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**J & J Systems UK Limited (J&JJ&J)**  
**STANDARD TRADING TERMS AND CONDITIONS**

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**1. Application of Terms and Conditions**

- 1.1 J&J shall supply and the Customer shall purchase the Goods and Services set out in its Quotation or referred to in any other document supplied by J&J, which shall be subject to these Terms and Conditions and any other relevant terms and conditions as set out in the Schedule or otherwise notified by J&J to the Customer; and
- 1.2 The Contract shall be to the exclusion of any other terms and conditions which the Customer may purport to apply under any order confirmation or similar document.

**2. Definitions and Interpretation**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Account Holder”</b>	means a Customer who the J&J has accepted in writing for credit facilities;
<b>“Anniversary Date”</b>	means the yearly anniversary of the Commencement Date;
<b>“Anti-Virus”</b>	a computer program that protects either workstations or servers against infection by a Virus;
<b>“Business Day”</b>	means any day other than a Saturday, Sunday or bank holiday;
<b>“Cloudstation”</b>	means file synchronisation services provided between a local computer and servers at J&J’s premises using the internet;
<b>“Commencement Date”</b>	means the commencement date for the Contract as set out in any Quotation or referred to in any other document supplied by J&J;
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>“Consumer”</b>	means a natural person who is acting for purposes that are outside his business as defined under the laws of England and Wales;
<b>“Contract”</b>	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions and any other relevant terms and conditions supplied by J&J;
<b>“Contract Price”</b>	means the price stated in the Contract payable for the Goods;

<b>“Customer”</b>	means the person who accepts an offer from J&J for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by J&J;
<b>“Delivery Date”</b>	means the date on which the Goods are to be delivered as stipulated in the Customer’s order and accepted by J&J;
<b>“Fair Usage”</b>	means in relation to Virus repair, a maximum of three (3) attacks repaired within a 12 month period, per machine or per user, (subject to variation at J&J’s discretion) and in relation to Premium Plus Support arrangements, refers to a reasonable level of support to be decided at J&J’s discretion;
<b>“Goods”</b>	means the goods (including any instalment of the goods or any parts for them) which J&J is to supply in accordance with these Terms and Conditions;
<b>“Hosted”</b>	means services and data held on servers located at J&J’s site and managed using the internet;
<b>“Housekeeping”</b>	undertaking general maintenance including various health checks, manually according to a list of items as deemed required by J&J;
<b>“Month/Monthly”</b>	means a calendar month;
<b>“Quotation”</b>	Means a quotation issued by J&J to the Customer in writing
<b>“Remote Support”</b>	means use of internet, remote desktop software or other such support software means to remotely log in to a server or workstation in order to remotely control the machine for support purposes;
<b>“Services”</b>	means the Services to be provided to the Customer as set out in the Quotation or any other document supplied by J&J, the detailed terms of which are set out in the Schedule;
<b>“Software”</b>	computer programmes and data and computer equipment used principally for the storage thereof;
<b>“J&amp;J”</b>	Means J&J Systems UK Limited, a company registered in England under company number 03657174 and whose registered address is 28 Miners Way, Lakesview International Business Park, Hersden, Canterbury, Kent CT3 4LQ;
<b>“Virus”</b>	means a computer program that infects other programs with copies of itself. The term ‘Virus’ will include worms of all kinds, zombies, trojan horses, hoax viruses and logic bombs, not normally classified as Viruses;
<b>“Virus Infection”</b>	means arrival, occurrence or incident of contamination by any Virus;
<b>“Working Hours”</b>	means Monday – Friday 0900 – 1730 excluding statutory Bank Holidays.

- 2.2 The Schedule contains further details of terms and conditions that are relevant to particular Goods and Services.
- 2.3 Unless the context otherwise requires, each reference in these Terms and Conditions to:
  - 2.3.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or similar means;
  - 2.3.2 “document” includes email;
  - 2.3.3 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 2.3.4 “these Terms and Conditions” is a reference to these Terms and Conditions and any other relevant terms and conditions as amended or supplemented at the relevant time by J&J;
  - 2.3.5 a Clause, Schedule or paragraph is a reference to a Clause, Schedule or paragraph of these Terms and Conditions, Schedule or any other relevant terms and conditions;
  - 2.3.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
- 2.4 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.5 Words imparting the singular number shall include the plural and vice versa.
- 2.6 References to any gender shall include the other gender.

### 3. **Basis of Sale and Service**

- 3.1 J&J’s employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by J&J in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and J&J.
- 3.3 J&J only provides Goods and Services to Customers who are acting in the course of their business. These Customers are therefore not Consumers. However, these conditions would not affect the statutory rights of any Customers who are deemed Consumers.
- 3.4 Sales literature, marketing material, price lists and other documents issued by J&J in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods or Services, which are capable of acceptance.
- 3.5 No contract for the sale of the Goods and Services shall be binding on J&J unless J&J has issued a Quotation or other document, which is expressed to be an offer to sell the Goods and Services and the Customer has accepted that Quotation.
- 3.6 Acceptance of performance is conclusive evidence of the Customer’s acceptance of the Terms and Conditions.
- 3.7 Any typographical, clerical or other accidental errors or omissions in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by J&J shall be subject to correction without any liability on the part of J&J.

#### **4. The Goods**

- 4.1 The specification for the Goods shall be that set out in J&J's sales documentation unless varied expressly in a Customer's order (if such variation(s) is/are accepted by J&J).
- 4.2 J&J reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance in so far as the same is apparent or has been notified to J&J in writing.
- 4.3 No order for Goods which has been accepted by J&J may be cancelled by the Customer except with the agreement in writing of J&J and subject to the Customer indemnifying J&J in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by J&J as a result of such cancellation.

#### **5. The Services**

- 5.1 With effect from the Commencement Date J&J shall, in consideration of the price being paid provide the Services identified in the Quotation or any other document referred to by J&J.
- 5.2 J&J will use reasonable care and skill to perform the Services.
- 5.3 J&J shall use its reasonable endeavours to complete its obligations under the Contract, but time will not be of the essence in the performance of the Services.
- 5.4 Either Party may cancel the Services at any time and for any reason. Where the Services consist of a fixed term period, the Customer may only terminate the Services at the end of such fixed term period or pay any applicable cancellation charges. For any other Services, the Party must give the other Party 60 days' notice in writing of their intention to terminate the Services, or such other notice period as may be set out in writing by J&J.
- 5.5 In the event of termination under clause 5.4, there may cancellation charges payable by the Customer as set out in the Quotation or any other document supplied to the Customer by J&J.
- 5.6 The details of the Services to be provided may be updated or amended from time to time by the J&J in writing to the Customer.

#### **6. Price**

- 6.1 The price of the Goods and Services shall be the price set out in the Quotation or any other document referred to by J&J.
- 6.2 J&J reserves the right, by giving written notice to the Customer at any time before invoicing the Customer, to increase the price of the Goods and/or Services to reflect any increase in the cost to J&J which is due to any factor beyond the control of J&J (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give J&J adequate information or instructions.
- 6.3 Except as otherwise stated in the Quotation or any other document referred to by J&J, all prices are exclusive of the J&J's charges for packaging and transport.

- 6.4 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to J&J.

## **7. Payment**

- 7.1 Subject to any special terms agreed in writing between the Customer and J&J, J&J shall invoice the Customer for the price of the Goods and Services on or at any time before delivery of the Goods and/or the provision of the Services (as applicable).
- 7.2 The Customer shall pay the price of the Goods (without any other deduction, credit or set off) within 30 Business Days of the date of J&J's invoice or where the Customer is accepted as an Account Holder in accordance with such credit terms as may have been agreed in writing between the Account Holder and J&J. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 7.3 All payments shall be made to J&J as indicated on the form of acceptance or invoice issued by the J&J.
- 7.4 J&J is not obliged to accept orders from any customer or buyer who has not supplied J&J with references satisfactory to J&J. If at any time J&J is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no further credit will be allowed to the Customer in which event no further goods or services will be delivered or provided to the Customer other than against cash payment and notwithstanding sub-Clause 7.2 of these conditions, all amounts owing by the Customer to J&J shall be immediately payable in cash.

## **8. Delivery and Performance**

- 8.1 Delivery of the Goods shall be made by J&J delivering the Goods to the place in the United Kingdom specified in the Quotation or any other document referred to by J&J or, if no place of delivery is so specified, at the Customer's trading address or by the Customer collecting the Goods at J&J's premises at any time after J&J has notified the Customer that the Goods are ready for collection.
- 8.2 J&J may make split deliveries but all costs resulting from such deliveries are payable by the Customer.
- 8.3 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by J&J in writing. The Goods may be delivered by J&J in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 8.4 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, J&J shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1 risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to J&J all costs and expenses including storage and insurance charges arising from such failure.
- 8.5 With effect from the Commencement Date J&J shall, in consideration of the price being paid in accordance with these Terms and Conditions and the Quotation or any other document supplied by the J&J, provide the Services expressly identified.

- 8.6 The Customer will co-operate with any on-boarding or off-processes of J&J, failing which J&J will not be liable under these Terms and Conditions.

## 9. Risk and Retention of Title

- 9.1 Risk of damage to or loss of the Goods shall pass to the Customer at:
- 9.1.1 in the case of Goods to be delivered at J&J's premises, the time when J&J notifies the Customer that the Goods are available for collection;
  - 9.1.2 in the case of Goods to be delivered otherwise than at J&J's premises, the time of delivery or, if the Customer fails to take delivery of the Goods, the time when J&J has attempted delivery of the Goods; or
  - 9.1.3 in the case of Goods being installed by J&J, the time that J&J notifies the Customer that the installation is complete.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Customer until J&J has received in cash or cleared funds payment in full of the price of the Goods.
- 9.3 Sub-Clause 9.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Customer until J&J has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by J&J and the Customer has repaid all moneys owed to J&J, regardless of how such indebtedness arose.
- 9.4 Until payment has been made to J&J in accordance with these Conditions and title in the Goods has passed to the Customer, the Customer shall be in possession of the Goods as bailee for J&J and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by J&J and shall insure the Goods against all reasonable risks.
- 9.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of J&J, but if the Customer does so all money owing by the Customer to J&J shall (without prejudice to any other right or remedy of J&J) forthwith become due and payable.
- 9.6 J&J reserves the right to repossess any Goods in which J&J retains title without notice. The Customer irrevocably authorises J&J to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which J&J retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 9.4.
- 9.7 The Customer's right to possession of the Goods in which J&J maintains legal and beneficial title shall terminate if:
- 9.7.1 the Customer commits or permits any material breach of his obligations under these Terms and Conditions;
  - 9.7.2 the Customer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
  - 9.7.3 the Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
  - 9.7.4 the Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint

an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

## 10. **Assignment**

- 10.1 J&J may assign the Contract or any part of it to any person, firm or company without the prior consent of the Customer.
- 10.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of J&J.

## 11. **Defective Goods**

- 11.1 If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or the Customer gives written notice of such defect to J&J within 2 Business Days of such delivery, J&J shall at its option:
  - 11.1.1 replace the defective Goods within 25 Business Days of receiving the Customer's notice; or
  - 11.1.2 refund to the Customer the price for those Goods (or parts thereof, as appropriate) which are defective;but J&J shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as set out above.
- 11.2 No Goods may be returned to J&J without the prior agreement in writing of J&J. Subject thereto any Goods returned which J&J is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at J&J's sole discretion J&J shall refund or credit to the Customer the price of such defective Goods but J&J shall have no further liability to the Customer.
- 11.3 J&J shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow J&J's instructions (whether given orally or in writing), misuse or alteration of the Goods without J&J's prior approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.
- 11.4 Goods, other than defective Goods returned under sub-Clauses 11.1 or 11.2, returned by the Customer and accepted by J&J may be credited to the Customer at J&J's sole discretion and without any obligation on the part of J&J.
- 11.5 Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.6 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Customer is carried out in accordance with directions given by J&J

or any competent governmental or regulatory authority and the Customer will indemnify J&J against any liability loss or damage which J&J might suffer as a result of the Customer's failure to comply with this condition.

## 12. Customer's Default

- 12.1 If the Customer fails to make any payment on the due date or breaches any other term and condition, then, without prejudice to any other right or remedy available to J&J, J&J shall be entitled to:
- 12.1.1 cancel the order or suspend any further deliveries or provision of Goods and Services to the Customer;
  - 12.1.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and J&J) as J&J may think fit (notwithstanding any purported appropriation by the Customer); and
  - 12.1.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 12.2 This condition applies if:
- 12.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
  - 12.2.2 the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
  - 12.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
  - 12.2.4 the Customer ceases, or threatens to cease, to carry on business; or
  - 12.2.5 J&J reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 12.3 If sub-Clause 12.2 applies then, without prejudice to any other right or remedy available to J&J, J&J shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 13. Liability

- 13.1 J&J will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by J&J's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 The Customer shall indemnify J&J against all damages, costs, claims and expenses



suffered by J&J, arising from loss or damage to any equipment (including that of third parties) caused by the Customer, its agents or employees.

- 13.4 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 13.5 J&J shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of J&J's obligations if the delay or failure was due to any cause beyond J&J's reasonable control.
- 13.6 Nothing in these Terms and Conditions excludes or limits the liability of J&J:
- 13.6.1 for death or personal injury caused by J&J's negligence;
- 13.6.2 for any matter which it would be illegal for J&J to exclude or attempt to exclude its liability; or
- 13.6.3 for fraud or fraudulent misrepresentation.
- 13.7 Subject to the remaining provisions of this Clause 13:
- 13.7.1 J&J's total 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 Contract shall be limited to the price paid for the Goods in question or in the case of Services, for the price paid for the Services in the 3 months immediately preceding the event, which gives rise to the liability; and
- 13.7.2 J&J shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**14. Confidentiality –J&J takes the security and confidentiality of its Customers data very seriously**

- 14.1 Each Party undertakes that, except as provided by sub-Clause 14.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Contract and for 12 months after its termination:
- 14.1.1 keep confidential all Confidential Information;
- 14.1.2 not disclose any Confidential Information to any other person;
- 14.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions and the Contract;
- 14.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 14.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-clauses 14.1.1 to 14.1.4 above.
- 14.2 Either Party may:
- 14.2.1 disclose any Confidential Information to:
- 14.2.1.1 any sub-contractor or supplier of that Party;

14.2.1.2 any governmental or other authority or regulatory body; or

14.2.1.3 any employee or officer of that Party or of any of the  
aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by these Terms and Conditions and the Contract, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 14.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 14, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

14.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Contract, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

14.3 The provisions of this Clause 14 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.

## 15. **Communications**

15.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

15.2 Notices shall be deemed to have been duly given:

15.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

15.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

15.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

15.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

15.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 16. **Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: weather, pandemic, power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

17. **Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

18. **Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

19. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. **Law and Jurisdiction**

20.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

20.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

## Schedule

### Support

1. Under a Premium or Premium Plus support arrangement, J&J will use reasonable endeavours to provide the hardware, software and technical support relevant for each of those levels of Services, as set out in the Quotation or other document supplied by J&J to the Customer, such Services to be supplied via the internet, telephone, email, modem diagnostics, or on site, during Working Hours and subject to Fair Usage.
2. Where stated in the Quotation, the Services will include the additional Services set out in the remainder of this Schedule.
3. Fees are payable monthly in advance.
4. Support arrangements shall commence on the Commencement Date for a minimum period of one (1) year, unless otherwise stated and will renew automatically unless 60 days' notice is received by the J&J, in advance of the Anniversary Date.
5. J&J will endeavour to respond to any requests for support, within 8 Working Hours, but time is not of the essence.
6. J&J may carry out maintenance during Working Hours, which may render support services, temporarily unavailable. J&J will endeavour to give reasonable notice, where this will render services unavailable for more than 2 hours.
7. J&J will not be liable for any delays caused by third parties, such as other software providers.
8. Costs of parts and general servicing are not covered by a support arrangement and will be invoiced separately.
9. Premium and Premium Plus will include a Cloudstation account with a 2GB limit. Any additional storage required will be charged additionally and invoiced separately.
10. J&J will maintain records covering all services provided under a support arrangement. Such records will include details of the request, action taken and whether the request was covered by the general support arrangement or chargeable.
11. Exceptions
  - a. J&J will not provide support to any versions of software programs not agreed in writing in advance with the Customer;
  - b. Training, upgrade installation or revisions to existing systems are not covered as part of a support arrangement and are a chargeable extra;
  - c. J&J will not provide support for any product that is not correctly licensed and registered to the Customer;
  - d. J&J will not support products which do not hold current or legal licence details;
  - e. J&J will not support the Customer in activities of misuse or illegality;
  - f. Support arrangements do not cover restoring any data, system or software or hardware damaged by a Virus Infection ;
  - g. Support arrangements do not cover updating Anti-Virus software or disinfecting any system where a Virus has been located;
  - h. Support arrangements do not include replacing any consumable products or general servicing of any hardware.

## 12. Customer Obligations

- a. The Customer is obliged to maintain and operate the hardware and software covered by any support arrangement in a proper and prudent manner in accordance with such advice and instructions as J&J may issue from time to time or any manufacturer or licensor's guidance or instructions;
- b. The Customer is obliged to ensure the hardware and software is used by competent, properly trained and authorised personnel;
- c. The Customer is obliged to notify J&J of any defect or alleged problem within a period not exceeding five days from the date the said defect or problem first became apparent;
- d. The Customer is obliged to ensure suitable and adequate backups are maintained of all data;
- e. The Customer is obliged to make available to J&J without charge any information or facilities to enable it to carry out the support, including but not limited to computer printouts and copies of documents;
- f. The Customer is obliged to ensure that all hardware is serviced on a regular basis;
- g. The Customer is obliged to manage all email accounts within Microsoft's or any other supplier's recommended tolerance limits for the versions specifically installed.

*The terms below apply if included within the Premium or Premium Plus support arrangements and/or supplied on an ad hoc basis, as set out in any Quotation or other document supplied by J&J to the Customer*

### **Hosted Email**

1. Hosted Exchange
  - 1.1. For Hosted Exchange accounts Customers must provide all necessary information to allow the smooth transfer of domain name hosting and services to J&J;
  - 1.2. Hosted Exchange servers are replicated providing comprehensive backup in the event of server hardware failure.
2. Use of Microsoft Outlook Software
  - 2.1. J&J's Hosted Exchange accounts do not include licensing for Outlook Client Software. The license fee is not included in the Contract Price unless specifically agreed by J&J and set out in the Quotation or any other document supplied by J&J . If the Customer cancels the Contract, the Customer is responsible for uninstalling any Outlook software that is licensed to the Customer and paying any ongoing licence fee or cancellation charges.
3. Mailbox Usage
  - 3.1. Each Mailbox has a storage quota. This is in place to protect the account and others from potentially large volumes of email sent to a single address that could materially affect the email system server. The limits applied are as recommended by Microsoft. Although reasonable endeavours will be made to assist the Customer with the management of Mailbox account(s) it is the Mailbox user's responsibility to ensure that the Mailbox does not reach its allocated level. J&J will not be responsible for email lost due to Mailboxes exceeding storage quotas.
  - 3.2. J&J makes every reasonable effort to ensure Mailbox security at all times. This is managed through a combination of various network security policies, load balancing and redundant systems. Every reasonable effort to ensure the integrity of data is made. Where there may be a problem with specific Mailbox data, it is the Customer's responsibility to notify J&J. J&J does not guarantee it will be possible to restore data and accepts no liability for the loss of any such data.

- 3.3. If J&J identifies a Mailbox or domain that is causing problems; the offending Mailbox maybe removed or its settings changed to resolve the issue. In extreme cases, a Mailbox will be disabled or suspended as appropriate.
- 3.4. J&J does not accept any responsibility whatsoever for any deleted Mailbox.
  
4. Anti-Virus checking
  - 4.1. J&J installs Anti-Virus software on its email servers for all exchange mailboxes. This software is configured to check messages coming into the email server. If a Virus is detected, the message is deleted. No notification is sent to either recipient or sender of the message. Messages sent between mailboxes on J&J's platform are not checked.
  
5. Anti-SPAM message filtering
  - 5.1. J&J runs anti-SPAM software on its email servers for all exchange mailboxes. A login is available for mailbox users to manage their quarantined email;
  - 5.2. J&J also runs anti-SPAM software on outbound email from all mailboxes, and reserves the right to mark or delete any messages determined to be SPAM.
  
6. Hosting services
  - 6.1. J&J may, on request and at its discretion, attempt to assist the Customer to migrate web hosting for the domain name linked to a Hosted Email from a third party. Hosting migrations are provided at the discretion of J&J are not covered as part of the Contract Price and are payable as a chargeable extra. J&J does not make any guarantee regarding the availability, possibility, or time required to complete a hosting migration. Each hosting company is configured differently and some hosting platforms save data in an incompatible or proprietary format, which may make it impossible for J&J to assist the Customer in the transfer of data from a third-party host.
  - 6.2. The Customer is solely responsible for reviewing the functionality and accuracy of migrated content following a hosting migration. J&J does not guarantee to perform website backups or archives in connection with a hosting migration, and recommends that the Customer undertakes to back up any third-party hosted website before migration to ensure that no data is lost. The Customer agrees not to make any changes or revisions to a migrating website during the migration process.
  - 6.3. By requesting a hosting migration, the Customer represents and warrants that they are authorised to provide J&J with access to any third-party hosting account and allow J&J to migrate the data at the third-party host to J&J's Servers. The Customer agrees that sole contractual and any other legal or fiduciary responsibilities related to the third-party hosting account are retained by the Customer. The Customer agrees that J&J is not liable for any delay in website resolution or loss of data related to the hosting migration. Hosting migrations are not available for websites with over 5GB of data or more than 50,000 files.
  - 6.4. The Customer undertakes to ensure that any website hosted with J&J may not include any of the following content: (1) image hosting scripts that allow an anonymous user to upload an image for display on another website (similar to Photobucket or Tinypic); (2) banner ad services for display on other websites or devices (commercial banner ad rotation); (3) file dump/mirror scripts that allow an anonymous user to upload a file for other to download (similar to Rapidshare); (4) commercial audio streaming (more than one or two streams); (5) push button mail scripts that allow the user to specify recipient email addresses; (6) anonymous or bulk SMS gateways; (7) backups of content from another computer or website; (8) Bittorrent trackers; or (9) any script that causes a degradation in the performance of J&J's server or network environment.
  - 6.5. The Customer shall be solely responsible for undertaking measures to: (1) prevent any loss or damage to the Customer's website or server content; (2) maintain independent archival and backup copies of any website or server content; and (3) ensure the security, confidentiality and integrity of all website or server content transmitted through or stored on J&J's servers.

- 6.6. J&J has no liability to the Customer or any other person for loss, damage or destruction of any content hosted on their servers
- 6.7. The Customer shall not use the Service in any way, that in J&J's sole discretion, impairs the functioning or operation of J&J's services or equipment. Specifically by way of example and not as a limitation, the Customer shall not use the servers as: (1) a repository or instrument for placing or storing archived files; and/or (2) placing or storing material that can be downloaded through other websites. The Customer acknowledges and agrees that J&J has the right to carry out a forensic examination in the event of a compromise to any server or account.
- 6.8. J&J does not back up your website unless otherwise agreed and whilst every attempt would be made in the unlikely event of any corruption or hardware failure, J & J Systems cannot guarantee to be able to restore lost data.

### **Online Backup**

- 1.1. For Online Backup the Customer must provide all necessary information to allow J&J's engineer to install the licenced client software to the machine that will be backed up.
- 1.2. You may not rent, lease, lend or transfer the software to a third party. It is illegal to make unauthorised copies of the software.
- 1.3. You may only access the Online Backup services through the interfaces and protocols provided and authorised by J&J.
- 1.4. If you exceed the storage limits agreed you will not be able to backup additional files unless you upgrade your account and pay additional charges.
- 1.5. You are responsible at your own expense for all computers, telecommunications equipment, software, access to the Internet and communications networks required to use the Online Backup services.
- 1.6. From time to time J&J may make improvements, upgrades or modifications to the Online Backup software.
- 1.7. J&J will collect and process data as a data processor and store this data solely in order to provide the Online Backup services to you. J&J may transfer this data to a third party service. By using J&J's Online Backup services you agree that J&J may back-up any of the files on a device covered by the Online Backup services, regardless of who might be the creator, originator, editor, or otherwise the owner of those files.
- 1.8. Unless we are required by law to retain your data for a longer period, J&J will delete your data, or place it in the queue for deletion, within approximately: (i) twenty-four (24) hours of you deleting any such data; (ii) twenty-four (24) hours of J&J terminating your account; and (iii) thirty (30) days of a Customer's non-payment or cancellation.

### **Disaster Recovery**

1. J&J will carry out the following monitoring:-
  - 1.1. Monitor server data back-ups made to any internal or external drive or Network Attached Storage device (NAS) installed to the Customer's system or to any back-up service provided by J&J, and take appropriate action should any back-up fail or be found to be incomplete.
  - 1.2. To configure and monitor virtual server replication from the Customer's site or sites across an internet connection deemed suitable to J&J servers or any other server deemed necessary.
2. In the event of a disaster (which may include natural disasters such as floods, hurricanes, earthquakes, manmade disasters, infrastructure or utility failure or terrorism), J&J shall use reasonable endeavours to provide:-
  - 2.1. The Customer with access to their replicated server at J&J's disaster recovery suite for a reasonable period of time as determined by J&J;
  - 2.2. The Customer with access to up to 6 personal computers configured for 6 of the Customer's staff, also for a reasonable period of time as determined by J&J;
  - 2.3. The Customer with use of telephone systems which are compatible with the Customers current system provided that the Customer uses a telephone systems purchase from J&J and incorporating SIP trunk technology, also provided by J&J.