

WEST MARCH SYSTEMS LIMITED
HOSTING SERVICE TERMS AND CONDITIONS

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

1.1 Definitions:

- (a) **Authorised Users:** employees and independent contractors of the Customer who are authorised to use the Software through the Hosting Services by the Customer.
- (b) **Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.
- (c) **Commencement Date:** the date specified for the start of the Services in the Customer Contract Sheet .
- (d) **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.
- (e) **Customer:** means the person named as customer named in the Customer Contract Sheet.
- (f) **Customer Contract Sheet:** the customer contract sheet specifying the services to be provided by WMS to the Customer and other terms of this agreement.
- (g) **Customer Data:** the data inputted into the Software by the Customer, by Authorised Users, or by WMS on the Customer's behalf.
- (h) **Fees:** the fees payable to WMS as described in clause 9.
- (i) **Hosting Services:** the software hosting services, website hosting services, and email hosting services which WMS agrees to provide as set out in the Customer Contract Sheet, and all as described more fully in clause 3.
- (j) **Intellectual Property Rights:** patents, copyright and related rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- (k) **Maintenance and Support:** the maintenance and support services to be provided by WMS to the Customer as specified in clause 4 and/or as set out in the Customer Contract Sheet.
 - (l) **Maintenance Events:** has the meaning given in clause 4.2.
 - (m) **Materials:** the content provided to WMS by the Customer from time to time for incorporation in the Site.
 - (n) **Minimum Term:** the minimum term of this agreement, as set out in the Customer Contract Sheet
 - (o) **Normal Business Hours:** 9am to 5:30pm local UK time, each Business Day.
 - (p) **Service Level Arrangements:** the service level arrangements set out in the Customer Contract Sheet.
 - (q) **Services:** the Hosting Services and/or Maintenance and Support as applicable, given the context in which the term **Services** is used.
 - (r) **Site:** the website of the Customer to be developed and/or hosted in accordance with this agreement.
 - (s) **Software:** the software applications to be hosted by the software hosting services, as set out in the Customer Contract Sheet, and as amended from time-to-time in accordance with clause 3.6.
 - (t) **Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
 - (u) **website design services:** the service of designing the Site, as specified in clause 6.
 - (v) **WMS:** means West March Systems Limited, company number 06245182.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.4 A reference to **writing** or **written** includes faxes and e-mail.

- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms
- 1.6 A reference to **this agreement** shall be to the agreement between WMS and the Customer to provide the Services on the terms and conditions set out in this document and the Customer Contract Sheet.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

2. GENERAL

- 2.1 These terms set out the terms on which WMS shall supply the Services to the Customer. These terms and the Customer Contract Sheet comprise the entire agreement between the parties in respect of the provision of the Services.
- 2.2 By placing an order for the Services the Customer shall be deemed to have accepted these terms to the exclusion of any other terms and conditions set out or referred to in any other document or other communication used by either party in concluding the Customer's order
- 2.3 By placing an order for the Services the Customer acknowledges that it has placed no reliance on any statement which has been made or may be made concerning the Services other than one made by WMS in writing.

3. HOSTING SERVICES

- 3.1 WMS shall perform such of the Hosting Services as are specified in the Customer Contract Sheet, or otherwise agreed in writing from time-to-time by WMS.
- 3.2 Where WMS provides **software hosting services**, these services shall comprise the follow services:
- (a) the design, installation, configuration and testing of the software hosting services, as well as the hosting facility and internet connectivity.
 - (b) installation and configuration of the hosting equipment to provide access to the Software (including installation of system and database software components, installation of the Software, and loading of initial Customer Data)
 - (c) installing or locating the hosting equipment in a professional hosting facility designed for such use;
 - (d) provision of internet connectivity through an internet service provider at the hosting facility. The connectivity shall include a firewall for security and (where applicable) a load balancer for traffic management and speed optimisation. The Customer shall, and shall ensure that its Authorised Users

shall, make their own arrangements for internet access in order to access the Software;

- (e) supply of burstable bandwidth connectivity services;
- (f) the continuation of the software hosting services provided by WMS or its contracted third parties, which allows for availability of the Software, including internet connectivity, load distribution management, security services, monitoring, back-up, release management and change control, and administration services;
- (g) 24 hours a day and seven days a week monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring, and intrusion detection;
- (h) performing scheduled back-ups at daily intervals, providing routine and emergency data recovery, and managing the archiving process. In the event of data loss, WMS shall provide recovery services to try to restore the most recent back-up;
- (i) release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by WMS to maintain the software hosting services;
- (j) installation and administration of additional hardware, operating system and other software, and other resources as necessary to maintain the software hosting services.

3.3 Where WMS provides **website hosting services**, these services shall comprise the following services:

- (a) provision of a domain name at which to access the Site;
- (b) hosting the Customer's website, and providing such electronic storage space for content hosted on the Customer's website as stated in the Customer Contract Sheet or agreed in writing between WMS and the Customer.

3.4 Where WMS provides **email hosting services**, these services shall comprise the following services:

- (a) provision of a domain based email address;
- (b) provision of email accounts for the number of users specified in the Customer Contract Sheet; and

- (c) provision of data storage for emails as specified in the Customer Contract Sheet

3.5 In relation to Authorised Users:

- (a) the Customer's access to the software hosting services shall be limited to the number of simultaneous connections by individual Authorised Users as specified in the Customer Contract Sheet;
- (b) the Customer shall maintain a written list of current Authorised Users of the Software, and the Customer shall provide such list to WMS as may be reasonably requested by WMS from time to time; and
- (c) the Customer shall ensure that each Authorised User keeps a secure password for his use of the Software, that such password is changed regularly, and that each Authorised User keeps his password confidential.

3.6 In relation to the Software:

- (a) WMS reserves the right to remove, from the list of Software to be accessed through the software hosting services, any Software previously accessed through the software hosting services, in its absolute discretion;
- (b) WMS shall not be required to provide access to any software through the software hosting services other than the Software. If the Customer wishes to add any software application to the Software, it shall notify WMS in accordance with clause 10.
- (c) the Customer shall not store, distribute or transmit any Virus, or any material through the software hosting services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- (d) the Customer shall not:
 - (i) use the Software or software hosting services to provide services to third parties; or
 - (ii) subject to clause 20.1, transfer, temporarily or permanently, any of its rights under this agreement, or
 - (iii) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 3.6(d); and
- (e) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify WMS promptly of any such unauthorised access or use.

- 3.7 From time-to-time, WMS may change the software hosting equipment or software hosting facility used to provide the software hosting services to the Customer. Upon request from WMS, the Customer shall provide all reasonable assistance to, and shall co-operate with, WMS in effecting such change.
- 3.8 The Service Level Arrangements shall apply with effect from the start of the month after the date when the Hosting Services are made available to the Customer.

4. MAINTENANCE AND SUPPORT

4.1 Training

- (a) WMS shall provide training on use of the software hosting services to such number of the Authorised Users as are specified in, and are otherwise in accordance with, the Customer Contract Sheet.
- (b) WMS may, on request from the Customer, provide training to the Authorised Users in respect of any or all of the Software, as specified in the Customer Contract Sheet or otherwise agreed in writing between WMS and the Customer.
- (c) Where WMS provides any training not specified in the Customer Contract Sheet, WMS shall be entitled to charge an addition fee in respect of the training. Such charges shall be based on WMS's rates in force from time-to-time, and shall be notified to the Customer in advance.

4.2 Maintenance

- (a) WMS shall endeavour to perform maintenance of the hosting equipment, facility, Software or other aspects of the Hosting Services that may require interruption of the Hosting Services (**Maintenance Events**) outside of Normal Business Hours, but may interrupt the Services to perform emergency or essential maintenance during Normal Business Hours. In addition, WMS may interrupt the Hosting Services during Normal Business Hours for unscheduled maintenance, provided that it has given the Customer at least two days' advance notice.
- (b) Any Maintenance Events which occur during Normal Business Hours, and which were not requested or caused by, or agreed with, the Customer shall be considered downtime for the purpose of service availability measurement. WMS shall at all times endeavour to keep any service interruptions to a minimum.
- (c) WMS may determine, at its sole discretion, that providing appropriate service levels requires additional equipment and/or bandwidth, and may install that equipment and/or bandwidth without approval from the Customer. WMS may increase the corresponding Hosting Services fees (only) in respect of any such installation.

- (d) WMS shall update the Software from time-to-time following public releases of patches or updates to the Software by the Software publisher or developer at such intervals or times as specified in the Customer Contract Sheet. Where such patches or updates are automatic, WMS shall permit those automatic updates or patches to take place, and shall not require the consent of the Customer to do so.

4.3 **Technical support services**

- (a) Subject to paragraphs 4.3(b) – (d) below, WMS shall provide the Customer with technical support services in relation to the Hosted Services. Any Authorised Users shall be authorised to contact WMS for technical support services. WMS shall provide technical support services only to Authorised Users. WMS shall handle support calls only from the Authorised Users.
- (b) WMS shall not be required to provide technical support services in relation to any Software unless previously agreed with the Customer (either in the Customer Contract Sheet or otherwise in writing).
- (c) The Customer acknowledges and agrees that WMS is not the owner, developer or publisher of any of the Software and that WMS does not necessarily have access to the source code or object code for the Software. In providing technical support for the Software, WMS shall endeavour to assist the Customer, but shall not be liable to the Customer if WMS is unable to resolve any issue or difficulty encountered by the Customer, and reserves the right to refer the Customer to the Software developer/provider for support.
- (d) In providing technical support, WMS shall be under no obligation to provide support in respect of:
 - (i) any error or fault in the Customer's IT network (including the Customer's hardware and locally installed software);
 - (ii) any fault in or failure of the Customer's internet access;
 - (iii) any fault or error arising directly or indirectly as a result of operator error or deliberate misuse of the Hosting Services or the Customer's IT network;

Where WMS agrees to provide support notwithstanding that the fault or error results from one of the matters listed above, any time spent by WMS investigating such fault and providing support will be charged at WMS's then current rates on a time and materials basis.

- (e) WMS shall provide technical support via telephone, email and a web portal. WMS technical support call centre shall accept telephone calls for telephone support, and reply to email and web-portal requests for support, during Normal Business Hours within Business Days. WMS shall use reasonable

endeavours to process support requests determine the source of the problem and respond to the Customer.

- (f) WMS shall use reasonable endeavours to respond to all support requests from Authorised Users within the time periods specified in the relevant section of the Customer Contract Sheet, according to priority. Priority shall be determined by WMS using the priorities described in the relevant section of the Customer Contract Sheet
- (g) If no progress has been made on a Priority 1 or Priority 2 incident within the Target Resolution Time (as specified in the Customer Contract Sheet), the incident shall be escalated to the Support Manager. If the incident is not resolved, then after each successive increment of the Target Resolution Time (for example four Business Hours for a Priority 1 incident, two Business Days for a Priority 2 incident), the incident shall be escalated to the Account Manager.

5. INTELLECTUAL PROPERTY RIGHTS AND CUSTOMER DATA

- 5.1 Unless set out otherwise in this agreement, the Customer agrees and acknowledges that WMS shall own all Intellectual Property Rights developed or used in the course of performing the Services and any improvements made or developed during the course of the Services, including all Intellectual Property Rights in any documentation prepared or provided by WMS.
- 5.2 The Customer will provide WMS with all assistance in securing registration by WMS of any such Intellectual Property Rights referred to in clause 5.1 above, including executing an assignment of any such Intellectual Property Rights to WMS.
- 5.3 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.4 WMS shall follow its archiving procedures for Customer Data as described in clause 3. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for WMS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by WMS in accordance with the archiving procedure described in clause 3. WMS shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by WMS to perform services related to Customer Data maintenance and back-up).

6. WEBSITE DESIGN AND CONTENT

- 6.1 This clause shall apply when WMS provides the website design services and/or website hosting services.

- 6.2 The **website design services** shall comprise the following services:
- (a) liaising with the customer and/or its design agency to develop the look and feel of the Site; and
 - (b) designing, developing and delivering the Site;
 - (c) developing SSL, website applications and other bespoke developments as specified in the Contract Sheet or otherwise agreed in writing between the Customer and WMS.
- 6.3 WMS shall design the Site in accordance with any specification attached to the Customer Contract Sheet.
- 6.4 Where WMS provides the website design services, all Intellectual Property Rights in the Site (including in the content of the Site and any software for the Site commissioned by the Customer), excluding the Materials, arising in connection with this agreement shall be the property of the Supplier, and the Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site
- 6.5 The Customer grants WMS a licence to use any Intellectual Property Rights owned by the Customer in relation to the Site to the extent required to perform its obligations under this agreement.
- 6.6 The Customer shall ensure that the Materials or any other content of the Site (other than content supplied by WMS) do not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).
- 6.7 The Customer acknowledges that WMS has no control over any content placed on the Site by visitors to the Site and does not purport to monitor the content of the Site. WMS reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. WMS shall notify the Customer if it becomes aware of any allegation that content on the Site may be Inappropriate Content.
- 6.8 If WMS reasonably considers that the Site is running software which is, or makes the Site, insecure or vulnerable to infection by a Virus or to malicious attack, WMS may request that the Site or relevant software is subject to penetration testing (in such form as WMS reasonably determines) at the Customer's cost. If the Customer fails to comply with such requirement, WMS may suspend hosting of the Site.
- 6.9 WMS reserves the right to suspend hosting of the Site if it suspects or becomes aware that the Site contains, or has been affected by, a Virus, or if it considers that continuing to host the Site may threaten the security, stability, accessibility or operation of any other services provided by WMS (either to the Customer or to

any third party), including if the Site or any software hosted on it fails any form of penetration testing. Where WMS suspends hosting of the Site under this clause, it shall give notice of that fact to the Customer.

- 6.10 The Customer shall indemnify WMS against all damages, losses and expenses arising as a result of any action or claim that the content on the Site or any other material posted to, or linked to, the Site constitutes Inappropriate Content, or as a result of the Site becoming affected by a Virus or subject to a malicious attack.

7. WMS'S OBLIGATIONS

- 7.1 WMS undertakes that the Services will be performed with reasonable skill and care.
- 7.2 WMS does not warrant or represent that the Hosting Services are suitable for the requirements of the Customer or will be suitable for the purposes required by the Customer. The Customer acknowledges and agrees that it has assessed the Services and has determined their suitability for the requirements and purposes of the Customer.
- 7.3 Except where the Software is provided by WMS under the terms of a separate software licence (and then only to the extent set out in such licence), WMS is not responsible for the correct operation, functioning or performance of the Software.
- 7.4 Where any timetables have been agreed by WMS for provision of the Services or part of them, WMS shall use its reasonable endeavours to comply with such timetables, but time shall not be of the essence of this agreement.
- 7.5 Where WMS has introduced the Customer to any third party as the supplier of any goods or services to the Customer, WMS gives no warranty or guarantee as to the suitability or quality of any goods or services provided by the third party, and shall have no liability whatsoever in respect of those goods or services or the actions or omissions of the third party.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) provide WMS with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by WMS; in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;
 - (b) provide such personnel assistance as may be reasonably requested by WMS from time to time;

- (c) comply with all applicable laws and regulations with respect to its activities under this agreement; and
- (d) carry out all other Customer responsibilities set out in this agreement or in the Customer Contract Sheet in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, WMS may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary.

8.2 The Customer warrants to WMS:

- (a) that the Customer has, and will have at all times during the term of the Services, all necessary authority, consents, licences and permissions:
 - (i) to enable it to use the Software (either through the Hosted Services or otherwise); and
 - (ii) to permit WMS to carry out its obligations in respect of the hosting and support of the Software under this agreement.
- (b) that WMS's proper performance the Services will not infringe the rights (including the intellectual property rights) of any third party; and
- (c) the Software, when submitted by the Customer to WMS, does not contain any Virus.

9. **CHARGES AND PAYMENT**

- 9.1 The Customer shall pay the amounts set out in the Customer Contract Sheet for the Services (the **Fees**). Any services provided by WMS in addition to those identified in the Customer Contract Sheet shall be charged for at WMS's rates in force at that time.
- 9.2 The Customer shall reimburse WMS for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by WMS in performance of the Services.
- 9.3 All amounts and fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to WMS's invoice(s) at the appropriate rate.
- 9.4 WMS shall invoice the Customer as set out in the Customer Contract Sheet. Each invoice is due and payable 30 days after the invoice date. If the Customer does not pay any invoice by the due date, then without prejudice to any other rights and remedies of WMS:
 - (a) WMS shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid, and WMS may suspend provision of any or all of the Services (including, for the avoidance of doubt, the Hosting Services); and

- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5 If the amounts charged by the third party service provider(s) and allocable to the Customer increase after the Commencement Date, WMS shall be permitted to charge the Customer the amount of the increase in addition to the Fees upon giving the Customer written notice of the amount of the increase. Such increases shall take effect from the date of the written notice (or such other later date as specified in the written notice).
- 9.6 The Fees shall be reviewed on the first and each successive anniversary of the Commencement Date. WMS may increase the Fees on each review by up to 5% above inflation, as measured by the Retail Prices Index measure of inflation for the month two months immediately preceding the month in which the anniversary of the Commencement Date falls. Where the Fees are increased, the increase shall take effect on the first month following the relevant anniversary of the Commencement Date, and WMS shall give the Customer not less than 15 Business Day's notice of the increase.

10. CHANGE CONTROL

- 10.1 If either party wishes to change the scope of the Services (including Customer requests for additional hosting services or to host additional software), it shall submit details of the requested change to the other in writing.
- 10.2 If either party requests a change to the scope or execution of the Services, WMS shall, within a reasonable time, provide a written estimate to the Customer of:
 - (a) the likely time required to implement the change;
 - (b) any variations to the Fees arising from the change;
 - (c) the likely effect of the change on any timetables or deadlines previously agreed by the parties for provision of the Services; and
 - (d) any other impact of the change on the terms of this agreement.
- 10.3 If WMS requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. This shall be without prejudice to WMS's right under clause 3.6 to refuse to continue to host certain Software applications, and under clause 3.7 to change the software hosting equipment or software hosting facility.
- 10.4 If the Customer wishes WMS to proceed with the change, WMS has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its Fees and any other relevant terms of this agreement to take account of the change.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
 - (b) was in the other party's lawful possession before the disclosure; or
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that any performance tests of the Services constitute WMS's Confidential Information.
- 11.6 WMS acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8 This clause 11 shall survive termination of this agreement, however arising.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless WMS against claims, actions, proceedings, losses, damages, expenses and costs (including without

limitation court costs and reasonable legal fees) incurred by WMS arising out of or in connection with the Customer's use of the Software or Services or any breach by the Customer of this agreement (including breach of any warranty provided by the Customer), provided that, in the case of any claim or proceedings commenced against WMS by a third party:

- (a) WMS provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (b) the Customer is given sole authority to defend or settle the claim.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of WMS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this agreement;
- (b) in respect of any use made by the Customer of the Services or any part of them; and
- (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.

13.3 Nothing in this agreement excludes the liability of WMS:

- (a) for death or personal injury caused by WMS's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.4 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and WMS's only obligation and liability in respect of, the performance and/or availability of the Service, or their non-performance and non-availability.

13.5 Subject to clause 13.3 and clause 13.4:

- (a) WMS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for:
 - (i) loss of profits;
 - (ii) loss of business, depletion of goodwill and/or similar losses;

- (iii) loss or corruption of data or information;
 - (iv) loss of software;
 - (v) loss of anticipated profits or loss of anticipated savings;
 - (vi) pure economic loss;
 - (vii) any special, indirect or consequential loss costs, damages, charges or expenses however arising under this agreement; or
 - (viii) any loss arising directly or indirectly from an act or omission of the Customer; or
 - (ix) any loss arising directly or indirectly from an act or omission of the hosting facilities provider, and internet service provider, or any other provider of telecommunications or other services to WMS or the Customer in respect of whom WMS has no control;
- (b) WMS's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Services or WMS's obligations under this agreement shall be limited to the price paid for the Services provided during the 12 months commencing on the Commencement Date (discounting any advanced payment for periods after this time).

14. TERM AND TERMINATION

- 14.1 This agreement shall commence on the Commencement Date and shall continue for the Minimum Term, unless otherwise terminated as provided in this clause 14. At the expiry of the Minimum Term, this agreement shall automatically renew for periods of 12 months, unless either party notifies the other, in writing, at least 90 days before the end of the then current term.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;

- (c) (in the case of WMS only), the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(d) to clause 14.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 14.3 WMS may, without any liability to the Customer, terminate this agreement at any point after the Commencement Date upon giving the Customer not less than 90 days' written notice of termination.
- 14.4 On termination of this agreement for any reason:
- (a) all licences granted under this agreement shall immediately terminate;
 - (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - (c) WMS may destroy or otherwise dispose of any of the Customer Data in its possession unless WMS receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. WMS shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by WMS in returning or disposing of Customer Data; and
 - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. DATA PROTECTION

- 15.1 The Customer and WMS acknowledge that for the purposes of the Data Protection Act 1998, the Company is the data controller and WMS is the data processor in respect of any Personal Data
- 15.2 WMS warrants that, to the extent it processes any Personal Data on behalf of the Customer it shall act only on instructions from the Customer (including in accordance with the terms of this agreement).
- 15.3 The Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to WMS so that WMS may lawfully process the personal data in accordance with this agreement on the Customer's behalf.
- 15.4 Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 15.5 In this clause 15, **Personal Data** has the meaning given in the Data Protection Act 1998.

- 15.6 WMS will not be liable for any claim brought by a Data Subject (as defined in the Data Protection Act 1998) arising from any action or omission by WMS, to the extent that such action or omission resulted directly from the Customer's instructions.

16. FORCE MAJEURE

- 16.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from a Force Majeure Event.
- 16.2 If a Force Majeure Event affects one of the parties, that party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.
- 16.3 A **Force Majeure Event** is any event, circumstances or causes beyond the party's reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of WMS or any third party), failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

17. WAIVER

- 17.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 17.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

18. RIGHTS AND REMEDIES

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

19. SEVERANCE

- 19.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. ASSIGNMENT

- 20.1 The Customer shall not, without the prior written consent of the WMS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 20.2 WMS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

22. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

- 24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Customer Contract Sheet, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Customer Contract Sheet.
- 24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received one hour after the time of sending.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes.