



hosting services master terms & conditions

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1 introduction

This Hosting master services agreement governs your use of all Hosting Services that Moore-Wilson provides to you, as identified in the orders placed with us for Services (as documented in Section 2 of your Hosting Service Level Agreement).

Other services that Moore-Wilson may provide to you may have separate master terms and conditions that apply to those services, but not to the Hosting service. Similarly, the terms specified here for Hosting do not apply to those other services.

By using the Services, you agree to be bound by all the terms and conditions of this Agreement (as defined below), including the agreed limitations of liability. If you do not agree with the provisions of this Agreement, do not use and do not authorise any use of the Services.



2 definitions

In this Agreement, the following terms shall mean:

“Moore-Wilson Representative”: a member of Moore-Wilson's personnel as notified to the Client.

“Moore-Wilson Senior Representative”: a member of Moore-Wilson's management as notified to the Client.

“Billing Rates”: Moore-Wilson's personnel charges from time to time as notified plus the cost of any materials provided.

“Client Representative”: a member of the Client's personnel as notified to Moore-Wilson.

“Client Senior Representative”: a member of the Client's management as notified to Moore-Wilson.

“Extended Hours”: all times other than Working Hours. Working hours are defined as 9am to 5pm Monday to Friday, and exclude bank and public holidays, and the period between Christmas day and the 1st of January.

"Inappropriate Material": Material that under the laws of any jurisdiction where the Material can be accessed is any of the following:
illegal, illicit, indecent, obscene, pornographic, libellous, malicious, profane, defamatory, threatening, abusive, offensive;
constitutes or encourages a criminal offence;
contains a virus, worm, trojan horse or other harmful code;
infringing of third-party rights (of whatever nature and including, without limitation, any Intellectual Property Rights);
in breach of any applicable regulations, standards or codes of practice (notwithstanding that compliance may not be compulsory);
harms the reputation of Moore-Wilson in any way.

“Intellectual Property Rights”: all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.

“Material”: text, graphics, images, sound, video or any combination thereof.

"Netiquette": generally accepted standards of conduct relating to use of the Internet including, without limitation, not sending unsolicited mass e-mail, not impersonating another person, and not misrepresenting oneself to have authorisation from another person when one does not.



“Retained Copyright”: computer code or script, whether compiled or not, written by Moore-Wilson in HTML, PHP, C#, JavaScript, Perl, Python, Java, Active Server Pages or any other computer language and incorporated into the Website.

"Servers", "Infrastructure": the computer server, network and storage equipment operated by Moore-Wilson in connection with the provision of the Services.

“Service Fees”: the fees payable by the Client to Moore-Wilson in respect of the Services as set out in Schedule A of the Website Hosting Service Level Agreement.

“Service Level”: the proportion of time during the period of this Agreement for which the Services will be available as set out in Schedule B of the Website Hosting Service Level Agreement.

“Services”: the services set out in Schedule A of the Website Hosting Service Level Agreement.

“Start Date”: the date set out in Schedule A of the Website Hosting Service Level Agreement.

“Tenant”: a client of Moore-Wilson with services residing on the same Server as the Client.

“Third Party Copyright”: Intellectual Property Rights owned by third parties in software used by Moore-Wilson in connection with this Agreement.

“URL” a “unique resource locator” address used to identify the Website on the WWW.

“Website”: a compilation of one or more webpages being a combination of text, data, sound, images or other material accessible through WWW at the URL’s set out in Schedule A of the Website Hosting Service Level Agreement.

“Working Hours”: 9am to 5pm London time on Monday to Friday. (excluding United Kingdom bank and public holidays, and the period between Christmas day and the 1st of January).



3 warranties and remedies

Quality of Service:

Moore-Wilson warrants that the Services will be performed in a professional and workmanlike manner consistent with industry standards reasonably applicable to such services. If The Client considers that a breach of this warranty has occurred, then Moore-Wilson will be required to urgently correct any affected services in order that they comply with the warranty. Email notification to be accepted by both parties as written notice.

The intention of this agreement is for Moore-Wilson to provide a service that is continuously available 24 hours a day, 365 days a year. However, Moore-Wilson does not warrant that the provision of the Services will be uninterrupted or error-free.

Remedies for breaches:

In the event of any defective performance from Moore-Wilson or failure to furnish the agreed level of service, Moore-Wilson will make reasonable efforts to restore the service to a good operating condition on an urgent basis.

Force majeure:

Neither party will be liable for any failure or delay in its performance under this Agreement due to reasons beyond its reasonable control, including acts of war, acts of God, earthquake, flood, riot, embargo, sabotage, governmental act or failure of the Internet, provided the delayed party gives the other party prompt notice of the reasons for such cause.



4 confidentiality

Each party undertakes on behalf of itself and its respective employees, agents and servants that it will not without the prior written permission of the other party, permit the disclosure to or duplication or use by any third party of information received pursuant hereto unless such information (otherwise than due to a breach hereof) is to be incorporated in the Website or at that time is already in the public domain.

The confidentiality provisions of this Agreement shall not preclude publicity referring to the existence of this Agreement.

The parties acknowledge and hereby agree that the terms of this Clause shall survive the expiry or termination for whatever reason of this Agreement.

The Client undertakes to keep secure from third parties any passwords issued to the Client by Moore-Wilson in connection herewith.



5 charges

The Service Fees shall cover the provision of the Services only in relation to the Hosting Service Level Agreement. Service Fees invoices shall be raised by Moore-Wilson in advance.

Any invoices issued under this Agreement shall be payable by the Client within 1 month following receipt of the invoice.

If the Client fails to pay any invoice, Moore-Wilson shall be entitled to charge interest on a daily basis on any sums outstanding from the invoice date until payment (both before and after judgement) at an annual rate 2% above the Base Rate for the time being in force of Lloyds Bank plc.

Moore-Wilson reserves the right to change the Service Fees on an annual basis subject to thirty days' written notice to the Client. Any such change will take into account any change in Moore-Wilson's effective obligations hereunder effected during the previous twelve months.

All prices or sums quoted by Moore-Wilson or specified in this Agreement are stated exclusive of any taxes (including without limitation VAT), duties, fees or other government levies, which may be incurred or imposed. If such sums become due and are paid by Moore-Wilson, Moore-Wilson will invoice the Client, and the invoice shall be payable by the Client within 30 days from the invoice date, or otherwise if specified upon the invoice.

For the purpose of this Agreement, time of payment shall be of the essence. Without prejudice to the Client's obligation to pay fees due hereunder, Moore-Wilson may without prejudice to any other rights and remedies suspend the Services hereunder if the Client's account with Moore-Wilson is overdue or any Inappropriate Material appears on the Website(s).

Moore-Wilson may take immediate action to suspend Inappropriate Material. In instances of Inappropriate Material Moore-Wilson must grant a 2-hour notice period whereby the client can identify, remove or modify said content.

If the Client wishes Moore-Wilson to transfer the Website(s) to a different server, Moore-Wilson may charge a reasonable fee for decommissioning and removal of the Website(s) as well as for transfer of data. Moore-Wilson shall be entitled to charge the Client at its Billing Rates for time spent:

- data restoration and/or re-establishment necessitated by problems caused by third parties who have been allowed access to server files or databases at the request of the Client;
- providing any other services agreed in writing in advance with the Client.



6 intellectual property rights and confidential information

Intellectual property rights and documentation:

Both parties acknowledge the intellectual property rights of the other party whether registered or not. Copyright of the finished assembled work of web pages is owned by The Client, this includes rights to photos, graphics and any other content. Copyright of the Infrastructure design and implementation is owned by Moore-Wilson.

Confidentiality and Competition:

Both parties agree to keep confidential all information concerning the other party's business or its ideas, products, customers or services that could be considered to be "confidential information". "Confidential information" is any information belonging to or in the possession or control of a party that is of a confidential, proprietary or trade secret nature and that is furnished or disclosed to the other party. Confidential information will remain the property of the disclosing party and the receiving party will not acquire any rights to that confidential information.

Court orders:

If the receiving party receives a Court Order to divulge any confidential information belonging to the disclosing party, then the receiving party is permitted to release such information to the court in accordance with any Court Order so served.

Destruction of data and records or return on termination:

Upon termination of this Agreement, the receiving party, at the option of the disclosing party, will return or destroy all confidential information belonging to the other party.



7 legal compliance & resolution of disputes

Governing law:

This Agreement shall be construed in accordance with and shall be governed by the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the English courts.

Export control:

Both Moore-Wilson and the Client agree to comply fully with all relevant export laws and regulation of the country or countries where their offices are located.

Informal Resolution:

In the event of dispute, the parties will attempt to resolve any such disputes through informal negotiation and discussion. Formal proceedings should not be commenced until such informal negotiations and discussions are concluded without resolution. Should informal negotiations and discussions not reach resolution within thirty days, either party may commence formal proceedings.

Arbitration:

Any unresolved dispute should be referred to a qualified independent arbitrator acceptable to both parties. In the event that a suitable independent arbitrator cannot be identified and agreed on by both parties, then the courts shall be requested to appoint one.

Limitation of Action:

Neither party may bring proceedings more than 6 months after the actual event occurred except for proceedings for non-payment.

Limitation of liability:

Moore-Wilson is not liable for any indirect loss, consequential loss, loss of profits, revenue, data or goodwill howsoever arising suffered by the Client and arising in any way in connection with this Agreement or for any liability of the Client to any third party.

Moore-Wilson is not liable for any viruses uploaded to the Website by third parties or the Client's employees or agents.

The Client alone is responsible for virus-checking any programs, macros, data files or other Material accessed through the Internet.



It is the Client's sole responsibility to ensure and satisfy itself as to the integrity, validity and completeness of any data or other Material which it downloads from or uploads to the Website.

Moore-Wilson shall not be liable for ensuring that there is not any Material, data or information on the Website which is illegal or unlawful, obscene, defamatory or otherwise infringes any third party rights whatsoever.

None of the clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of Moore-Wilson or its appointed agents.

The Client agrees that it is in a better position than Moore-Wilson to foresee and estimate any loss it may suffer in connection with this Agreement and that the Service Fees and other fees have been set after taking full account of the limitations and exclusions in this clause. The Client is recommended to effect suitable insurance having regard to its particular circumstances and the terms of this section "legal compliance & resolution of disputes".

The parties agree that The Client is the sole author, editor or publisher of all Material on the Website.



8 general

Standard of care:

Each party will act in good faith in the performance of its respective duties and responsibilities and will not unreasonably delay or withhold the giving of consent or approval required for the other party under this Agreement. Each party will provide an acceptable standard of care in its dealings with the other party and its employees.

Assignment and sub-contracting:

The rights and obligations of the parties under this Agreement are personal to the parties and the parties undertake that neither they, their servants, directors or employees, will, without the prior written consent of the other party, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

Moore-Wilson shall be entitled to sub-contract any of its obligations under this Agreement, provided any sub-contract is consistent with this Agreement, and Moore-Wilson remains fully responsible for the conduct of its sub-contractors.

Notices:

Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by e-mail, by hand or by pre-paid first-class post or other next Working Day delivery service at its registered office. A notice shall be deemed to have been received.

If delivered by e-mail, on the day of receipt during Working Hours if sent on a Working Day or on the next Working Day if sent outside of Working Hours.

Waiver:

Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.

**Headings:**

Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.

Website(s) content:

The Client recognises and accepts that it bears sole responsibility for the content of all Material on its Website(s). For the avoidance of doubt, this clause shall apply to all Material, whether posted on the Website(s) by the Client itself, or on the Client's behalf by another person (whether Moore-Wilson or a third party).

E-mail services (including e-mail forwarding):

The Client acknowledges that Moore-Wilson is not responsible for the security of the contents of e-mail sent or received by the Client.

Moore-Wilson will use its reasonable endeavours to ensure that messages are routed accurately and promptly but does not accept any liability for non-receipt, non-delivery or misrouting of e-mail or any other failure of the e-mail system, or as necessary to ensure operational integrity of the service.

Moore-Wilson's policy is to respect the privacy of e-mail messages sent, received, forwarded or otherwise dealt with by it and the Client acknowledges that Moore-Wilson will therefore not monitor, edit or disclose the contents of such messages unless required to do so by law or competent authority or to protect Moore-Wilson's rights and/or position.

Client's obligations:

The Client shall appoint a Client Representative, who is acceptable to Moore-Wilson, and the Client Representative undertakes to channel all contact with Moore-Wilson.

The Client shall at its own expense provide to Moore-Wilson all such information as Moore-Wilson reasonably requires to substantiate the existence or diagnose the cause of Problems.

The Client undertakes to secure copyright and other appropriate licences or consents where necessary for use of any Material, data or information provided to Moore-Wilson pursuant hereto.

The Client undertakes to pay all taxes, fees, levies and duties whether for import or otherwise arising in any part of the world in connection with the Website(s). Where Moore-Wilson pays any such sums, the Client undertakes to reimburse such sums to Moore-Wilson immediately on demand.



The Client undertakes to keep secure from third parties any passwords issued to the Client by Moore-Wilson in connection herewith.

The Client undertakes fully to virus-check all Material supplied to Moore-Wilson pursuant to this Agreement.

The Client undertakes to ensure that no Inappropriate Material is uploaded to the Website(s) by the Client or any of its employees or agents.

The Client warrants, represents and undertakes in relation to all Material which it requests Moore-Wilson to post on a Website(s) that:

- no such Material shall be Inappropriate Material; and
- no such Material shall contravene Netiquette; and

the Client either has sole ownership of all Intellectual Property Rights in such Material in each jurisdiction from which the Website(s) may be accessed and/or has obtained full and effective licence(s) from all relevant third parties allowing the Client to use relevant Material and to permit its dissemination worldwide by Moore-Wilson hereunder.

The Client warrants, represents and undertakes not to embark on any course of action, whether by use of the Services or any other means, which: may cause a disproportionate level of Website(s) activity without providing at least three days prior notice in writing to Moore-Wilson.

For the avoidance of doubt, the Client undertakes to advise Moore-Wilson on an ongoing basis of its marketing activities; makes use of the Services to an extent or in a manner which in Moore-Wilson's reasonable opinion is excessive, wasteful or otherwise to the detriment of Moore-Wilson, any of Moore-Wilson's customers or any other third party, including but not limited to, contravening Netiquette.

Personnel:

Neither party will, without the prior written consent of the other party, during the course of this Agreement or within 6 months of its completion, solicit, employ or make any offer of employment to any member of the other's employees or agents. In the event of a breach of this clause, the defaulting party shall pay to the other a sum equal to 6 months' gross salary including benefits in kind or such lesser sum as the parties may agree.

This sum will be payable by way of liquidated damages and is agreed by the parties to represent fair compensation in such event. Moore-Wilson will use its reasonable endeavours to maintain continuity in the staff engaged to provide the Services.

**Entire Agreement:**

This document constitutes an agreement between the parties and supersedes all other prior agreements between the parties for the provision of the services described in the Hosting Service Level Agreement.

Severability:

The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions.

Changes to the Agreement:

All changes to this Agreement must be approved in writing by authorised officials of both parties. All SLA (Service Level Agreement) change requests made by The Client will be reviewed and considered by Moore-Wilson. An estimate of the time and work effort for implementing the change request will be presented to The Client. The SLA Change Request, if approved, is then to be incorporated into this Service Level Agreement



9 termination

Termination for Convenience:

Either party may terminate this agreement at any time by giving 30 days written notice to the other party. Email notification to be accepted by both parties as written notice.

Termination for Cause:

Without prejudice to the other rights and remedies which the parties may have, if either party fails to perform its obligations under this Agreement, and within 30 days of receiving written notice describing such failure fails to remedy such failure, then this Agreement may be terminated forthwith.

Payment on termination:

In the event of termination of this Agreement for any cause, Moore-Wilson will continue to be paid up to the effective date of termination for any fees or expenses due for services delivered up to that date.