

Westway IT Ltd Master Service Agreement

THIS AGREEMENT is made on the date as referred to in the Order.

BETWEEN:

- (1) Westway IT Ltd, a company registered in England & Wales under number 11341592 whose registered office is at 229 Bristol Road, Gloucester. GL1 5TL. ("Westway IT Ltd") and
- (2) the "Client" is as referred to in the Order ("the Client")

WHEREAS:

- (1) Westway IT Ltd provides IT services and has reasonable skill, knowledge, qualifications and experience in that field.
- (2) The Client wishes to engage Westway IT Ltd to provide IT services subject to, and in accordance with, the terms and conditions of this Agreement.
- (3) Westway IT Ltd wishes to accept such engagement and shall provide IT services to the Client subject to, and in accordance with, the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

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

"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England & Wales;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Equipment"	means the Client's IT equipment in relation to which Westway IT Ltd is to provide the IT Services as set out in the Client's Service Order Form;
"Fees"	means the fees payable by the Client to Westway IT Ltd in consideration of the IT Services as set out in the Client's Service Order Form;
"Software"	means the computer software operating on the Equipment in relation to which Westway IT Ltd is to provide the IT Services as set out in the Client's Service Order Form;; and
"IT Services"	means the services to be provided by Westway IT Ltd to the Client as set out in the Client's Service Order Form;
"Order"	means the Client's order for the supply of Goods and /or Services as set out in the Client's Service Order Form or Work Order;

“Recurring Services means, any service which has a recurring billing cycle such as monthly or annual.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
 - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. **Westway IT Ltd’s Obligations**

- 2.1 Westway IT Ltd shall use reasonable endeavours to provide the IT Services in accordance with the Client’s Service Order in all material respects.
- 2.2 Westway IT Ltd shall provide the IT Services with reasonable skill and care.
- 2.3 Westway IT Ltd shall use reasonable endeavours to meet deadlines agreed from time to time with the Client, but any such dates shall be estimates only. Time for performance shall not be of the essence of this Agreement.
- 2.4 Westway IT Ltd shall use reasonable endeavours to act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the scope of the IT Services as set out in the Client’s Service Order.
- 2.5 Westway IT Ltd shall use reasonable endeavours to comply with any and all end user licence agreements which relate to any Software that Westway IT Ltd is required to interact with in the course of providing the IT Services.
- 2.6 Westway IT Ltd shall use reasonable endeavours to accommodate any reasonable changes in the IT Services that may be requested by the Client, subject to the Client’s acceptance of any reasonable changes to the Fees that may be due as a result of such changes.

3. **Client’s Obligations**

- 3.1 The Client shall:
 - 3.1.1 Allow Westway IT Ltd access to the Equipment and all relevant Software as reasonably required by Westway IT Ltd in the course of providing the IT Services;
 - 3.1.2 Provide adequate working space and facilities for Westway IT Ltd, its agents, subcontractors, consultants and employees as reasonably required by Westway IT Ltd; and
 - 3.1.3 Co-operate with Westway IT Ltd upon Westway IT Ltd’s reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software;

- 3.1.4 Allow the installation of tools and network probes for purposes such as licencing control, remote support, diagnostics, monitoring & management.
- 3.2 The Client shall allow Westway IT Ltd the use of any Equipment that is reasonably necessary to enable Westway IT Ltd to provide the IT Services.
- 3.3 The Client shall make freely available to Westway IT Ltd:
 - 3.3.1 any and all documentation associated with the Software;
 - 3.3.2 any and all documentation associated with the Equipment;
 - 3.3.3 any and all documentation associated with applicable vendors;
 - 3.3.4 original Software installation media;
 - 3.3.5 current data backups.
- 3.4 The Client shall use reasonable endeavours to provide all pertinent information to Westway IT Ltd that is necessary for Westway IT Ltd's provision of the IT Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.
- 3.5 The Client may, from time to time, issue reasonable instructions to Westway IT Ltd in relation to the IT Services. Any such instructions must be compatible with the scope of the IT Services as set out in the Client's Service Order.
- 3.6 In the event that Westway IT Ltd requires the decision, approval, consent or any other form of authorisation or communication from the Client in order to continue providing the IT Services (or any part thereof), the Client shall use reasonable endeavours to provide the same in a reasonable and timely manner.
- 3.7 The Client shall use reasonable endeavours to inform Westway IT Ltd of all health and safety rules and regulations that apply at its premises.
- 3.8 The Client shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 3.9 The Client shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.

4. **Insurance**

- 4.1 Westway IT Ltd shall have in place, in relation to the IT Services, public liability insurance with a minimum limit of indemnity of £5,000,000 in any one occurrence.
- 4.2 Westway IT Ltd shall have in place, in relation to the IT Services, professional indemnity insurance with a minimum limit of indemnity of £5,000,000 in any one occurrence.

5. **Fees and Payment**

- 5.1 In consideration of the IT Services, the Client shall pay the Fees to Westway IT Ltd in accordance with the provisions of the Client's Service Order and this Clause 5.
- 5.2 Westway IT Ltd shall invoice the Client for Fees due in accordance with the provisions of the Client's Service Order.
- 5.3 The Client shall pay the Fees due within 0 days of receipt of the relevant invoice from Westway IT Ltd unless otherwise agreed by Westway IT Ltd management.
- 5.4 All payments to be made by the Client under this Agreement shall be made in GBP, in full and in cleared funds, to such bank in United Kingdom as Westway IT Ltd may from time to time nominate in writing.
- 5.5 Payments may only be made by Direct Debit or BACs transfer. Other payment methods may only be accepted with prior approval from Westway IT Ltd management, payments using other methods may be subject to an administration fee.
- 5.6 Where any payment under this Agreement falls due on a day that is not a Business Day, it may be made on the next following Business Day.

5.7 Without prejudice to sub-Clause 12.3.1 and any other rights or remedies open to it, if the Client fails to pay Westway IT Ltd within the period set out in sub-Clause 5.3:

5.7.1 The Client shall pay interest on the overdue sum at the rate of 1.5% per annum above the base rate of Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until payment is made in full to Westway IT Ltd of the overdue sum, whether before or after judgment. The Client shall pay the interest due together with the overdue sum.

5.7.2 Westway IT Ltd shall have the right to suspend the IT Services until payment of the overdue sum (together with any interest due) is made in full.

5.8 All sums due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (except such amount (if any) of tax that is to be deducted or withheld by law).

6. Recurring Services Fees & Payment

6.1 Recurring Services shall be invoiced in accordance with their billing cycle.

6.2 All recurring services must be paid via Direct Debit unless a special agreement has been made with Westway IT Ltd management.

6.2.1 A valid Direct Debit must be setup within 0 days of a Recurring Service starting

6.2.2 Direct Debits must be kept up to date and valid, in the event a Direct Debit is no longer valid the Client has 2 days to make the Direct Debit valid.

7. Limitation of Liability

7.1 Neither Party shall be liable – whether in contract, tort (including negligence), breach of statutory duty or otherwise – to the other if it breaches any of its obligations under this Agreement (or arising therefrom), for any loss suffered by the other Party in the form of lost revenue or profit or failure to achieve any benefit expected to be derived from this Agreement, loss of use of any asset, loss of data recorded on any computer or other equipment, loss which is not the direct and immediate consequence of the breach, business interruption or management time, or any other loss which is otherwise indirect, commercial, economic, special or consequential.

7.2 The total liability of Westway IT Ltd – whether in contract, tort (including negligence), breach of statutory duty or otherwise – for any and all breaches and/or non-performance of its obligations or liability under this Agreement shall be limited to £50.00 or the total Fees payable by the Client, whichever is the greater sum.

7.3 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury or any other liability which cannot be excluded by law.

8. Confidentiality

8.1 Each Party undertakes that, except as provided by sub-Clause 8.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and after its termination:

8.1.1 keep confidential all Confidential Information;

8.1.2 not disclose any Confidential Information to any other party;

8.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

8.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

8.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.1.1 to 8.1.4 above.

8.2 Either Party may:

8.2.1 disclose any Confidential Information to:

8.2.1.1 any sub-contractor or supplier of that Party;

8.2.1.2 any governmental or other authority or regulatory body; or

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

to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the IT Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 8.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 8, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

8.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

8.3 The provisions of this Clause 8 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

9. **Data Collection**

9.1 Westway IT Ltd may only collect data regarding a Client for business purposes in order to facilitate business operations and service delivery. The data collected shall be limited to:

9.1.1 Names, titles, email, contact telephone and service addresses of Client staff

9.1.2 Invoice address

10. **Assignment and Sub-Contracting**

10.1 Subject to sub-Clause 10.2, this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence any of its rights hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

10.2 Westway IT Ltd shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of Westway IT Ltd.

11. **Force Majeure**

11.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

12. **Term and Termination**

12.1 This Agreement shall come into force on our acceptance of your order and shall continue in force until terminated by either party in accordance with clause 12.

12.2 Either Party may terminate this Agreement at any time by giving to the other not less than 30 days written notice.

- 12.3 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
- 12.3.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 90 Days of the due date for payment;
 - 12.3.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 14 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 12.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 12.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 12.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
 - 12.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 12.3.7 that other Party ceases, or threatens to cease, to carry on business; or
 - 12.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 12.4 For the purposes of sub-Clause 12.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 12.5 The rights to terminate this Agreement given by this Clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

13. **Effects of Termination**

Upon the termination of this Agreement for any reason:

- 13.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;
- 13.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain In full force and effect;
- 13.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 13.4 subject as provided in this Clause 13 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 13.5 each Party shall (except to the extent referred to in Clause 8) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

14. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement

shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

16. Costs

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

17. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

18. Relationship of the Parties

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

19. Non-Solicitation

19.1 Neither Party shall, for the term of this Agreement and for a period of 6 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement without the express written consent of that Party.

19.2 Neither Party shall, for the term of this Agreement and for a period of 6 months after its termination or expiry, solicit or entice away from the other Party any Client or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

20. Third Party Rights

20.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

20.2 Subject to this Clause 20 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

21. Notices

21.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

21.2 Notices shall be deemed to have been duly given:

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

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

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

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

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

22. Entire Agreement

22.1 This Agreement contains the entire agreement between the Parties with respect to its subject

matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

22.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

23. Counterparts

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

24. Severance

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

25. Dispute Resolution

25.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

25.2 Nothing in this Clause 25 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

25.3 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 23 shall be final and binding on both Parties.

26. Law and Jurisdiction

26.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

26.2 Subject to the provisions of Clause 25, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

Appendix A – Support Services

1. Definitions and Interpretation

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

“Business Day” means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England & Wales;

“Business Hours” means 9:00am to 5:00pm on a business day. Westway IT Ltd reserves the right to reduce these support hours during Christmas and New Year and will publish any change of hours prior to the period on Westway IT Ltd website;

2. Requesting Support

- 2.1 All requests for support must be made via email or telephone to Westway IT Ltd's published support email and phone number.
 - 2.1.1 Requests by email may be emailed in at any time but will only be actioned during Business Hours;
 - 2.1.2 Requests by telephone may only be made during Business Hours
- 2.2 Once a request for support has been received a support ticket will be created for that request.

3. Delivery of Support

- 3.1 No guarantees or commitments will be given regarding the length of time required for resolving requests.
- 3.2 Westway IT Ltd retains the right to decide whether Support will be delivered remotely or on site at all times.
- 3.3 The Client will provide Westway IT Ltd or its representative with unrestricted access to the system and will provide such further facilities and assistance as the representative may require to carry out the work. Westway IT Ltd will not be liable for where its representative cannot provide support as a result of the Client failing to provide such facilities or assistance.
- 3.4 Westway IT Ltd cannot guarantee that the remote connection to the Client's System will always be available due to issues with the Client's System or other external factors beyond the control of Westway IT Ltd (e.g. Internet Service Provider problems).
- 3.5 When Remote Support cannot resolve the request and On Site Support is required, the On Site visit will be arranged for an available point in time during Business Hours.
- 3.6 When a Client has an Incident that is being worked upon during normal business hours that remains unresolved at the end of Business Hours Support will not continue in the Out of Hours Period by default.

4. Chargeable Services

- 4.1 Remote and On Site work shall be charged at the Client's current rate on an hourly basis rounded up to the nearest 10th of an hour.
- 4.2 When an On Site visit is required a call out charge at the current rate will be charged for each visit. This charge may be waived by Westway IT Ltd management on a case by case basis.
- 4.3 In line with Clause 4.1 Retainer Hours may be redeemed for On Site and Remote support at a 1 to 1 ratio.
 - 4.3.1 Where there are not enough retainer hours to cover the support hours overage fees shall be applied at the Client's current rate.
 - 4.3.2 Westway IT Ltd retains the right to determine if Retainer Hours may be applied at all times.
 - 4.3.3 Unused Retainer Hours shall expire after 3 months if not redeemed.
- 4.4 For separate pieces of work in the form of "consultancy" or "project work", charges will be at the hourly rate as set out in the current rate list, unless a fixed price has been pre-agreed in the form of supporting quotes and proposals. The Client will be required to confirm commencement of such work via signed Order or Quote.

5. Exclusions

- 5.1 Westway IT Ltd retains the right to exclude 3rd party software from the scope of the Agreement.
- 5.2 Westway IT Ltd does not commit to having experts available for all 3rd party software and therefore cannot guarantee being able to resolve all requests relating to 3rd party software and will not provide training under the terms of the Agreement.

- 5.3 When 3rd party information or services are provided Westway IT Ltd can make no guarantees about quality or suitability.
 - 5.4 Westway IT Ltd cannot guarantee that any 3rd party software including but not limited to Anti-Virus, security and firewall software, whether or not recommended by Westway IT Ltd will keep computer(s) free of errors, viruses, worms, trojans, email spam, spy ware, hacking or any other unauthorised access.
 - 5.5 In certain circumstances when an issue exists with an aspect of the Client's System, Westway IT Ltd may recommend a solution that will require a capital cost outlay by the Client. Such costs will not be covered by Westway IT Ltd.
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Appendix B – Microsoft Online Services

Applicable when Microsoft Online Services are used.

1. Definitions and Interpretation

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

“Microsoft Online Services”	means, any online service provided by Microsoft which includes but not limited to: Office 365, Azure and Dynamics;
“Tenant”	means, the client's account within Microsoft Online Services.

2. Microsoft Online Services

- 2.1 Office 365 is provided by Microsoft and is bounded by the Microsoft Services Agreement. Tenants found in breach of this agreement will have their Office 365 subscriptions terminated in line with clause MSA 12.3.2. The Microsoft Services Agreement is available from the Office 365 Trust Centre.
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Appendix C – Sale of Goods

Applicable when Goods are sold.

1. Definitions and Interpretation

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

“Contract”	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
“Contract Price”	means the price stated in the Contract payable for the Goods;
“Client”	means the person who accepts a quotation or offer of the Supplier for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by the Supplier;
“Delivery Date”	means the date on which the Goods are to be delivered as stipulated in the Client's order and accepted by Westway IT Ltd;
“Goods”	means the goods (including any instalment of the goods or any parts for them) which Westway IT Ltd is to supply in accordance with these Terms and Conditions;

2. **Basis of Sale**

- 2.1 Westway IT Ltd's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by Westway IT Ltd in writing. In entering into the Contract the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Client and Westway IT Ltd.
- 2.3 Sales literature, price lists and other documents issued by Westway IT Ltd in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods and Services shall be binding on Westway IT Ltd unless Westway IT Ltd has issued a quotation which is expressed to be an offer to sell the Goods and Services or has accepted an order placed by the Client by whichever is the earlier of:
 - 2.3.1 Westway IT Ltd's written acceptance;
 - 2.3.2 delivery of the Goods;
 - 2.3.3 provision of the Services; or
 - 2.3.4 Westway IT Ltd's invoice.
- 2.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Westway IT Ltd shall be subject to correction without any liability on the part of Westway IT Ltd.

3. **The Goods**

- 3.1 No order submitted by the Client shall be deemed to be accepted by Westway IT Ltd unless and until confirmed in writing by Westway IT Ltd's authorised representative.
- 3.2 The specification for the Goods shall be that set out in Westway IT Ltd's sales documentation unless varied expressly in the Client's order (if such variation(s) is/are accepted by Westway IT Ltd). The Goods will only be supplied in the minimum units thereof stated in Westway IT Ltd's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly
- 3.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by Westway IT Ltd are intended as a guide only and shall not be binding on Westway IT Ltd.

4. **Price**

- 4.1 The price of the Goods and Services shall be the price listed in Westway IT Ltd's price list current at the date of acceptance of the Client's order or such other price as may be agreed in writing by Westway IT Ltd and the Client.
- 4.2 Where Westway IT Ltd has quoted a price for the Goods other than in accordance with Westway IT Ltd's published price list the price quoted shall be valid for 5 days only or such time as Westway IT Ltd may specify.
- 4.3 Westway IT Ltd reserves the right, by giving written notice to the Client at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to Westway IT Ltd which is due to any factor beyond the control of Westway IT Ltd (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give Westway IT Ltd adequate information or instructions.
- 4.4 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a

similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Client shall be additionally liable to pay to Westway IT Ltd.

5. Payment

- 5.1 Subject to any special terms agreed in writing between the Client and Westway IT Ltd, Westway IT Ltd shall invoice the Client for the price of the Goods and Services on, before or at any time after delivery of the Goods and/or the Provision of the Services (as applicable), unless, in the case of Goods, the Goods are to be collected by the Client or the Client wrongfully fails to take delivery of the Goods, in which event Westway IT Ltd shall be entitled to invoice the Client for the price at any time after Westway IT Ltd has notified the Client that the Goods are ready for collection or (as the case may be) Westway IT Ltd has tendered delivery of the Goods.
- 5.2 Westway IT Ltd may pause the processing of an order until payment has been received.
- 5.3 Where Westway IT Ltd has recommended the use of a financial service option this is only a recommendation. Westway IT Ltd is not a credit broker and does not provide credit services.

6. Delivery and Performance

- 6.1 Delivery of the Goods shall be made by Westway IT Ltd, a 3rd party, a supplier or sub contractor delivering the Goods to the place in the United Kingdom specified in the accepted order or, if no place of delivery is so specified, by the Client collecting the Goods at Westway IT Ltd's premises at a scheduled time after Westway IT Ltd has notified the Client that the Goods are ready for collection.
- 6.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by Westway IT Ltd in writing. The Goods may be delivered by Westway IT Ltd in advance of the Delivery Date.
- 6.3 If the Client fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, Westway IT Ltd shall be entitled upon giving written notice to the Client to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1 risk in the Goods shall pass to the Client, delivery shall be deemed to have taken place and the Client shall pay to Westway IT Ltd all costs and expenses including storage and insurance charges arising from such failure.

7. Non-Delivery of Goods and Services

- 7.1 If Westway IT Ltd fails to deliver the Goods or provide the Services or any of them on the Delivery Date (or Commencement Date, as appropriate) other than for reasons outside Westway IT Ltd's reasonable control or the Client's or its carrier's fault:
 - 7.1.1 if Westway IT Ltd delivers the Goods and/or provides the Services at any time thereafter Westway IT Ltd shall have no liability in respect of such late delivery; or
 - 7.1.2 if the Client gives written notice to Westway IT Ltd within 5 Business Days after the Delivery Date (or Commencement Date, as appropriate) and Westway IT Ltd fails to deliver the Goods and/or Services within 14 Business Days after receiving such notice the Client may cancel the order and Westway IT Ltd's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods or services to those not delivered or provided over the price of the Goods or Services not delivered or provided.

8. Risk and Retention of Title

- 8.1 Risk of damage to or loss of the Goods shall pass to the Client at:
 - 8.1.1 in the case of Goods to be delivered at Westway IT Ltd's premises, the time when Westway IT Ltd notifies the Client that the Goods are available for collection;

- 8.1.2 in the case of Goods to be delivered otherwise than at Westway IT Ltd's premises, the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when Westway IT Ltd has tendered delivery of the Goods; or
- 8.1.3 in the case of Goods being installed by Westway IT Ltd, the time that Westway IT Ltd notifies the Client that the installation is complete.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Client until Westway IT Ltd has received in cash or cleared funds payment in full of the price of the Goods.
- 8.3 Until payment has been made to Westway IT Ltd in accordance with these Conditions and title in the Goods has passed to the Client, the Client shall be in possession of the Goods as bailee for Westway IT Ltd and the Client shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by Westway IT Ltd and shall insure the Goods against all reasonable risks.
- 8.4 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Westway IT Ltd, but if the Client does so all money owing by the Client to Westway IT Ltd shall (without prejudice to any other right or remedy of Westway IT Ltd) forthwith become due and payable.
- 8.5 Westway IT Ltd reserves the right to repossess any Goods in which Westway IT Ltd retains title without notice. The Client irrevocably authorises Westway IT Ltd to enter the Client's premises during normal business hours for the purpose of repossessing the Goods in which Westway IT Ltd retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 8.3.
- 8.6 The Client's right to possession of the Goods in which Westway IT Ltd maintains legal and beneficial title shall terminate if:
- 8.6.1 the Client commits or permits any material breach of his obligations under these Terms and Conditions;
- 8.6.2 the Client enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
- 8.6.3 the Client is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 8.6.4 the Client convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Client, notice of intention to appoint an administrator is given by the Client or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client.

9. Assignment

- 9.1 Westway IT Ltd may assign the Contract or any part of it to any person, firm or company without the prior consent of the Client.
- 9.2 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of Westway IT Ltd.

10. Defective Goods

- 10.1 If on delivery any of the Goods are defective in any material respect and either the Client lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as "condition and contents unknown" the Client gives written notice of such defect to Westway IT

Ltd within 5 Business Days of such delivery, Westway IT Ltd shall at its option:

10.1.1 replace the defective Goods within 30 Business Days of receiving the Client's notice;
or

10.1.2 refund to the Client the price for those Goods (or parts thereof, as appropriate) which are defective;

but Westway IT Ltd shall have no further liability to the Client in respect thereof and the Client may not reject the Goods if delivery is not refused or notice given by the Client as set out above.

- 10.2 No Goods may be returned to Westway IT Ltd without the prior agreement in writing of Westway IT Ltd. Subject thereto any Goods returned which Westway IT Ltd is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at Westway IT Ltd's sole discretion Westway IT Ltd shall refund or credit to the Client the price of such defective Goods but Westway IT Ltd shall have no further liability to the Client.
- 10.3 Westway IT Ltd shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, environmental, subjection to abnormal conditions, failure to follow Westway IT Ltd's instructions (whether given orally or in writing), misuse or alteration of the Goods without Westway IT Ltd's prior approval, or any other act or omission on the part of the Client, its employees or agents or any third party.
- 10.4 Goods, other than defective Goods returned under sub-Clauses 10.1 or 10.2, returned by the Client and accepted by Westway IT Ltd may be credited to the Client at Westway IT Ltd's sole discretion and without any obligation on the part of Westway IT Ltd.
- 10.5 Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.6 The Client shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Client is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Client is carried out in accordance with directions given by Westway IT Ltd or any competent governmental or regulatory authority and the Client will indemnify Westway IT Ltd against any liability loss or damage which Westway IT Ltd might suffer as a result of the Client's failure to comply with this condition.

Appendix D – Web Hosting Services

Applicable when web hosting services are used.

1. Definitions and Interpretation

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

“Account” means the Client's details that are required and held by the Host to facilitate the provision of the Service to the Client including, but not limited to, identification and location details, payment details, username and password, and details of the Service provided to the Client;

“Client Website” means the website that the Host is hosting for the Client and refers to all parts of that website including, but not limited to, component files and related services such as email;

“Hosting Infrastructure”	means any and all computer and networking equipment used by the Host in the provision of the Service including, but not limited to, servers and network infrastructure;
“Hosting Package”	means one of the Service packages offered by Westway IT Ltd and generally refers to the package selected by the Client as detailed in the Order;
“Hosting Software”	means any and all software used by the Host in the provision of the Service;
“Intellectual Property Rights”	means copyright (and related rights), designs, patents, trade marks and any and all other intellectual property rights. This includes all such rights, whether they are registered or unregistered, and the rights to apply for renewals or extensions of those rights (where relevant); and

2. The Service

- 2.1 The Host is under no obligation to provide any services that do not form a part of the Service as defined in the Order unless the Host and Client enter into a new written agreement for the provision of additional services.
- 2.2 The Host may, in its sole discretion, alter, improve or otherwise modify the Service provided that any such change will not alter the Service received by the Client to the Client’s material disadvantage (which shall include, but not be limited to, the removal of features from the Hosting Package. No alterations to the Service shall affect the Fee payable by the Client.
- 2.3 Notwithstanding the provisions of sub-Clause 2.2 the Host may take any action necessary to diagnose and/or rectify faults in the Hosting Infrastructure or Hosting Software without any prior notice to the Client. If such diagnosis or rectification results in an interruption to the provision of the Service, the Client shall be notified in accordance with the provisions of Clause 3.

3. Availability of Service

- 3.1 The Host will use reasonable endeavours to ensure that the Service is provided to the Client on a constant, uninterrupted basis throughout the term of this Agreement.
- 3.2 Notwithstanding sub-Clause 3.1, the Host shall not be liable for Hosting Infrastructure downtime or interruptions to the provision of the Service where such downtime or interruptions last for no more than 6 Hours.
- 3.3 Where the Service is unavailable for more than 2 Hours the Host shall contact the Client and shall provide details of the interruption including, but not limited to the cause. If this is not possible due to an undiagnosed problem, the Host shall at a minimum inform the Client that the problem is being investigated.
- 3.4 Where Service interruption due to Hosting Infrastructure failure cannot be remedied within 6 Hours the Host shall transfer the Client Website to alternative Hosting Infrastructure in order to restore the provision of the Service or, where this is not possible, notwithstanding sub-Clause 5.1.1, from the end of the initial 6 Hour period of Service interruption, keep a record of the number of whole days of Service interruption. Upon restoration of the Service, any partial days shall be rounded up and the Host shall reimburse the Client for the interrupted period. Such reimbursement shall be calculated on a pro-rata basis and shall be paid to the Client within 60 days. The Host acknowledges that this is an appropriate remedy in view of the Client’s legitimate commercial interest in Service interruption due to failure of the Hosting Infrastructure being avoided or minimised.
- 3.5 Where the provision of the Service is interrupted through the fault of any third party, the Host shall bear no responsibility or liability.

4. **Client Undertakings and Obligations**

- 4.1 The Client may not use the Service (including, but not limited to, the Hosting Infrastructure and/or the Hosting Software) for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:
 - 4.1.1 Distribution of computer viruses, malware, spyware or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
 - 4.1.2 Distribution of pirated material including, but not limited to, software, videos, music and written works; and
 - 4.1.3 Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.
- 4.2 The Client may not use the Client Website to link to any other websites or systems hosting any material described in sub-Clause 4.1.
- 4.3 The Client undertakes to monitor and supervise any and all third party activity on the Client Website (including, but not limited to, the submission of material by users and the use of communication systems such as forums). Any third party activity that may fall within the provisions of sub-Clause 4.1 must be stopped or removed, as appropriate.
- 4.4 The Client undertakes to ensure that any and all personal information collected through the Client Website is gathered, processed and held in accordance with the relevant provisions laws and regulations including, but not limited to, the Data Protection Act 1998 and General Data Protection Regulation.
- 4.5 The Client undertakes to ensure that any and all e-commerce conducted through the Client Website complies with all relevant laws in force at the relevant time including, but not limited to, the Distance Selling Regulations 2000 and the EU E-Commerce Directive 2000.
- 4.6 The Client shall be responsible for all activity relating to the Client Website.
- 4.7 The Client shall use reasonable endeavours to ensure that the Host is furnished with any information reasonably required by the Host to provide the Service in a timely manner.

5. **Limitation of Host's Liability**

- 5.1 Subject to the provisions of sub-Clause 3.4 and the remainder of this Clause 5, and to the fullest extent permitted by law, the Host shall not be liable to the Client or to any third party, whether in contract or tort (including negligence) for any loss or damage, direct or indirect, whether foreseeable or otherwise (including any indirect, consequential, special or exemplary damages) arising from:
 - 5.1.1 interruptions or downtime to the Service;
 - 5.1.2 any damage, loss or corruption of data (including, but not limited to, the Client Website or any part thereof);
 - 5.1.3 any incompatibility, whether of the Hosting Software, Hosting Infrastructure or the Client Website with any of the Client's equipment (or that of any third party);
 - 5.1.4 any inability, on the part of the Client, to use the Service (including, but not limited to, failure to follow reasonable instructions provided by the Host);
 - 5.1.5 the loss of confidentiality caused by the storage of information on the internet (this does not refer to the mutual confidentiality obligations of the Parties under MSA Clause 8).