

# Westhouse IT general terms of service

These Conditions set out the terms under which Westhouse IT Ltd. (hereinafter referred to as "Westhouse IT") will provide Services to the Client (as such terms are defined below). These Conditions should be read in conjunction with the acceptable use policy which can be viewed at: <http://westhouseit.co.uk/terms/aup.php>. These Conditions will be supplemented from time to time by Order Confirmation forms setting out specific details relating to services requested by the Client and, as so supplemented, will apply to the exclusion of any other terms and conditions including any which the Client may attempt to introduce. Westhouse IT reserves the right to change, add, subtract or in any way alter these Conditions without the prior consent of the Client.

To the extent that the Client is deemed to be a consumer (as defined by the Unfair Contract Terms Act 1977) then these Conditions will not affect the rights of the Client as a consumer and will apply to the extent that applicable law allows.

By logging into your account, updating files, or otherwise using the Services you are deemed to have accepted these terms and conditions

These Conditions are divided into four parts, however all parts may not apply in every case:

- Part 1 applies in all cases.
- Part 2 applies where Westhouse IT is to provide software and/or equipment in connection with the Services.
- Part 3 applies where the Services include ongoing support and maintenance services.
- Part 4 applies where the Services include domain name registration services.

## Part 1: General Provisions

### 1. Definitions

In these Conditions, the following expressions will have the following meanings, unless inconsistent with the context:

"Agreement"

the agreement between Westhouse IT and the Client for the provision of Services formed by these Conditions and the Order Confirmation(s)

"Ancillary Systems"

any Software and/or Equipment

"Associated Company"

in respect of either party, a subsidiary or holding company of that party or any subsidiary of such holding company and the terms "subsidiary" and "holding company" will have the meanings given to them by sections 736 and 736A Companies Act 1985

"Business Day"

a day which is not a Saturday or Sunday or public or bank holiday in England and Wales

"Business Hours"

9am to 5pm on each Business Day

"Client Materials"

data, text, images, graphics, videos, logos and other content and material, hardware or equipment provided by the Client in connection with the Agreement for use by Westhouse IT in providing the Services

"Client"

as identified on the Order Confirmation(s)

"Client System"

the Client's computer system upon which the Software is loaded or otherwise in connection

with which the Services are provided

"Conditions"

these conditions (in four parts) to be read in conjunction with the Order Confirmation(s)

"Defect"

any defect in systems having a material effect on the Client's use or operation of the Services or any failure by any Ancillary System to comply with any term of Part 2 of these Conditions

"Domain Services"

those domain registration and other related services (if any) provided to the Client by Westhouse IT pursuant to the Agreement, as described on a relevant Order Confirmation

"Equipment"

any hardware, cabling and/or other equipment provided to the Client by Westhouse IT in connection with the Agreement

"Fees"

the charges due to Westhouse IT under the Agreement in relation to the Services, as set out on the Order Confirmation(s)

"Westhouse IT Ltd"

Westhouse IT Ltd., registered in England and Wales (Company No. 07858691), whose registered office is at 46 Well Street, Biddulph, Stoke on Trent, ST8 6HX

"Intellectual Property Rights"

any and all patents, trade marks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to the same

"Netiquette"

generally accepted standards and codes of practice for use of the internet including but not limited to sending bulk unsolicited email, mail bombing or impersonating another person, organisation or website

"Order Confirmation"

the order confirmation form(s) submitted by Westhouse IT to the Client by email or otherwise in writing for the provision of the Services, in response to the Client's order or request

"Services"

those development, implementation, consultancy, hosting and other services (if any) provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation, together with any Support Services and Domain Services

"Software"

any communications or other software provided to or made available to the Client by Westhouse IT in connection with the Agreement, but excluding Third Party Software

"Support Services"

those support and maintenance services provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation

"Support Hours"

the hours during which Westhouse IT will provide the Support Services, as set out on a relevant Order Confirmation

"Third Party Software"

any software identified as third party software (if any) to be provided to the Client pursuant to the Agreement, as set out in a relevant Order Confirmation

"Use the Software"

to load the Software onto and store and run it on the Client System and/or Equipment in accordance with the terms of the Agreement

## **2. Interpretation**

- 2.1 The headings used in the Agreement are inserted for convenience only and are not intended to be part of nor to affect the meaning or interpretation of any of the Agreement.
- 2.2 In the Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require.
- 2.3 The expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
- 2.4 In the event of a conflict between any of these Conditions and any Order Confirmation, the conflict will be resolved according to the following order of priority: these Conditions then the Order Confirmation.
- 2.5 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.
- 2.6 The Agreement (as varied in accordance with its terms) forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings and negotiations between the parties.
- 2.7 The parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not party to it.
- 2.8 References in these Conditions to clauses means clauses of these Conditions. References in these Conditions to the provisions of statutes or statutory instruments are deemed to include those provisions as amended or substituted.

## **3. Service Provision**

- 3.1 The Services are described or referred to on the Order Confirmation(s). Westhouse IT agrees to supply Services to the Client on the following conditions, these conditions are not an offer to provide service but a statement of the terms on which we would provide them.
- 3.2 Westhouse IT will use its reasonable endeavours to provide the Services in accordance with any timescale set out on the Order Confirmation(s), but will not be liable to the Client where, using those endeavours, it fails to meet any timescale.
- 3.3 Westhouse IT will not be liable for any failure to provide the Services resulting from any breach by the Client or its employees, agents or subcontractors of the Agreement.
- 3.4 Westhouse IT will not be obliged to provide any services not referred to on the Order Confirmation(s). Furthermore, Westhouse IT cannot provide the Services where the Client makes use of what in the sole discretion of Westhouse IT can be deemed as incompatible communication systems
- 3.5 The terms of the Agreement form the entire agreement between Westhouse IT and the Client in relation to the Services and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. The Client may not rely upon any representation made or given by any employee of Westhouse IT prior to the Agreement being entered into unless confirmed in the Agreement.
- 3.6 Westhouse IT reserves the right at any time and from time to time to improve, correct or otherwise modify all or any of the Services (including substituting Software and/or Equipment. Westhouse IT will endeavour to give the Client reasonable notice of any such modification, where this is reasonably practicable.
- 3.7 Without prejudice to its other rights and remedies, Westhouse IT may at its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) and will have no liability to provide the Services on the occurrence of any of the following events:
  - 3.7.1 notified or unscheduled upgrade or maintenance of Westhouse IT's IT systems;
  - 3.7.2 issue by any competent authority of an order which is binding on Westhouse IT

- which affects the Services;
- 3.7.3 if the Client fails to pay any Fees or any other sums owing to Westhouse IT by the Client when they fall due;
- 3.7.4 if an event occurs and Westhouse IT deem it to be appropriate to terminate the Agreement;
- 3.7.5 if the bandwidth or computer memory used by the Client in relation to the Services exceeds any agreed or stipulated level and Westhouse IT determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by Westhouse IT from time to time;
- 3.7.6 if the size of an email, mailing list or cron job used by the Client exceeds any agreed or stipulated size, level or frequency and Westhouse IT determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by Westhouse IT from time to time; or
- 3.7.7 failure or deficiencies in the Client System referring but not limited to hardware, server corruption and security breaches
- 3.7.8 failure by the Client to adhere to any of the provisions outlined in Westhouse IT's acceptable usage policy.

Where Westhouse IT suspends provision of the Services in accordance with clause 3.7.3, it will only be obliged to recommence provision during Business Hours and once the Client has paid all relevant outstanding sums in clear funds together with any relevant reinstatement fee as published from time to time by Westhouse IT and has accepted any revised payment terms requested by Westhouse IT (such as payment by direct debit).

- 3.8 The Client will provide to Westhouse IT those Client Materials identified on the Order Confirmation(s) within a reasonable time period taking account of the obligations of Westhouse IT under the Agreement.
- 3.9 The Client warrants that the Client Materials will be accurate in all material respects and will not knowingly include material which is illegal, the accessing holding transmitting or supplying of which would be a criminal offence or which is otherwise unlawful or in breach of any applicable law or code of practice applying to such materials. In particular, the Client warrants that all necessary licences, consents and waivers (including those from rights owners, performers and other contributors) are obtained and paid for by the Client. Without prejudice to the foregoing, Westhouse IT may decline to use any Client Materials on any reasonable grounds.
- 3.10 The Client will supply in a timely manner all information, instructions, review and feedback reasonably required by Westhouse IT in connection with the performance of its obligations under the Agreement and will appoint a representative who is fully empowered and authorised to provide the same.

#### **4. Service Delivery**

- 4.1 The Client acknowledges that, given the nature of such services, Westhouse IT cannot guarantee that the Services, when delivered via the internet, will be uninterrupted or error free.
- 4.2 To the fullest extent permitted by law and save as provided elsewhere in the Agreement, the Services and any Client Systems and Ancillary Systems are provided by Westhouse IT to the Client on an "as is" and "as available" basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including as to satisfactory quality and fitness for a particular purpose. In particular, Westhouse IT gives no warranty or representation that:
  - 4.2.1 the Services will meet the Client's requirements;
  - 4.2.2 the Services will be provided on an uninterrupted, timely, secure or error-free

- basis; or
- 4.2.3 any results obtained from use of the Services will be accurate, complete or current.
- 4.3 Westhouse IT warrants that it will provide the Services with reasonable care and skill. Westhouse IT will not be liable for a breach of such warranty unless the Client notifies Westhouse IT in writing of such failure within 14 days of the Client becoming aware of the failure.
- 4.4 If the Client makes a valid claim against Westhouse IT based on a failure by Westhouse IT to comply with the warranty set out in clause 4.3 Westhouse IT may, at its option, take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to such Services, provided that the liability of Westhouse IT under such warranty will in no event exceed one and a quarter times the amount of the Fees paid to Westhouse IT by the Client (excluding VAT and expenses) in the 12 month period prior to the date on which the Client makes the claim. If Westhouse IT complies with this clause, it will have no further liability for a breach of the said warranty.

## **5. Client's Obligations**

- 5.1 The Client agrees that it will:
  - 5.1.1 immediately notify Westhouse IT on becoming aware of any unauthorised use of all or any of the Services and/or relevant part of the Client System;
  - 5.1.2 not use the Services, Ancillary Systems and/or Client System or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Client's country or any other place where the results of such purpose or the material in question can be accessed;
  - 5.1.3 not use the Services, Ancillary Systems and/or Client System or allow them to be used for the publication, web forwarding, linking to issue of or display of any material which in the absolute discretion of Westhouse IT may harm Westhouse IT or any of its Associated Companies or clients or bring Westhouse IT into disrepute or which calls into question any action taken by Westhouse IT on the Client's behalf;
  - 5.1.4 not use the Services, Ancillary Systems and/or Client System or allow them to be used in breach of good Netiquette practices;
  - 5.1.5 remove or prevent access to any material hosted on any of the Equipment and/or Client System which causes or is likely to cause the Client to be in breach of the Agreement;
  - 5.1.6 ensure that it has all necessary consents, permissions and licences to make use of the Services including registration and appropriate consents and approvals under the Data Protection Act 1998;
  - 5.1.7 not provide any technical or other information obtained from Westhouse IT and/or relating to the Services to any person which the Client is aware or ought reasonably be aware may directly or indirectly lead to a breach of any law or regulation;
  - 5.1.8 not, in breach of good Netiquette practices, use any service provided by any third party (including an internet web site and/or email) for the publication, linking to, issue or display of any material which refers to an internet web site hosted by Westhouse IT or any other products or services offered by Westhouse IT from time to time without Westhouse IT' prior written consent;

- 5.1.9 ensure that all material or data hosted by Westhouse IT on any web site operated by the Client from time to time or communicated through such site or using the Client System is checked for viruses and other harmful code and has appropriate security patches applied;
- 5.1.10 save as provided in any Order Confirmation, be responsible for keeping regular and full back ups of all material and data hosted by Westhouse IT on any web site or other system operated by the Client from time to time including the Client System and/or Ancillary Systems;
- 5.1.11 comply with any security policy notified to it from time to time by Westhouse IT and, in particular, ensure that all passwords and user names provided to it by Westhouse IT are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Client has any reason to believe that any password or user name has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Client will inform Westhouse IT immediately;
- 5.1.12 independently monitor its bandwidth in relation to the use of Services and report to Westhouse IT any use of bandwidth over and above those agreed or stipulated levels as detailed on the Westhouse IT website at the time of purchase. Exceeding stipulated levels will incur additional fees as noted in clause 6.1.3;
- 5.1.13 be entirely liable for all activities conducted and charges incurred under its passwords and user names whether authorised by it or not and the Client acknowledges that Westhouse IT shall not be liable for any loss of confidentiality or for any damages arising from the Client's inability to comply with these Conditions;
- 5.1.14 ensure that the Client obtains and maintains insurance over all parts of the Client System which are located on the premises of Westhouse IT or any of its Associated Companies and to provide evidence that such insurance is in place, upon Westhouse IT's demand;
- 5.1.15 ensure that all communication details which it provides to Westhouse IT are at all times true, current, accurate and complete. The Client will promptly notify Westhouse IT of any change to such details and acknowledges that Westhouse IT will not be liable for any loss suffered or incurred by the Client as a result of its failure to notify such changes to Westhouse IT; and
- 5.1.16 ensure that its systems (including the Client System) meet any minimum system specifications notified to the Client from time to time.
- 5.2 The Client acknowledges that it has appropriate knowledge of how the internet functions, the systems and products provided to it in connection with the Agreement and what types of use and content are and are not acceptable, some of which are referred to in clause 5.1.2. The Client acknowledges that Westhouse IT shall have no obligation to:
  - 5.2.1 train the Client or its staff on its use of the Services or any Ancillary System;
  - 5.2.2 manipulate any material which the Client wishes to and/or does post on any web site or other system it operates (including any Client System) or any communication which it issues or sends in connection with any Services; or
  - 5.2.3 validate, vet or edit such material for usability, legality, content or correctness.
 The Client also acknowledges that the services and products provided by Westhouse IT are standard packages which are not tailored to specific requirements of the Client, unless confirmed in writing by Westhouse IT to the contrary.
- 5.3 The Client will promptly provide to Westhouse IT and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services and, where relevant, deliver and install any Ancillary Systems.
- 5.4 The Client will procure all necessary rights from third parties (including intellectual property licences of computer software and website content including but not limited to

ringtones, and music and any other relevant media which are from time to time required in order for Westhouse IT to be able legally to provide the Services.

- 5.5 Where as part of the Services the Client is entitled (having obtained Westhouse IT's prior written consent) to resell the whole or any part of the Services to a third party then the Client will:
  - 5.5.1 procure such third party's compliance with and acceptance of these Conditions;
  - 5.5.2 be fully responsible for the acts and omissions of any such third party; and
  - 5.5.3 indemnify Westhouse IT for any losses it suffers as a result of such acts or omissions.

## **6.Payment Terms**

- 6.1 The Fees are payable to Westhouse IT subject to the following conditions:
  - 6.1.1 Fees payable monthly or yearly will be paid in advance and will not be refundable in whole or part if the Agreement or relevant part is terminated during the period to which the payment relates;
  - 6.1.2 any set up fee will (unless stated to be included within later payments) be payable immediately;
  - 6.1.3 additional Fees will become payable if the Client exceeds agreed or stipulated bandwidth use levels. In the event that the Client's monthly data allowance exceeds that specified in the service paid for, Westhouse IT do not prevent any further data usage. Instead, customers will be charged the standard rate of £2.00 per Gigabyte of additional data used. It is the responsibility of Clients to maintain and monitor their own data usage and no notifications will be sent by Westhouse IT in this regard. Clients should be advised that the current quoted rate is subject to change without notice.
- 6.2 Any total sum for the fees set out in an Order Confirmation is (unless stated in the Order Confirmation to be a fixed and firm amount) an estimate of the fees only and not a fixed price quotation.
- 6.3 Any sums payable by the Client to Westhouse IT under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Client at the appropriate rate.
- 6.4 The Client agrees to pay Westhouse IT' invoices within 7 days of invoice due date. If invoices are not settled in full by then, the Client will without prejudice to its other rights and remedies (including the right to suspend the Services under clause 3.8.3) be liable to pay interest on any sum outstanding from the due date for payment at the annual rate of 6% above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment is made whether before or after any judgment.
- 6.5 All sums payable to Westhouse IT under the Agreement must be paid in full with no set off or deduction.
- 6.6 Westhouse IT has a general and particular lien over the Client System until all claims and money payable by the Client to Westhouse IT on any account whatsoever have been received in full clear funds. If the Client fails to discharge any lien within a reasonable time from the date of notice of exercise then the Client System may be sold in or towards satisfaction of that lien and Westhouse IT will account to the Client for any excess.
- 6.7 Westhouse IT may make a search in relation to the Client with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and enquiries, and share that information with third parties. Westhouse IT may also make enquiries about the principle directors/proprietors of the Client with a credit reference agency.
- 6.8 Where the Client authorises payment of any of the Fees by credit and or debit card then

Westhouse IT may deduct other amounts becoming payable to it under the Agreement from that credit or debit card without obtaining additional authorisation from the Client. For the avoidance of all doubt the Client must have an active credit or debit card stored on Westhouse IT's systems for the duration of the Agreement.

- 6.9 Without prejudice to any other of its rights and remedies, Westhouse IT will be entitled to remove the Client's data from its systems and any Equipment and/or put the Equipment to any use other than the Client's if any amount due under the Agreement is not paid within 14 days of its due date for payment. Westhouse IT is not required to back up such data or return the same to the Client prior to any such removal or following termination of the Agreement.
- 6.10 Westhouse IT will not refund to the Client the cost of registering a domain name after the Client has submitted a domain name application form provided that the domain name has been registered with the appropriate registrar. This is due to the bespoke nature of domain names.

## **7. Confidential Information**

- 7.1 Each party will (unless contrary to law):
  - 7.1.1 keep confidential all information obtained from the other under or in connection with the Agreement ("Information");
  - 7.1.2 not disclose any Information to any third party without the prior written consent of the other except to such persons and to such extent as may be strictly necessary for the performance of the Agreement;
  - 7.1.3 not use any Information otherwise than for the purposes of the Agreement.
- 7.2 The provisions of clause 7.1 do not apply to Information which:
  - 7.2.1 is or becomes public knowledge (otherwise than by breach of this clause); or
  - 7.2.2 was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or
  - 7.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

and nothing in this clause 7 prevents either party from disclosing any Information for a proper purpose to a public authority or any regulatory body, or to a court of law in the United Kingdom or elsewhere in legal proceedings, or to its senior management, its auditors, bankers, lawyers or other professional advisers.

- 7.3 The provisions of this clause 7 will continue to apply notwithstanding termination of the Agreement.
- 7.4 The Client, by entering into the Agreement, consents to Westhouse IT sending to the Client by whatever means Westhouse IT deems appropriate (whether by email or otherwise) information concerning new products and other services that Westhouse IT and its Associated Companies may from time to time offer.

## **8. Intellectual Property**

- 8.1 The Client acknowledges and agrees that it will not own or acquire ownership of any Intellectual Property Rights in or relating to the Services or created in performing the Services and that it will have no rights in or to the Services other than the rights expressly granted by the Agreement.
- 8.2 The Client will indemnify and keep Westhouse IT indemnified from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, legal costs (on a full indemnity basis) and judgments which Westhouse IT incurs or suffers as a consequence of infringement of any Intellectual Property Right of any third party arising directly or indirectly from:
  - 8.2.1 the provision by Westhouse IT of Services making use of information or



- specifications supplied by the Client;
  - 8.2.2 the Client's failure to procure all necessary rights from third parties which are from time to time required in order for Westhouse IT to be able legally to provide the Services; or
  - 8.2.3 the use by Westhouse IT in connection with the Agreement of the Client System and the Client Materials.
- 8.3 No Intellectual Property Rights created or acquired by Westhouse IT will transfer or be assigned to the Client unless Westhouse IT and the Client have signed a written assignment document to that effect.
- 8.4 The Client shall keep the Ancillary Systems in good condition during the continuance of the Agreement and free of all charges, liens and encumbrances and protect it from any and all judicial process.

## **9. Liability**

- 9.1 The provisions of this clause 9 and the provisions of clauses 4 and 24 set out the entire liability of Westhouse IT (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:
  - 9.1.1 any breach of the Agreement; and
  - 9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 9.2 Nothing in the Agreement excludes or limits the liability of Westhouse IT for death or personal injury caused by the negligence of Westhouse IT, fraud or a breach of section 12 of the Sale of Goods Act 1979.
- 9.3 Subject to clauses 9.2 the total liability of Westhouse IT in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Agreement is limited to:
  - 9.3.1 £500 per breach for loss of or damage to tangible property; and
  - 9.3.2 for any other kind of loss, one and a quarter times the amount of sums paid by the Client to Westhouse IT pursuant to the Agreement (excluding VAT and expenses) during the preceding 12 month period.
- 9.4 Westhouse IT will not be liable to the Client in contract, tort, misrepresentation or otherwise (including negligence), for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, or for any loss of profit, loss of business, loss of contract loss of revenue, depletion of goodwill or otherwise (whether direct or indirect), and whether or not caused by the negligence of Westhouse IT or its employees, agents or authorised representatives, which arises out of or in connection with the Agreement.
- 9.5 The Client acknowledges that the allocation of risk in the Agreement reflects the price paid for the Services and that it is not within the control of Westhouse IT how or for what purposes they are used.
- 9.6 Where the Client accesses Westhouse IT's services from locations outside the UK, the Client does so, on the Client's own initiative and is responsible for compliance with all and any applicable local laws.

## **10. Client Indemnity**

The Client will fully indemnify and keep Westhouse IT and its Associated Companies, officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

- 10.1 the Client's breach of the Agreement, negligence or other default;
- 10.2 the operation or break down of any IT systems owned or used by the Client including the Client System but not the Equipment; or
- 10.3 the Client's use or misuse of the Services.

## **11. Force Majeure**

Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of Westhouse IT or the Client, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

## **12. Term and Termination**

Without prejudice to the remaining provisions of this clause 12 and any other rights and remedies available to Westhouse IT:

- 12.1 Westhouse IT will provide the Services for the period of 12 months from the date of the relevant Order Confirmation or, where different, any other period of supply stated on the Order Confirmation (such period being termed the "Initial Period") and will continue beyond that period, subject to termination by:
  - 12.1.1 the Client upon serving 30 days' written notice on Westhouse IT following completion of Westhouse IT' prescribed template procedures for terminating the whole or any part of the Agreement (details of which can be obtained from Westhouse IT' Customer Services Team); or
  - 12.1.2 Westhouse IT serving 30 days' written notice on the Client to expire at any time after the Initial Period.
- 12.2 Westhouse IT may immediately terminate the Agreement (or at its option, any part of it) by notice in writing to the Client if the Client fails to pay to Westhouse IT any sum due under the Agreement on the due date for payment.
- 12.3 Either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing to the other if the other party:
  - 12.3.1 is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;
  - 12.3.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;
  - 12.3.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 12.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or
  - 12.3.5 has ceased or threatened to cease to trade.
- 12.4 Clients that have purchased the Services as Consumers have the right to cancel the

Agreement within 7 days at no additional cost from either (a) the date the contract is formed; or (b) the date that the Client receives confirmation that the contract is formed from Westhouse IT or whichever is the later. For the purposes of this clause, the date the contract is formed shall be the date that the Client presses the 'Order' button thereby granting consent that the Service commences.

- 12.4.1 The Client can exercise their right to cancel by contacting Westhouse IT through our support site.
- 12.4.2 The Client will no longer have the right detailed in clause 12.4 when, Westhouse IT has commenced the Service with the Client's consent. For the purposes of this clause the Client's consent will be deemed to be given upon the Client pressing the 'Order' button.
- 12.4.3 If you do not wish to waive these rights, then Westhouse IT will be unable to commence the Service until the end of the relevant cooling off period which is 7 days.

### **13. Consequences of Termination**

- 13.1 Termination of the Agreement is without prejudice to the rights and duties of either party accrued prior to termination.
- 13.2 The clauses of the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination. 13.3 Westhouse IT will without notice remove the Client's data from its systems and any Equipment following termination. For the purposes of this clause, the date of termination will be either the date that Westhouse IT receives authorisation from the Client instructing cancellation of account or the date of expiry of notice of termination served in accordance with these Conditions.
- 13.4 Upon termination of the Agreement, the Client will forthwith:
  - 13.4.1 cease to use the Software, Equipment and Services;
  - 13.4.2 erase the Software from the Client System and certify to Westhouse IT that this has been done;
  - 13.4.3 return to Westhouse IT any hardware or other equipment loaned to the Client in connection with the Services or any other materials and equipment owned by Westhouse IT; and
  - 13.4.4 pay all outstanding invoices raised by Westhouse IT pursuant to the Agreement and pay for all work in progress not previously paid for on a reasonable pro-rata basis (subject to receipt of an invoice for the same from Westhouse IT).
- 13.5 In the event of termination of the Agreement by the Client part way through the Initial Period, the Client remains obliged to pay for Services comprising the provision of dedicated server hosting for the remainder of that period.
- 13.6 Where following termination, Westhouse IT is unable to cancel any registration of a domain name registered on behalf of the Client, it may levy a minimum charge to cover the cost of the domain registration fee. For the avoidance of all doubt Westhouse IT will not refund to the Client the cost of registering a domain name after the Client has submitted a domain name application form, provided that the domain name has been registered with the appropriate registrar. This is due to the bespoke nature of domain names.
- 13.7 Where the Client services include the purchase of licensing for software by Westhouse IT on behalf of the client, in the event of termination of the agreement by the client, Westhouse IT are unable to refund any proportion of the software and/or licensing fees incurred.

### **14. Severability**

The illegality, invalidity or unenforceability of any provision of the Agreement will not affect the

legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

### **15.Waiver**

- 15.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 15.2 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

### **16.Assignment and Subcontracting**

The Client may not assign the benefit or delegate the burden of the Agreement nor sub-license any of its rights under the Agreement (including to its Associated Company) without the prior written consent of Westhouse IT. Any consent provided by Westhouse IT under this clause is given on condition that the assignee or licensee, as the case may be, agrees to comply with the terms of the Agreement as if they were the Client. Westhouse IT may sub-contract or assign any or all of its rights and obligations under the Agreement.

### **17.Amendments**

No variation or amendment to the Agreement (including any Order Confirmation) is effective unless agreed in writing and signed by an authorised representative of Westhouse IT.

### **18.Notices**

Any notice to be given or made by either party under or in connection with the Agreement must be in writing and given or made to the other party at its address stated in the Order Form or to such other address as either party may from time to time notify to the other. Every notice, if so addressed, is deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party, if sent by prepaid first class post, two Business Days after the date of posting and if transmitted by facsimile, at the time of transmission (provided a confirmatory letter is sent by prepaid first class post) provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Business Day or after 4.00 p.m. on a Business Day, such notice shall be deemed to be given or made at 9.00 a.m. on the next Business Day. Westhouse IT may additionally serve notice on the Client under or in connection with the Agreement by email to the Client by sending an email to the contact email address stated on the Order Confirmation(s), and in such a case the email will be deemed sent once transmitted from Westhouse IT's email server.

### **19.Applicable Law and Jurisdiction**

The construction, performance and validity of the Agreement will be governed by English law and the English courts have jurisdiction to settle any disputes which may arise out of or in connection with it.

## **Part 2 : Ancillary Systems Supply**

### **20.Provision of Software**

- 20.1 In these Conditions, the following expressions will have the following meanings, unless inconsistent with the context:
- 20.2 In consideration of payment by the Client of the Fees, Westhouse IT will supply to the Client one copy of the Software and Third Party Software in object code form.
- 20.3 Westhouse IT grants to the Client the non-exclusive, non-transferable right to Use the Software for so long as the relevant Services continue to be provided subject to the remaining terms of these Conditions.

### **21.Client's Undertakings**

The Client undertakes:

- 21.1 to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 21.2 to take good care of the Ancillary Systems; and
- 21.3 not to provide or otherwise make available the Software in whole or in part (including program listings, object and source program listings, object code and source code) in any form to any person other than the Client's employees without the prior written consent of Westhouse IT.

### **22.Copying**

The Client may make only so many copies of the Software as are reasonably necessary for operational security and to Use the Software. Such copies and the media on which they are stored will remain the property of Westhouse IT, and the Client will ensure that all such copies bear Westhouse IT' proprietary notices. The provisions of Part 2 of these Conditions will apply to such copies as it applies to the Software.

### **23.Alterations**

- 23.1 Except to the extent and in the circumstances expressly required to be permitted by Westhouse IT by law, the Client may not:
  - 23.1.1 alter, modify, adapt or translate the whole or any part of the program listings, object and source program listings, object code or source code in the Software in any way whatsoever;
  - 23.1.2 permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs; or
  - 23.1.3 decompile, disassemble or reverse engineer the Software;nor attempt to do any of these things.
- 23.2 To the extent that the law applicable to the Agreement grants the Client the right to decompile the Software in order to obtain information necessary to render the Software interoperable with other computer programs used by the Client, Westhouse IT undertakes to make that information readily available to the Client. Westhouse IT may impose reasonable conditions (including a reasonable fee) for doing so. In order to ensure that the Client receives the appropriate information, the Client must first give to Westhouse IT sufficient details of the Client's objectives and the other computer programs concerned

## **24. Performance**

- 24.1 The Client acknowledges that:
  - 24.1.1 software in general is not error-free, and agrees that the existence of such errors will not constitute a breach of the Agreement; and
  - 24.1.2 the Ancillary Systems will operate only in conjunction with the Client System and other operating systems that may be notified by Westhouse IT in writing from time to time.
- 24.2 Westhouse IT will use its reasonable endeavours to check the Software for the most commonly known viruses prior to delivery to the Client. However, the Client is solely responsible for virus scanning the Software and Westhouse IT gives no warranty that the Software will be free from viruses.
- 24.3 Westhouse IT warrants that (subject to the other provisions of the Agreement) the Ancillary Systems will as at delivery be free from material errors which prevent the Client's use of the Services and conform in all material respects with any applicable specification agreed in writing between the Client and Westhouse IT. Westhouse IT will not be liable for a breach of this warranty:
  - 24.3.1 if the error in question has been caused by any modification variation or addition to any part of the Ancillary Systems not performed by Westhouse IT, their incorrect use by the Client, or use with or in connection with systems with which they are incompatible; or
  - 24.3.2 where the Client does not notify Westhouse IT in writing of a failure within 14 days of becoming aware of the same.
- 24.4 If the Client makes a valid claim against Westhouse IT based on the failure by Westhouse IT to comply with the warranty set out in clause 24.3 Westhouse IT will at its option take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to the defective Ancillary Systems.
- 24.5 If Westhouse IT complies with clause 24.4 it will have no further liability for a breach of the warranty set out in clause 24.3.

## **25. Third Party Software and Services**

Any Third Party Software is supplied to the Client on the basis of the relevant third party's standard licence terms provided to the Client with the relevant Third Party Software and with which the Client agrees to comply.

## **Part 3 - Support Services**

### **26. Provision of Support Services**

- 26.1 Westhouse IT will provide the Support Services to the Client upon the terms and conditions set out in this Part 3 and Part 1 of these Conditions.
- 26.2 Westhouse IT will only be obliged to provide the Support Services during Support Hours.
- 26.3 The obligation of Westhouse IT to provide Support Services will not extend to:
  - 26.3.1 rectification of lost or corrupted data;
  - 26.3.2 Ancillary Systems altered modified or varied by other than Westhouse IT;
  - 26.3.3 attendance to faults arising from the Client's failure to comply with Westhouse IT's instructions with regard to the use of the Services or any documentation or manuals provided by Westhouse IT, or operator error or omission; or
  - 26.3.4 attendance to faults attributable to the use or interaction of an Ancillary

System with other software or systems with which it is not compatible.

- 26.4 Westhouse IT will charge its standard employee charge out rates (as published from time to time by Westhouse IT) in addition to the Fees for the carrying out any remedial work described in clauses 26.3.1 to 26.3.4
- 26.5 Westhouse IT will use its reasonable endeavours to provide the Support Services
- 26.6 Westhouse IT will at no additional charge to the Client initially install the standard operating system Software on to the Client System or, where appropriate, the Equipment. Any re-install will incur a charge, such charge will be detailed on the Westhouse IT website.
- 26.7 Westhouse IT will operate a helpline service to assist the Client and its staff in relation to the Client's use of the Services and the identification and correction of Defects. Assistance via this helpline service may be requested by the Client and provided by Westhouse IT, by telephone, e-mail or helpdesk ticket system provided by Westhouse IT. The helpline service will be obtained by telephoning and or, e-mailing such numbers or addresses or logging into such ticketing systems, as are notified by Westhouse IT from time to time. For the avoidance of all doubt the helpline service can only be obtained by using the preceding methods of contact. Any other method applied or used by the Client or its staff shall not be deemed as a request for assistance and Westhouse IT may at its sole discretion choose not to answer such a request.
- 26.8 If a Defect occurs, the following procedure will be followed:
  - 26.8.1 the Client will notify Westhouse IT of the Defect and provide such information and assistance as Westhouse IT reasonably requires in connection with such Defect; and
  - 26.8.2 Westhouse IT will analyse the Defect and use its reasonable endeavours to rectify the Defect in question or propose a solution in connection with the same and of being notified of the same under clause 26.7.

## **Part 4 - Domain Services**

### **27. Service Provision**

- 27.1 Westhouse IT will provide the Domain Services to the Client upon the terms and conditions set out in this Part 4 and Part 1 of these Conditions.
- 27.2 The Client undertakes and warrants to Westhouse IT that the registration of any domain name requested by it (a "Requested Domain"):
  - 27.2.1 and the manner in which it is to be directly or indirectly used will not infringe any third party rights; and
  - 27.2.2 is not being made in bad faith or could be considered to be an abusive registration under the ICANN or Nominet dispute resolution policies, whichever is appropriate.

The Client also confirms and warrants that any Requested Domain is not being registered and will at no time whatsoever be used for any unlawful purpose.

- 27.3 The Client acknowledges that, whilst Westhouse IT will use its reasonable endeavours to register a Requested Domain, Westhouse IT will not be obliged to accept any request to register or continue to process any registration of a Requested Domain where such a Requested Domain has not been capable of registration.
- 27.4 The Domain Services are limited to forwarding the application submitted by the Client for registration with the relevant naming authority. For the avoidance of all doubt it shall remain the sole responsibility of the Client to verify if the Requested Domain has been successfully registered with the appropriate authority. Upon successful registration, Westhouse IT will use reasonable endeavours to notify the Client of any renewal dates however Westhouse IT accepts no liability for the loss of registration of any Domain that has

failed to be renewed.

- 27.5 Westhouse IT makes no representations or warranties (expressed or implied) of any kind (and they are expressly disclaimed) with respect to availability or likelihood of registration of any Requested Domain. The Client acknowledges that Westhouse IT cannot guarantee the reservation or registration of any Requested Domain and that the registration of such domain name will be subject to any registration requirements of the appropriate registry.
- 27.6 The Client will at all times comply with the terms and conditions (from time to time subsisting) applying to the registration of domain names published by the relevant naming authority (including the domain dispute resolution policy of that authority) and any other authority having similar force.
- 27.7 If the Client wishes to transfer ownership of a Requested Domain then it will procure that all necessary consents to that transfer are obtained and will deliver up to Westhouse IT, on demand, documentary evidence of that all such consents have been obtained. The Client agrees that prior to transferring ownership of a Requested Domain to another person (the "Transferee") the Client will procure that the Transferee agrees in writing to be bound by the terms of the Agreement. A Requested Domain will not be transferred until Westhouse IT receives such written assurances as it requires that the Transferee is bound by the terms of the Agreement.
- 27.8 Westhouse IT will not transfer ownership of a Requested Domain until all Fees attributable to the Domain Services which are due have been paid by the Client to Westhouse IT.
- 27.9 Westhouse IT may from time to time change the registrar that a Requested Domain is held with, at its discretion and without notice to the Client.
- 27.10 The Client agrees and acknowledges that Westhouse IT will make registration information provided by the Client in relation to the Requested Domain available to ICANN, Nominet or any other appropriate registration authority, the registry administrators, and other third parties as applicable laws may require or permit including the police or other enforcement authority. The Client further acknowledges that Westhouse IT may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information provided, for purposes of inspection (such as through the WHOIS service) or other purposes as required or permitted by ICANN, Nominet and applicable law. The Client consents to any and all such disclosures, whether during or after the term of registration of the Requested Domain. The Client irrevocably waives any and all claims and causes of action arising from such disclosure or use of the domain name registration information by Westhouse IT.
- 27.11 Westhouse IT will only allow a domain name owned or managed by the Client to be attached to the ISP tag of Westhouse IT or any of its Associated Companies if the Client has an active hosting account with Westhouse IT or one of its Associated Companies or is holding the domain name within a Westhouse IT holding account.