

John White PM Ltd

G-Cloud 15 Terms and Conditions Document

This Agreement is dated

20[25]

Between

- (1) **John White PM Ltd** incorporated and registered in England and Wales with company number 07977410 whose registered office is at Saxon House, 27 Duke Street, Chelmsford, England, CM1 1HT ("**JWPM**"); and
- (2) **[Insert Customer Name]** incorporated and registered in England and Wales with company number **[Insert Company Number]** whose registered office is at **[Insert Address]** (the "**Customer**").

Background

- (A) JWPM has agreed to provide services to the Customer from time to time on the terms set out in this Agreement.
- (B) The services to be provided by JWPM under this Agreement will be detailed in individual Statements of Work agreed between the parties from time to time.

It is agreed:

1. **Definitions and interpretation**

- 1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Affiliates"	means in relation to a party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with that party from time to time;
"Agreement"	means this Master Services Agreement and any and all Statement of Work concluded under it;
"Applicable Data Protection Laws"	means: (i) to the extent the UK GDPR applies, the UK GDPR and the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (ii) to the extent the EU GDPR applies, the EU GDPR and the law of the European Union or any member state of the European Union to which JWPM is subject, which relates to the protection of personal data;
"Applicable Laws"	means: (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom and (ii) to the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which JWPM is subject;
"JWPM's Project Manager"	means JWPM's manager for the Services;
"Commencement Date"	means [Insert Date] [OR] [the date of this Agreement] ;

"Confidential Information"		means (i) all financial, business, operational, supplier, customer and technical information or data including any know how and all other information (whether written, oral or in electronic form or on magnetic or other media) concerning the business and affairs of a party that the other party obtains, receives or has access to, under or in connection with this Agreement or a Statement of Work (including as a result of the discussions leading up to or the entering into or the performance of the Agreement, or Statement of Work); and (ii) this Agreement and any Statement of Work;
"Control"		has the meaning given in section 1124 of the Corporation Tax Act 2010 of England and Wales, and "Controls" , "Controlled" shall be interpreted accordingly;
"Customer Personal Data"		means any personal data which JWPM processes in connection with this Agreement, on behalf of the Customer, in the capacity of a processor;
"Customer's Manager"	Project	means the Customer's manager for the Services;
"Deliverables"		means any and all products and materials developed or supplied by JWPM in relation to the Services in any media, including, software and computer programs, data, diagrams, documents, reports and specifications (including drafts);
"EU GDPR"		the General Data Protection Regulation ((EU) 2016/679);
"Intellectual Rights"	Property	means patents, rights to inventions, copyright and related rights, trade marks, 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 without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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;
"Project"		means any project for the provision of Services by JWPM to the Customer, as described in a Statement of Work;

"Project Milestone"	means a date by which a part of any Project is estimated to be completed, as set out in the applicable Project Plan;
"Project Plan"	means a detailed plan describing a Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by JWPM, as set out in or agreed under the applicable Statement of Work;
"Services"	means any software design, software development, implementation, training and/ or other consultancy or other services to be provided by JWPM to the Customer pursuant to this Agreement, as detailed in a Statement of Work;
"Statement of Work"	an individual contract between the parties for the provision of Services concluded between the parties pursuant to this Agreement, based on the pro-forma set out in Schedule 1 or in such other format as the parties may agree;
"Term"	means the term of this Agreement as detailed in clause 11;
"Third Party Software/ Materials"	means any software or other materials comprised in any Deliverables, or supplied by JWPM to the Customer pursuant to this Agreement, which is/ are proprietary to any third party;
"UK GDPR"	has the meaning given to it in the Data Protection Act 2018.

2. **Statements of Work**

- 2.1. This Agreement shall operate as a framework agreement for the provision of Services as detailed in individual Statements of Work agreed between the parties from time to time. Any number of Statements of Work may be added to this Agreement at any time upon agreement of such Statements of Work by the parties.
- 2.2. Each Statement of Work, when executed by an authorised representative of both parties, shall constitute a separate agreement and, except for provisions in this Agreement which are specifically excluded or modified in such Statement of Work, each such Statement of Work shall incorporate therein all the terms and conditions of this Agreement.
- 2.3. No addition to, variation of, exclusion or attempted exclusion of any term or condition of this Agreement or any Statement of Work shall be binding on either party unless it is set out in writing and signed by a duly authorised representative of each party.
- 2.4. Both parties irrevocably acknowledge and agree that each Statement of Work and this Agreement shall override and exclude any other terms and conditions referred to, offered or relied on by the Customer, whether in negotiation or at any stage in

the dealings between the Parties (including the Customer's standard terms appearing on any purchase order).

- 2.5. A template/ pro-forma Statement of Work which the parties may use (but shall not be obliged to use) is set out in Schedule 1 to this Agreement.
- 2.6. In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the any Statement of Work concluded under this Agreement, the latter shall take precedence.

3. **JWPM's Obligations**

3.1. JWPM shall:

- 3.1.1. perform the Services, and deliver the Deliverables to the Customer, in accordance in all material respects with the applicable Statements of Work and using reasonable skill and care;
- 3.1.2. use reasonable endeavours to meet the performance dates specified in any applicable Project Plan or Statement of Work, but (unless expressly provided otherwise in any Statement of Work) any such dates shall be estimates only and time shall not be of the essence;
- 3.1.3. comply with all policies of the Customer made known by the Customer to JWPM in writing and in advance of the commencement of the provision of the Services; and
- 3.1.4. co-operate and liaise with the Customer and with all suppliers of related services to the Customer as is reasonable in the circumstances to facilitate the smooth provision of the Services and Deliverables to the Customer.

4. **Customer's obligations**

4.1. The Customer shall (and shall procure that its other suppliers shall):

- 4.1.1. co-operate with JWPM in all matters relating to the performance of the Services;
- 4.1.2. provide in a timely manner such access to the Customer's premises, systems and other facilities, as is requested by JWPM and as may reasonably be required by JWPM, to perform the Services;
- 4.1.3. provide in a timely manner such information and other assistance as JWPM may reasonably request from time to time in connection with the performance of the Services, and ensure that any information supplied pursuant to this clause is accurate in all material respects.

- 4.2. If JWPM's performance of its obligations under any Statement of Work is prevented or delayed by any act or omission of the Customer, any of its Affiliates or any third party engaged by the Customer, the Customer shall in all circumstances be liable to pay to JWPM on demand all reasonable costs, charges or losses sustained or incurred by it as a consequence thereof, subject to JWPM confirming such costs, charges and losses to the Customer in writing and using reasonable endeavours to mitigate such costs, charges and losses.

- 4.3. JWPM shall have no liability for any failure or delay in performing its obligations under or pursuant to this Agreement to the extent that such failure or delay was caused by any act or omission on the part of the Customer, its Affiliates or any third party engaged by the Customer, including (without limitation) any failure of the Customer to comply with its obligations under this clause 4.

5. **Change Control**

- 5.1. The Customer's Project Manager and JWPM's Project Manager shall meet regularly to discuss matters relating to the performance of the Services.
- 5.2. If either party requests a change to the scope or execution of the Services, JWPM shall, within a reasonable time, provide a written estimate to the Customer of:
- 5.2.1. the likely time required to implement the change;
 - 5.2.2. any variations to JWPM's charges arising from the change;
 - 5.2.3. the likely effect of the change on any applicable Project Plan; and
 - 5.2.4. any other impact of the change on the terms of the applicable Statement of Work.
- 5.3. If JWPM requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 5.4. If the Customer wishes JWPM to proceed with the change, JWPM has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the applicable Project Plan and any other relevant terms of the applicable Statement of Work to take account of the change.
- 5.5. JWPM reserves the right to charge a reasonable fee for any work or time spent responding to a change requested by the Customer, in accordance with its standard rates in force at the relevant time.

6. **Charges and Payment**

- 6.1. Clause 6.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 6.3 and clause 6.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 6 shall apply in either case.
- 6.2. Where the Services are provided on a time-and-materials basis:
- 6.2.1. the charges payable for the Services shall be calculated in accordance with JWPM's standard daily fee rates as set out in the applicable Statement of Work;
 - 6.2.2. JWPM's standard daily fee rates are calculated on the basis of a seven and a half (7.5) hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - 6.2.3. JWPM shall ensure that all members of the project team complete time sheets recording time spent on Projects, and JWPM shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 6.2.4; and

- 6.2.4. JWPM shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 6.
- 6.3. Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the applicable Statement of Work. The total price shall be paid to JWPM in instalments as set out in the Statement of Work on its achieving the corresponding Project Milestone. On achieving a Project Milestone, JWPM shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in clause 6.4.
- 6.4. Unless otherwise stated in a Statement of Work, any fixed price contained in a Statement of Work excludes: (i) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by JWPM for the supply of the Services. Such expenses, materials and third party services shall be invoiced by JWPM at cost; and (ii) VAT, which JWPM shall add to its invoices at the appropriate rate.
- 6.5. The Customer shall pay each invoice submitted to it by JWPM in full, and in cleared funds, within 30 days of receipt. All payments under this Agreement shall be made in Pounds Sterling.
- 6.6. All amounts due under this Agreement shall be paid by the Customer to JWPM in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.7. If the Customer fails to pay any amount payable by it under this Agreement then (without prejudice to any other rights and remedies which may be available to JWPM) JWPM may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand from the due date up to the date of actual payment, after as well as before judgment) at the rate of 4% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly.
- 6.8. If the Customer fails to pay any amount payable by it under this Agreement by the due date for payment then (without prejudice to any other rights and remedies which may be available to JWPM) JWPM shall additionally be entitled to withhold performance of any Services it is providing under this Agreement or any other agreement in place with the Customer, until the outstanding sums are paid in full.

7. Intellectual Property Rights

- 7.1. All Intellectual Property Rights existing prior to the commencement date of each Statement of Work shall belong to the party and/or third party that owned such rights immediately prior to that date ("**Existing IPRs**").
- 7.2. JWPM grants the Customer a perpetual, irrevocable, non-exclusive, transferable, world-wide, royalty free licence to use the Existing IPRs of JWPM to the extent necessary and/or desirable for the Customer to enjoy the Services and/or Deliverables. Unless expressly provided to the contrary in the relevant Statement of Work, the Customer is to obtain on its own account any licence to the Intellectual Property Rights of any third party where JWPM identifies or recommends that the Customer obtain additional software or upgrades or updates its current software.

- 7.3. The Customer grants JWPM a revocable, non-exclusive, personal, non-transferable, world-wide royalty free licence for the term of this Agreement to use the Existing IPRs of the Customer or any member of its Group to the extent necessary for JWPM to provide the Services.
- 7.4. Any and all Intellectual Property Rights developed by or on behalf of JWPM in the course of the provision of the Services and comprised in any Deliverables ("**New IPRs**") shall vest in the Customer as appropriate on payment for the Services. For the avoidance of doubt New IPRs shall not include Third Party Software/Materials to the extent JWPM uses them in the provision of the Services and the production of Deliverables. The parties acknowledge and agree that the Intellectual Property Rights in any Third Party Software/ Materials shall belong to the relevant third party supplier of that/ those software or materials (or their licensors) and shall be subject to such third party's licence terms.
- 7.5. To the extent that any New IPRs do not automatically vest in the Customer, JWPM shall hold them on trust for the Customer and at no additional cost to the Customer, assign or procure the assignment thereof to the Customer as appropriate.

8. **Intellectual Property Claims**

- 8.1. JWPM shall defend at its own expense any claim brought against the Customer alleging that the use of any Deliverables in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third party (an "**Intellectual Property Claim**") and JWPM shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Customer:
- 8.1.1. furnishes JWPM with prompt written notice of the Intellectual Property Claim;
 - 8.1.2. provides JWPM with reasonable assistance in respect of the Intellectual Property Claim;
 - 8.1.3. gives to JWPM the sole authority to defend or settle the Intellectual Property Claim.
- 8.2. If, in JWPM's reasonable opinion, the use of the Deliverables are or may become the subject of an Intellectual Property Claim then JWPM may either:
- 8.2.1. obtain for the Customer the right to continue using the Deliverables which are the subject of the Intellectual Property Claim; or
 - 8.2.2. replace or, modify the Deliverables which are the subject of the Intellectual Property Claim so they become non-infringing.
- 8.3. If the remedies set out in clause 8.2 above are not in JWPM's opinion reasonably available, then JWPM may terminate the applicable Statement of Work in which event the Customer shall return the Deliverable which is the subject of the Intellectual Property Claim and JWPM shall refund to the Customer the corresponding portion of any fees paid for such Deliverable, as normally depreciated.
- 8.4. JWPM shall have no liability for any Intellectual Property Claim resulting from:

- 8.4.1. the use of any Deliverable in combination with any equipment or programs not supplied or approved by JWPM; or
- 8.4.2. any modification of any Deliverable by a party other than JWPM or its authorised agent; or
- 8.4.3. JWPM using or following any specifications, requirements, instructions, software or materials supplied by the Customer to JWPM for the purposes of this Agreement; or
- 8.4.4. any Third Party Software/ Materials.

9. **Liability**

- 9.1. Subject to clause 9.4, in no event will either Party be liable whether based on a claim in contract, representation, misrepresentation (whether innocent or negligent), tort (including negligence), breach of statutory duty or otherwise arising out of or in relation to this Agreement or Statement of Work for any loss of data or use, lost profits, loss of revenue, loss of opportunity, damage to goodwill, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of JWPM whether such damages were reasonably foreseeable or actually foreseen.

- 9.2. Subject to clause **Error! Reference source not found.:**

- 9.2.1. JWPM's total aggregate liability to the Customer; and
- 9.2.2. the Customer's total aggregate liability to JWPM;

whether based on an action or claim in contract, representation, misrepresentation (whether innocent or negligent), tort (including negligence), breach of statutory duty or otherwise arising out of or in relation to this Agreement and any Statement of Work shall be limited to £500,000 or the aggregate of the charges paid for the Services in the relevant Statement of Work, whichever is the lesser.

- 9.3. The parties acknowledge and agree that the limitations contained in this clause 9 are reasonable in the light of all the circumstances. All liability that is not expressly assumed in this Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, references to a party include its employees, personnel, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

- 9.4. The limitations and exclusions of liability set out in clauses 9.1 to 9.3 inclusive will not apply in respect of:

- 9.4.1. death or personal injury caused by a party's negligence, or that of its employees or authorised representatives;
- 9.4.2. fraud or fraudulent misrepresentation;
- 9.4.3. the charges due pursuant to clause 6 (Charges and Payment); or
- 9.4.4. any other liability which cannot legally be limited or excluded.

- 9.5. JWPM has given commitments as to compliance of the Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

10. **Confidential Information**

- 10.1. Each Party (the "Receiving Party") undertakes to the other Party (the "Disclosing Party") that it shall:

10.1.1. hold all Confidential Information of the Disclosing Party which it obtains in relation to this Agreement and/or any Statement of Work in strict confidence, using at least the same degree of care as it employs to prevent unauthorised disclosure of its own confidential information but in any event not less than a reasonable degree of care;

10.1.2. not disclose, or authorise the disclosure of, the Disclosing Party's Confidential Information to any third party other than pursuant to clauses 10.3 and 10.4;

10.1.3. not to use, exploit or authorise anyone to use or exploit, the Disclosing Party's Confidential Information for any purpose other than the performance of its obligations or the exercise of its rights or the receipt of any benefits pursuant to this Agreement and any Statement of Work; and

10.1.4. promptly notify the Disclosing Party of any suspected or actual unauthorised use or disclosure of the Disclosing Party's Confidential Information of which it becomes aware and promptly take all reasonable steps that the Disclosing Party may require in order to prevent, stop or remedy the unauthorised use or disclosure.

- 10.2. Without prejudice to any other rights or remedies that the Disclosing Party may have, the Receiving Party acknowledges and agrees that if the Confidential Information is used or disclosed other than in accordance with the terms of Clause 10.1, the Disclosing Party shall, without proof of special damage, be entitled to seek an injunction or other equitable relief for any threatened or actual breach of the provisions of this Clause 10, in addition to any damages or other remedy to which it may be entitled.

- 10.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:

10.3.1. To its employees, officers, agents, representatives, advisers and subcontractors who need to know such information for the purposes of carrying out the party's obligations under this Agreement. The Receiving Party shall ensure that its employees, officers, agents, representatives, advisers or subcontractors to whom it discloses the Disclosing Party's Confidential Information comply with this Clause 10;

10.3.2. where the Receiving Party is JWPM, to JWPM's third party suppliers who have been selected by the Customer to assist in the provision of the Services; and

10.3.3. as may be required by law, a court of competent jurisdiction or any governmental body or regulatory authority.

- 10.4. This Clause 10 will not apply to Confidential Information to the extent that:
- 10.4.1. such Confidential Information has been placed in the public domain other than through the fault of the Receiving Party;
 - 10.4.2. such Confidential Information has been independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party;
 - 10.4.3. the Disclosing Party has approved in writing the particular use or disclosure of the Confidential Information;
 - 10.4.4. such Confidential Information was already known by the Receiving Party prior to the disclosure without an obligation of confidentiality;
 - 10.4.5. such Confidential Information is independently received from a third party without any obligation of confidence and the Receiving Party has made reasonable enquiries that the third party owed no obligation of confidence to the Disclosing Party.
- 10.5. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

11. **Term and Termination**

- 11.1. This Agreement shall commence or be deemed to have commenced on the Commencement Date and (subject to earlier termination in accordance with clause 11.2, 11.3 or 15.8) shall continue until terminated by either party giving to the other party not less than one (1) months prior written notice to terminate ("**Term**") Notwithstanding any termination of this Agreement pursuant to this clause 11.1, each Statement of Work concluded under this Agreement shall (subject to earlier termination in accordance with any other term of this Agreement or by agreement between the parties) continue in force in accordance with its own terms or until the relevant Services have been performed.
- 11.2. Either party may terminate this Agreement and all Statements of Work concluded under it, forthwith on giving notice in writing to the other if the other party commits any serious breach of any term of this Agreement which impacts to a material extent on all such Statements of Work, and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other to do so, to remedy the breach. Either party may additionally terminate any individual Statement of Work concluded under this Agreement, forthwith on giving notice in writing to the other if the other party commits any serious breach of that Statement of Work, and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other to do so, to remedy the breach.
- 11.3. Either Party may terminate this Agreement and/ or any Statements of Work concluded under it, if the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is

subject to any analogous event or proceeding to the foregoing in any applicable jurisdiction in consequence of debt.

- 11.4. JWPM may terminate this Agreement and all Statements of Work concluded under it, forthwith on giving notice in writing to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment.
- 11.5. Forthwith upon the termination of this Agreement:
 - 11.5.1. JWPM shall immediately discontinue the provision of the Services and delivery of the Deliverables pursuant to the relevant Statements of Work; and
 - 11.5.2. each party shall either destroy or promptly return to the other party all copies in whatever medium of all Confidential Information provided or obtained in respect of those Statements of Work and/or the Agreement.
- 11.6. Any termination of this Agreement or any Statement of Work (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement or any Statement of Work which is expressly or by implication intended to come into or continue in force on or after such termination.

12. **Data Protection**

- 12.1. For the purposes of this clause 12, the terms "controller", "processor", "data subject", "personal data", "personal data breach" and processing shall have the meaning given to them in the UK GDPR.
- 12.2. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 12.3. The parties have determined that, to the extent that JWPM processes any Customer Personal Data on the Customer's behalf in performing the Services, the Customer shall act as controller and JWPM shall act as processor. Should this determination change, then each party shall work together in good faith to make any changes which are necessary to this clause 12 or the related schedules.
- 12.4. Without prejudice to the generality of clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Customer Personal Data to JWPM and/ or the lawful collection or processing of the same by JWPM for the duration and purposes of this Agreement.
- 12.5. In relation to the Customer Personal Data, Schedule 2 sets out the scope, nature and purpose of processing by JWPM, the duration of the processing and the types of personal data and categories of data subject.
- 12.6. Without prejudice to the generality of clause 12.2 the JWPM shall, in relation to Customer Personal Data:
 - 12.6.1. process that Customer Personal Data only on the documented instructions of the Customer, unless JWPM is required by Applicable Laws to otherwise process that Customer Personal Data.

- 12.6.2. Where JWPM is relying on Applicable Laws as the basis for processing Customer Processor Data, JWPM shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit JWPM from so notifying the Customer on important grounds of public interest. JWPM shall inform the Customer if, in the opinion of JWPM, the instructions of the Customer infringe Applicable Data Protection Laws;
 - 12.6.3. implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 12.6.4. ensure that any personnel engaged and authorised by JWPM to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 12.6.5. assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to JWPM), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 12.6.6. notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - 12.6.7. at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless JWPM is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 12.6.7 Customer Personal Data shall be considered deleted where it is put beyond further use by JWPM; and
 - 12.6.8. maintain records to demonstrate its compliance with this clause 12.
- 12.7. The Customer hereby provides its prior, general authorisation for JWPM to:
- 12.7.1. appoint third parties to process the Customer Personal Data, provided that JWPM: (i) shall ensure that the terms on which it appoints such third party processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on JWPM in this clause 12; (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of JWPM; and (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to JWPM's reasonable satisfaction, that the objection is due to an actual or likely breach of

Applicable Data Protection Law, the Customer shall indemnify JWPM for any losses, damages, costs (including legal fees) and expenses suffered by JWPM in accommodating the objection.

- 12.7.2. transfer Customer Personal Data outside of the UK as required for the purpose of performing the Services and its obligations under this Agreement, provided that JWPM shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of JWPM, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 12.8. Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct ("**Amended Terms**"). Such Amended Terms shall apply when replaced by attachment to this Agreement, but only in respect of such matters which are within the scope of the Amended Terms.
- 13. **Non-solicitation**
 - 13.1. The Customer shall not and shall procure that its Affiliates shall not, without the prior written consent of JWPM, at any time from the date of any Statement of Work to the expiry of twelve (12) months after the completion of the Services being provided under that Statement of Work, directly or indirectly, solicit or entice away or attempt to solicit or entice away from JWPM or employ or engage, or attempt to employ or engage, any person who is, or has been, engaged or employed as an employee or sub-contractor of JWPM and who has been involved in any way with the performance of those Services.
- 14. **Interpretation**
 - 14.1. In this Agreement unless the context otherwise requires:
 - 14.1.1. words importing any gender include every gender and words importing the singular number include the plural number and vice versa;
 - 14.1.2. words importing persons include firms, companies and corporations and vice versa;
 - 14.1.3. any phrase in this Agreement introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - 14.1.4. the headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation; and
 - 14.1.5. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

15. **Miscellaneous**

- 15.1. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 15.2. This Agreement nor any Statement of Work may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.
- 15.3. No party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the other party (such consent not to be unreasonably withheld).
- 15.4. This Agreement is personal to the parties and, subject to clause 15.5 and 15.6 below, neither this Agreement nor any rights, licences or obligations under it, may be assigned by either party without the prior written approval of the other party (such consent not to be unreasonably withheld). Any attempted assignment in violation of this clause will be void and without effect.
- 15.5. Notwithstanding the foregoing clause 15.4, either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls, or is under common control with a party to this Agreement.
- 15.6. JWPM may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that JWPM shall remain liable for such performance.
- 15.7. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to their subject matter. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 15.8. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.
- 15.9. All notices under this Agreement shall be in writing. Notices shall be deemed to have been duly given: (i) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or (ii) when sent, if transmitted by e-mail provided no "bounce back" is received; or (iii) on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or (iv) on the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, or e-mail address notified to the other party.
- 15.10. The provisions of the Schedules shall form part of this Agreement as if set out here.
- 15.11. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be

severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

- 15.12. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.
- 15.13. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.
- 15.14. This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.
- 15.15. Subject to clause 9.3 above, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.
- 15.16.** This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the English Courts.