

CONTENTS

CLAUSE

1.	Interpretation.....	1
2.	Application of terms and conditions	3
3.	Effect of the Service Level Agreement	3
4.	Supplier's obligations	3
5.	Customer's obligations.....	4
6.	Change control	5
7.	Charges and payment	6
8.	Data protection	8
9.	Intellectual Property Rights.....	8
10.	Confidentiality and Supplier's property.....	8
11.	Limitation of liability	9
12.	Termination	10
13.	Force majeure.....	12
14.	Waiver.....	12
15.	Rights and remedies	12
16.	Severance	13
17.	Warranty.....	13
18.	Entire agreement.....	13
19.	Assignment	13
20.	No partnership or agency	14
21.	Third party rights	14
22.	Notices.....	14
23.	Governing law.....	14
24.	Jurisdiction.....	15

1. Interpretation

The definitions and rules of interpretation in this Clause apply in these terms and conditions.

1.1 Definitions:

Additional Charges: means the charges detailed as Additional Support and Maintenance Charges in the Service Level Agreement.

Advanced Parts: means power supply unit, hard drive, motherboard, printer or docking station.

Basic Parts: means RAM memory, keyboard, mouse, cables, DVD/CD drive, fans,

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors (**Representatives**) to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Consultant: the Supplier's non-technical employee responsible for the supply of the Services, appointed in accordance with clause 4.3.

Contract: the Service Level Agreement accepted by the Customer in writing and the Supplier's acknowledgement under clause 3.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer Equipment: means any hardware, software, device or apparatus owned by the Customer;

Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).

Equipment: means any hardware, software, device or apparatus provided by the Supplier to enable the supply of the Services in accordance with the Contract.

Intellectual Property Rights: patents, utility models rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business and 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 to use and protect the confidentiality of 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.

Key Customer Contact: the Customer's employee who is to act as the point of contact regarding the supply of the Services, appointed in accordance with clause 5.1(a) confirmed in the Service Level Agreement.

Managed Services: means the services detailed as Managed Services in the Service Level Agreement.

Pre-existing Materials: materials which existed before the supply of the Services commenced.

Premises: means the location specified by the Customer where the Supplier shall provide the Services.

Service Level Agreement: the detailed agreement describing the Services and setting out the estimated timetable, charges and responsibilities of each of the parties for, or in connection with, the supply of the Services by the Supplier in accordance with the Contract.

Services: the services, to include Managed Services, to be provided by the Supplier under the Contract.

Supplier: JMV Solutions Ltd registered in England and Wales with company number 05969219 at 17 Samara Business Park Cavalier Road, Heathfield Industrial Estate, Newton Abbot, England, TQ12 6TR.

Term: means the duration of the Contract as defined in section 1.3 of the Service Level Agreement.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes but not email.
- 1.9 References to Clauses and Schedules are to the Clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Application of terms and conditions

2.1 These terms and conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's acceptance of the Service Level Agreement, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. Effect of the Service Level Agreement

3.1 The Customer's acceptance of the Service Level Agreement constitutes an offer by the Customer to purchase the Services specified in it on these terms and conditions. Accordingly, the execution and return of the Supplier's acknowledgement, or the Supplier's commencement or execution of work pursuant to the Service Level Agreement, shall establish a contract for the supply and purchase of those Services on these terms and conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Customer's acceptance of the Service Level Agreement shall not govern the Contract.

4. Supplier's obligations

4.1 The Supplier shall use reasonable endeavours to manage, complete, and supply the Services and/or the Deliverables to the Customer, in accordance in all material respects with the Service Level Agreement.

4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Service Level Agreement, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall appoint a Consultant who shall have authority to contractually bind the Supplier on all matters relating to the supply of the Services. Although the Supplier shall use reasonable endeavours to ensure that the same person acts as the Consultant throughout the supply of the Services, it may replace him or her from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 Prior to commencement of the Contract, the Supplier shall carry out an assessment of the Customer Equipment and network environment to which the Services are to be supplied to and identify any incompatibility.

4.5 If in the opinion of the Supplier, any Customer Equipment is deemed incompatible under clause 4.4, the Supplier shall provide a written recommendation and cost estimate for the upgrading (if possible) of any such Customer Equipment. The Customer shall be under no obligation to upgrade the Customer Equipment.

4.6 Subject to clauses 4.4 and 4.5, the Supplier reserves the right, to omit from the Contract, any Customer Equipment deemed incompatible with the Services.

5. Customer's obligations

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the supply of the Services and appoint the Key Customer Contact, who shall have the authority to contractually bind the Customer on matters relating to the Services;
- (b) provide in a timely manner such access to the Premises and data, and such office accommodation and other facilities, as is requested by the Supplier in writing;
- (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant Premises for the supply of the Services.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.

5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of the Supplier. The Customer shall not be in breach of this clause 5.3 if it hires an employee or subcontractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or subcontractors of the Supplier.

5.4 Any consent given by the Supplier in accordance with clause 5.3 shall be subject to the Customer paying to the Supplier on demand a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or subcontractor.

5.5 The Customer warrants that they will obtain, keep and make available machine readable copies of all programs, operating systems, drivers and data files relating to any Equipment or Customer Equipment referred to in the Service Level Agreement and make these available in the format required, to the Supplier.

5.6 The addition, modification, or removal of Advanced Parts, Basic Parts, Customer Equipment and/or Equipment by the Customer, is strictly prohibited, unless expressly agreed in writing by the Supplier. The Supplier shall be under

no obligation to carry out any maintenance, repair or rectify any issue caused by the Customer not observing this clause 5.6.

- 5.7 Should any maintenance, repair or rectification be required as a result of a breach of clause 5.6, the Supplier reserves the right to recover any costs incurred in accordance with clause 7.
- 5.8 The management of any software or software licence obtained by the Supplier for the benefit of the Customer shall be the sole responsibility of the Customer, save for any monitoring software installed by the Supplier on Customer Equipment referred to in the Service Level Agreement, which shall be uninstalled by the Supplier on termination of the Contract.
- 5.9 All valid licences, required to facilitate the supply of the Services by the Supplier shall be provided by the Customer within 2 Business Days of the date of the Service Level Agreement or earlier if necessary. If the Customer is unable to provide valid licences, Additional Charges will apply in accordance with clause 7.
- 5.10 Any hardware, software, device or apparatus, Advanced Parts and/or Basic Parts owned by the Customer prior to the date of the Contract, or purchased during the Term in order for the Services to be provided, shall remain in the ownership of the Customer upon Termination.

6. Change control

- 6.1 The Key Customer Contact and the Consultant shall meet on a regular basis, to be determined by the parties, to discuss matters relating to the Services. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
 - (a) the likely time required to implement the change;
 - (b) any variations to the Supplier's charges arising from the change; and
 - (c) any other impact of the change on the terms of the Contract.
- 6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Service Level Agreement and any other relevant terms of the Contract to take account of the change.

7. Charges and payment

7.1 Clause 7.2 shall apply if the Services are to be provided on a time-and-materials basis, clause 7.3 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 7 shall apply in either case.

7.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time and detailed in the Service Level Agreement;
- (b) the Supplier's standard daily fee rates are calculated on the basis of a nine-hour day worked between 8.00 am and 5.00 pm Monday to Friday (excluding weekends and public holidays) for any support provided via telephone;
- (c) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm Monday to Friday (excluding weekends and public holidays) for any support provided in person;
- (d) the Supplier shall be entitled to charge at an overtime rate for time worked by the Supplier's employees outside the hours referred to in clause 7.2(b) and 7.2(c) on a pro-rata basis;
- (e) the Supplier shall ensure that all its employees record time spent in relation to the supply of the Services.
- (f) the Supplier shall invoice the Customer monthly, in advance of the Services being provided, on or around the 27th of each month;
- (g) the Supplier shall invoice the Customer for any Additional Charges (together with VAT where appropriate) on the 1st of the month that follows the incurrence of the Additional Charges. If the 1st is not a Business Day then the invoice shall be raised on the first Business Day of that month and such Additional Charges shall be calculated in accordance with this clause 7 or the Service Level Agreement as the case may be;

7.3 Where the Services are provided on a fixed price basis:

- (a) the charges payable for the Services shall be calculated in accordance with and detailed within the Service Level Agreement;
- (b) the Supplier shall invoice the Customer monthly, in advance of the Services being provided, on or around the 27th of each month;
- (c) the Supplier shall invoice the Customer for any Additional Charges (together with VAT where appropriate) in accordance with clause 7.2 (g);
- (d) any fixed price contained in the Service Level Agreement excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier's employees in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier in order to supply the Services. Such expenses, materials and third-party services shall be invoiced by the Supplier in addition and shall exclude VAT, which the Supplier shall add to its invoices at the appropriate rate.

- 7.4 Where the Customer pays via direct debit:
- (a) the Customer shall pay each invoice submitted to it by the Supplier in full and in cleared funds on the date of the invoice, or where the date is not a Business Day, on the first Business Day following the date of the invoice;
 - (b) where the invoice relates to Additional Charges, the Supplier shall collect payment via direct debit no less than 5 Business Days of the date of the invoice;
- 7.5 Where the Customer pays via BACS:
- (a) the Customer shall pay each invoice submitted to it by the Supplier in full and in cleared funds via BACS within 10 Business Days of the date of the invoice;
 - (b) where the Supplier raises an invoice in relation to Additional Charges, the invoice shall be due within 10 Business Days from the date of the invoice;
- 7.6 No Additional Charges shall be incurred without a prior written agreement between the Supplier and the Customer.
- 7.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;
 - (b) charge an administration fee of £5 plus VAT each time a direct debit is refused during the Term of the Contract;
 - (c) charge an administration fee of £20 plus VAT if a direct debit is cancelled during the Term of the Contract; and
 - (d) suspend all Services until payment has been made in full.
- 7.8 Time for payment shall be of the essence of the Contract.
- 7.9 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This clause 7.9 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.10 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. Data protection

The parties shall comply with their data protection obligations as set out in Schedule 1.

9. Intellectual Property Rights

9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier where applicable. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and 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. If the Supplier terminates the Contract under clause 12.1, this licence will automatically terminate.

9.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

10. Confidentiality and Supplier's property

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

10.2 Each party shall hold the other's Confidential Information in strict confidence, not use the other's Confidential Information for any purpose other than the implementation of this agreement and, subject to clause 10.4 and clause 10.5, not make the other's Confidential Information available to any third party.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this agreement.

10.4 A party may disclose the Confidential Information of the other party to such of the disclosing party's Representatives as need to know it for the purpose of discharging the disclosing party's obligations under this agreement, provided that such Representatives are subject to obligations of confidentiality corresponding to those which bind the disclosing party.

10.5 A party may disclose Confidential Information of the other party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. To the extent it is legally permitted to do so, the disclosing party shall give the other

party as much notice of such disclosure as possible. Where notice of disclosure is not prohibited and is given in accordance with this clause 10.5, the disclosing party shall take into account the reasonable requests of the other party in relation to the content of such disclosure.

- 10.6 All materials, Equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 10.7 The above provision of this clause 10 shall survive termination of the Contract, however arising.
- 10.8 Where, upon Termination, any Customer property, documentation, records or Confidential information is in the Supplier's possession, such property shall be returned to the Customer.

11. Limitation of liability

- 11.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
 - (a) any breach of the Contract however arising;
 - (b) any use made by the Customer of the Services, the Equipment or any part of them; and
 - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these terms and conditions excludes the liability of the Supplier:
 - (a) for death or personal injury caused by the Supplier's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 11.4 Subject to clause 11.2 and clause 11.3:
 - (a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or

- (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss or corruption of data or information; or
 - (ix) improper use of Equipment and/or Basic Parts by the Customer; or
 - (x) any incompatibility of the Customer Equipment, Customer's environment, network, hardware or software equipment with the Services
 - (xi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the full price paid for the Services.

11.5 The Supplier does not make any guarantees for uninterrupted operation of the Customer's IT equipment, computers, peripherals and network related matters for the duration of the Term.

11.6 The Supplier shall not be liable for any data loss where the Customer has not maintained reasonable backup procedures. Any data loss shall be the sole responsibility of the Customer. The Supplier shall not be liable for any data loss as a result of the Supplier attempting to recover data under the Customer's instruction. This clause 11.6 shall be subject to clause 11.4 and clause 11.7.

11.7 Clause 11.6 shall not apply to any managed backup Services for the benefit of the Customer detailed within the Service Level Agreement.

12. Termination

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (i) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(d) to clause 12.1(k) (inclusive);
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (n) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

12.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

12.3 The Supplier may terminate the Contract by giving at least 20 Business Days prior written notice to the Customer, not earlier than 30 days from the date of the Contract. Where such notice is served, the Supplier will raise a pro-rata refund for any Services still due to the Customer under the Contract.

- 12.4 The Supplier may terminate the Contract, with immediate effect, if the Customer fails to cooperate, alters/modifies/removes any Customer Equipment and/or Equipment in breach of these terms and conditions and/or hinders the Supplier's ability to provide the Services or does anything in breach of clause 5.6.
- 12.5 The Customer may terminate the Contract by giving at least 20 Business Days prior written notice to the Supplier. Where such notice is served, the Customer will not be entitled to any refund for any pre-paid Services and a maintenance charge will be applied.
- 12.6 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

13. Force majeure

- 13.1 The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation:
- (a) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party);
 - (b) failure of a utility service or transport network;
 - (c) act of God, war, riot, pandemic or civil commotion;
 - (d) malicious damage;
 - (e) compliance with any law or governmental order, rule, regulation or direction; and
 - (f) accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14. Waiver

- 14.1 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.

15. Rights and remedies

- 15.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16. Severance

- 16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 16.2 If any provision or part-provision of this agreement is deemed deleted under clause 16.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

17. Warranty

The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's provision of the Services. This clause 17 shall survive termination of the Contract.

18. Entire agreement

- 18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each party acknowledges that, in entering into this agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

19. Assignment

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 The Supplier may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

20. No partnership or agency

20.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Third party rights

21.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

22. Notices

22.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
- (b) sent by fax to its main fax number; or
- (c) Sent by email.

22.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.
- (d) If sent via email, the time the email is delivered to the other Party' server

22.3 This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23. Governing law

23.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

24. Jurisdiction

- 24.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

1. DATA PROTECTION

DEFINITIONS

Applicable Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Customer Personal Data: any personal data which the Supplier processes in connection with this Contract, in the capacity of a processor on behalf of the Customer.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Purpose: the purposes for which the Customer Personal Data is processed, as set out in the Supplier's Privacy Policy which can be found at [link to website]

Supplier Personal Data: any personal data which the Supplier processes in connection with this Contract, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

- 1.1 For the purposes of this clause¹, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 1.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 1.3 By entering into this Contract, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy

policy available at www.jmv-solutions.co.uk (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Contract, the Privacy Policy will take precedence.

- 1.4 Without prejudice to the generality of clause 1.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this Contract.
- 1.5 In relation to the Customer Personal Data, the Privacy Policy sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.