this sub-clause on a security breach log).
 - 9.3.5. ensure that all employees and sub-contractors permitted to access the personal data are subject to a strict duty of confidentiality and shall not permit any person to process personal data who is not under such obligation;
 - 9.3.6. not sub-contract any processing of personal data save with the prior written consent of the Customer pursuant to clause 9.4;
 - 9.3.7. maintain complete and accurate records and information to demonstrate its compliance with this clause and make these available upon request for audit by the Customer and /or the Customer's auditors;
 - 9.3.8. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by law to store the personal data.
- 9.4. The Customer shall:
- 9.4.1. ensure that the Customer is entitled to transfer the relevant personal data to IT Auxilium so that IT Auxilium may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
 - 9.4.2. ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - 9.4.3. take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;
 - 9.4.4. not unreasonably withhold consent to IT Auxilium appointing a sub-processor of personal data under this Agreement on condition that IT Auxilium shall enter into a contract with the sub-processor incorporating terms which are substantially similar to terms found in this clause 9 and that IT Auxilium shall remain fully liable for all acts or omissions of any sub-processor.

10. LIMITATION OF LIABILITY

- 10.1. The following provisions set out the entire liability of IT Auxilium (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- 10.1.1. any breach of the Agreement (including the Schedule);
- 10.1.2. any use made by the Customer of the Services, the Products and/or the Deliverables or any part of them; and
- 10.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 10.2. IT Auxilium will not be liable for any delay or failure caused by:
 - 10.2.1. errors in programs, information, data or instructions supplied by Customer;
 - 10.2.2. the late arrival or non-arrival of material from Customer; or
 - 10.2.3. defects in any Customer hardware or Customer software.
- 10.3. Except as expressly and specifically provided in the Agreement:
 - 10.3.1. the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. IT Auxilium shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to IT Auxilium by the Customer in connection with the Services, or any actions taken by IT Auxilium at the Customer's direction; and
 - 10.3.2. all warranties, conditions and other terms implied or incorporated by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Agreement including warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.
- 10.4. Nothing in the Agreement excludes the liability of IT Auxilium for death or personal injury caused by IT Auxilium's negligence or for fraud or fraudulent misrepresentation, or for any other liability which cannot at law be excluded.
- 10.5. Subject to clause 10.4 above:
 - 10.5.1. IT Auxilium shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract law, misrepresentation or otherwise for any of the following: loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - 10.5.2. IT Auxilium's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the price paid and payable for the Products and/or Services during the 12 months preceding the date on which the claim arose.

11. TERMINATION

- 11.1. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement immediately without liability to the other if:
 - 11.1.1. the other party commits a material breach of the Agreement (which shall include non-payment of Fees due) including and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 11.1.2. if the other party becomes insolvent, or if an order is made or a resolution is passed for the winding up of the other party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business, or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- 11.2. Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 11.3. Without limiting its other rights or remedies, IT Auxilium shall have the right to suspend provision of the Services and/or delivery of any Products under the Agreement or any other agreement between

the Customer and IT Auxilium if the Customer becomes subject to any of the events set out in this clause if IT Auxilium reasonably believes that the Customer is about to become subject to any of them.

12. FOLLOWING TERMINATION

- 12.1. Without prejudice to any other right or remedy, on termination or expiry of the Agreement for any reason:
 - 12.1.1. the Customer shall immediately pay to IT Auxilium all of IT Auxilium's outstanding unpaid invoices and interest and, in respect of Services and/or Products supplied but for which no invoice has been submitted (including the balance of any on-boarding fees), IT Auxilium shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.1.2. the Customer shall return any and all Confidential Information, any Deliverables together with any Products which have not been fully paid for. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement;
 - 12.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
 - 12.1.4. provisions of the Agreement which expressly or by implication have effect after termination shall continue in full force and effect.
- 12.2. The Customer may, at any time before termination of the Agreement, for any reason, request IT Auxilium to put into effect an exit plan or otherwise to offer reasonable assistance in transitioning the Services to a Replacement Supplier ("**Transition Service**"). IT Auxilium will, in return for a reasonable fee (to be agreed prior to the commencement of any Transition Services), provide such Transition Services for a maximum period of three months, or until termination of the Agreement in accordance with the Agreement, whichever is later.
- 12.2. On expiry or termination of the Agreement, IT Auxilium will promptly produce a list of the third-party Agreements which IT Auxilium reasonably considers necessary to enable the transition of the Support Services to the Customer or any Replacement Supplier on expiry or termination of the Agreement (the "**Transferring Agreements**").
- 12.3. IT Auxilium and Customer shall co-operate to procure the termination of licences granted to IT Auxilium as part of the Customer's obligations, the novation or assignment to the Customer and/or Replacement Supplier of the Transferring Agreements.
- 12.5. The Customer shall:
 - 12.5.1. accept assignments or licence termination from IT Auxilium or (as applicable) join with IT Auxilium in procuring a novation of each Transferring Agreement; and
 - 12.5.2. once a Transferring Agreement is novated, re-assigned to the Customer or the Replacement Supplier or the applicable licence is terminated (as applicable), the Customer shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Agreement and exercise its rights arising under that Transferring Agreement or, as applicable, procure that the Replacement Supplier does the same.
- 12.4. All obligations of IT Auxilium under this clause shall be at the sole cost and expense of the Customer calculated on the basis of IT Auxilium's daily rates set out in the applicable list price in force at the applicable time.

13. NON-SOLICITATION

- 13.1. Neither party shall, without the prior written consent of the other, at any time from the date of the Agreement to the expiry of one year after the completion of the Agreement, Recruit or attempt to Recruit any person who is, or has been, engaged as an employee or sub-contractor of the other.

- 13.2. "Recruit" means to initiate personal contact for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are presented to Customer by a recruiting firm.
- 13.3. If a party hires personnel in violation of this clause 13, such party will pay the other liquidated damages in an amount equal to 50 per cent of the hired employee's aggregate annual compensation preceding the date of hiring.

14. FORCE MAJEURE

- 14.1. IT Auxilium shall have no liability to the Customer under the Agreement if it is prevented from, or delayed in, performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes involving the workforce of any third party, failure of a utility service or transport network, communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("**Force Majeure Event**").
- 14.2. If the Force Majeure Event prevents IT Auxilium from providing any of the Services and/or Products for more than 6 weeks, each of the Customer and IT Auxilium shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the other.

15. DEFINITIONS AND INTERPRETATION

- 15.1. The following definitions and rules of interpretation apply in this agreement.

Definition	Interpretation
Act	has the meaning set out in clause 9
Agreement	this MSA including its Schedules and the Quotation
IT Auxilium Representative	has the meaning set out in clause 2
IT Auxilium's System	has the meaning set out in clause 2
Change Control Procedure	the procedure as set out in clause 5 and Change has the meaning set out in clause 5
Commencement Date	has the meaning set out in clause 1
Confidential Information	has the meaning set out in clause 8
Customer Data	any information or data (including Customer Personal Data) which is provided by the Customer to IT Auxilium as part of the Customer's use of the Services
Customer Personal Data	means any personal data which is part of the Customer Data
Deliverables	has the meaning set out in clause 7
Delivery Address	has the meaning set out in clause 4
Fees	has the meaning set out in clause 6
Force Majeure Event	has the meaning set out in clause 14
Initial Term	has the meaning set out in clause 1
Intellectual Property Rights or IPR	has the meaning set out in clause 7
On-boarding Fee	means any fee for setting up the Services for the Customer as specified in the Schedule
Products	has the meaning set out in clause 1, being hardware or software and including in the case of software, a licence of which is procured by IT Auxilium for the use of the Customer
Quotation	means the formal proposal or quotation provided by IT Auxilium in the form appended to this Agreement
Renewed Term	has the meaning given in clause 1
Services	has the meaning set out in clause 1 including the Support services set out in the Schedule. [Standard Working Hours: any time between the hours of 08:00 to 18:00, Monday to Friday, not including Bank Holidays]

Transition Services and Transferring Agreements	have the meaning given in clause 12
Variation Agreement	has the meaning set out in clause 5 and in the form appended to this MSA
VAT	value added tax chargeable under English law for the time being and any similar additional tax

- 15.2. Headings do not affect the interpretation of the Agreement.
- 15.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 15.4. Words in the singular shall include the plural and vice versa. A reference to one gender shall include a reference to the other genders. A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 15.5. Any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

16. MISCELLANEOUS

- 16.1. **Waiver.** A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.
- 16.2. **Severance.** If any provision of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 16.3. **Status of pre-contract statements.** Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement other than as expressly set out in the Agreement.
- 16.4. **Assignment and Sub-contracting.** The Customer shall not, without the prior written consent of IT Auxilium, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. IT Auxilium may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights under the Agreement and may sub-contract or delegate in any manner any or all of its obligations under the Agreement to any third-party subject to it remaining liable to the Customer for any breach.
- 16.5. **No Partnership.** IT Auxilium is an independent contractor and nothing in the Agreement shall render it an agent or partner of the Customer and IT Auxilium shall not hold itself out as such.
- 16.6. **Third party rights.** The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 16.7. **Notices.** All notices shall be in writing and delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Agreement provided that a confirmatory copy is printed and sent by post. A notice delivered by hand shall be deemed received when delivered (or if delivery is not

during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class or recorded delivery post shall be deemed received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed received on the next working day.

- 16.8. **Disputes.** All bona fide disputes between the parties arising out of or relating to the Agreement that cannot be settled between the IT Auxilium Representative and the Customer Representative of the parties within a maximum of ten (10) working days of the issue arising shall be referred, by either party, to their respective senior management for resolution. If any dispute cannot be resolved by the respective senior management within a maximum of ten (10) working days after it has been referred, the dispute shall be referred to IT Auxilium's Managing Director and the Customer's Head of Procurement for resolution. If the IT Auxilium Managing Director and the Customer's Head of Procurement fail to resolve the dispute within thirty (30) working days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
- 16.9. If the dispute is not resolved at that meeting, the parties may agree to seek to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. The commencement of mediation will not prevent the parties commencing or continuing court proceedings.
- 16.10. **Governing Law and Jurisdiction.** The Agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.