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	Page 1 of 25

**STORETEC SERVICES LIMITED****STANDARD TERMS OF AGREEMENT****2023**

## CONTENTS

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### CLAUSE

1.	Interpretation .....	1
2.	Application of conditions .....	5
3.	Effect of Customer order.....	6
4.	Supplier's obligations .....	6
5.	Customer's obligations .....	7
6.	Change control .....	8
7.	Charges and payment .....	9
8.	Intellectual Property Rights .....	11
9.	Confidentiality and Supplier's property and compliance with policies .....	12
10.	Customer Data .....	14
11.	Limitation of liability .....	17
12.	Termination.....	18
13.	Force majeure .....	21
14.	Waiver.....	21
15.	Rights and remedies .....	21
16.	Severance .....	21
17.	Entire agreement .....	22
18.	Assignment.....	22
19.	No partnership or agency .....	22
20.	Third party rights .....	22
21.	Notices .....	23
22.	Governing law.....	23
23.	Jurisdiction .....	23
24.	Authorisation .....	23

**1. Interpretation**

The definitions and rules of interpretation in this condition apply in these terms and conditions.

**1.1 Definitions:**

- Blank Image** is an image deemed by the capture process to have no discernible useful content, typically an A4 size image scanned at 200DPI would be considered blank if the image data size was below 200 bytes.
- Box** any box, container or receptacle sent by the Customer for storage or scanning.
- Charges** the charge rates for all services or items to be paid by the Customer in accordance with these Conditions.
- Contract** the Customer’s acceptance of the Proposal (whether orally or in writing) and the Supplier’s acceptance to deliver the Services detailed under clause 3. Can be referred to as the Agreement.
- Customer** the person, firm or company who purchases Services from the Supplier.
- Customer Data** the data inputted by the Customer, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
- Customer Contact** the Customer’s representative for the Services appointed in accordance with clause 5.1.1.
- Customer Materials** Any Items provided by the Customer, including but not limited to: paper documents, data, images, negatives, glass photo plates, databases, files, boxes, removable media, hard drives, microfilm, microfiche, acetates and

aperture cards.

**Data Image**

is a scanned impression of one side of a sheet or page.

**Data Unit – FreeDocs  
Cloud Admissibility  
Management**

is the unit of charge being either 1 Gigabyte of FreeDocs data space or 24,000 Data Images.

**Data Protection  
Legislation**

the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deliverables**

all products and materials developed by the Supplier in relation to any of the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Document Handling**

is a term used to describe all actions and time spent handling, moving, checking, removing bindings, inserting documents, removing documents, adding control sheets, scanning, repacking or reconstituting paper documents.

**FreeDocs**

the Cloud-based document management system designed and developed by the Supplier, of which the Customer may be registered by the Supplier as an authorised user. FreeDocs is a secure system hosted in the UK using Amazon AWS. It is an encrypted

system, meaning, it is virtually impossible for electronic document security to be compromised. FreeDocs is operated as a 'Software as a Service' or 'Subscribeware' software license and delivery model a subscription based software.

## **GDPR**

European General Data Protection Regulation (EU GDPR). This regulation was approved on April 14, 2016, by the European Parliament and the Council of Europe. It will be applied directly in each country, EU or non-EU (which stores European citizens' personal data), allowing for a consistency of rules between nations on the rights of citizens' privacy

## **i-Trac**

the records management system designed and developed by the Supplier, of which the Customer may be an authorised user. i-Track is used for managing archive box storage.

## **Image Preparation**

is a term used to describe all activities and time spent in the manipulation, indexing, database building, checking and uploading of all images.

## **Invalid Data Image**

is a scanned image that contains no useful data, typically an invalid data image can result from bleed through, hole punch marks, shaded or coloured background, dirty documents, paper creases and tears.

## **Intellectual Property Rights**

patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in

each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

<b>Mandatory Policies</b>	the Supplier's business policies referred to in these terms, and controlled, or amended by the Supplier.
<b>Permanent Withdrawal</b>	applies to any item that will not be returned to, or is to be permanently removed from the Supplier.
<b>Proposal</b>	the initial pricing and project description document, which is based on information provided orally or in writing by Customer, and/or seen by the Supplier during any onsite visit to the Customer. All volumes and total Charges are estimates as the actual volume, and therefore the total of all Charges, will remain unknown until project completion.
<b>Services Proposal</b>	the plan describing the Services and setting out any estimated timetable and responsibilities of each of the parties for, or in connection with, the provision of the Services by the Supplier in accordance with the Contract. This may be included in the Proposal document.
<b>Services</b>	the services to be provided by the Supplier under this Contract.
<b>Standard Box</b>	is a storage box up to 1.3 cubic feet and/or 12 kilograms and/or 2,000 Data Images.
<b>Supplier</b>	Storetec Services Limited, UK Company Registration Number 4719444.
<b>Supplier Project</b>	the Supplier's internal project manager for the

**Manager** Services, appointed in accordance with clause 4.3.

**VAT** UK value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to writing or written includes faxes but not email.
- 1.9 References to conditions and Schedules are to the conditions and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## **2. Application of Conditions**

2.1 These conditions shall:

- 2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of the order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

### **3. Effect of Customer Order**

The Customer's order (whether oral or in writing) constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the order by the Supplier, or the Supplier's commencement or execution of work pursuant to the order, shall establish a Contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern this agreement.

### **4. Supplier Obligations**

4.1 The Supplier shall use reasonable endeavours to manage and complete the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Proposal.

4.2 The Supplier shall use reasonable endeavours to any agreed performance dates, but any such dates shall be estimates only, and time shall not be of the essence of the Contract unless agreed in writing.

4.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the Services, but may replace him/her from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 In providing the Services, the Supplier shall:

4.4.1 hold all Customer Materials, supplied by the Customer to the Supplier in safe custody and where applicable in accordance with the British Standard



ISO27001, maintain the Customer Materials in good condition until returned to the Customer, destroyed with the consent of the Customer or entered into ongoing storage;

4.4.2 keep each set of items separately and distinctly from any other set of items, and each set of items shall be kept in such a manner so that they are readily identifiable from any other kind held by the Supplier on behalf of the Customer;

4.4.3 scan ALL Customer Materials received from the Customer, in accordance with procedures as set out in the Supplier Procedures Manual, the basis of which is the BSI Standard BIP0008, "The Evidential Weight and Legal Admissibility of Information stored electronically" if scanning is applicable and has been noted in the Proposal."

## **5. Customer obligations**

5.1 The Customer shall:

5.1.1 co-operate with the Supplier in all matters relating to the Services and appoint the main Customer Contact, who shall have the authority to contractually bind the Customer on matters relating to the Services;

5.1.2 provide, in a timely manner, such access to the Customer's premises and data, information, and such office accommodation and other facilities, as is requested by the Supplier;

5.1.3 provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any

person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

- 5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the first collection of Customer Materials, to the expiry of twelve months after, the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier, except that the Customer shall not be in breach of this clause 5.3 if it hires an employee or sub-contractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of the Supplier, except that the Customer shall not be in breach of this condition 5.3 if it hires an employee or sub-contractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of the Supplier.
- 5.4 Any consent given by the Supplier in accordance with clause 5.3 shall be subject to the Customer paying to the Supplier on demand a sum equivalent to 25% of the then, current annual remuneration of the Supplier's employee, if higher, 25% of the annual remuneration to be paid by the Customer to such employee.

## **6. Change control**

- 6.1 The Customer Contact and the Supplier's Project Manager shall discuss matters relating to the Services if any deviation from the project outlined in the Proposal document is found to exist, or for any other reasons as may be agreed between the parties. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing or via email.
- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 6.2.1 the likely time required to implement the change;
  - 6.2.2 any variations to the Supplier's Charges arising from the change;
  - 6.2.3 the likely effect of the change the Services Proposal and

6.2.4 any other impact of the change on the terms of the Contract.

6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing or via email on the necessary variations to its Charges and any other relevant terms of the Contract to take account of the change.

## **7. Charges and Payment**

7.1 The Supplier will invoice the Customer for the Services provided at the Charges detailed in the Proposal, or any other rates as amended or agreed from time to time in accordance with the Contract. The Supplier will invoice the Customer for the actual amount of Services provided to the Customer at the each calendar month, or on completion of the Services to be delivered.

7.2 The Customer agrees to pay the Charges within thirty [30] days of the date of the invoice, unless otherwise agreed in writing by the Supplier.

7.3 The Supplier reserves the right to vary the Charges at annual intervals. The Supplier reserves the right to vary the Charges when conditions beyond the Supplier's reasonable control affect the base cost, including minimum wage increases and any other material costs.

7.4 The Supplier shall invoice the Customer monthly in arrears.

7.5 The Supplier will in addition charge for extra Services provided to the Customer. Exception Charges will apply for any, extra collections, vehicle fuel supplements, pro-rata Charges for non-standard Boxes, temporary storage, Permanent Withdrawal, data transfers, removal of Invalid Data Images, additional quality checking, IT time, database configuration, database modification, re-compression of images, conversion of images for text search, additional courier costs, application set up fees, additional document handling time, software development and failed collections.

7.6 If the Customer is provided with a credit against its account, to offset an incumbent provider's termination or Permanent Withdrawal charges, and/or any initial Services

provided without charge, the Customer agrees that the Supplier shall hold the cost of the credit or without charge Services on the Customer's account. If the Customer or Supplier terminates this Agreement for any reason, the cost of the corresponding credit together with the cost of any Services provided without charge, plus interest, will be re-charged to the Customer's account, which must be settled in full prior to exit or removal of items.

- 7.7 Data Images and Invalid Data Images will be charged at the rates detailed in writing. The Supplier may, at its discretion, remove some Invalid Data Images during quality assurance procedures, unless otherwise instructed by the Customer. The Customer should note the number of images charged and the images released/returned may differ.
- 7.8 Unauthorised Box storage will be charged to the client on a weekly basis at the rate of £0.50 per standard storage Box.
- 7.9 The Supplier will charge an hourly rate for certain Services as noted on the Proposal or as otherwise agreed. The total number of hours charged will increase by a fixed ratio to cover work completed by senior team members, supervisors and managers whose hourly rate is higher than standard production employees.
- 7.10 Following the completion of the scanning process any paper documentation not authorised, in writing or via email, by the Customer for destruction will be placed in storage and will attract storage charges.
- 7.11 Without prejudice to any other right or remedy that the Supplier may have if the Customer fails to pay the Supplier on the due date the Supplier may:
- 7.11.1 charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
  - 7.11.2 suspend all Services until payment has been made in full; and
  - 7.11.3 if payment still has not been made thirty [30] days after the due date, the Supplier may terminate this Agreement and commence recovery actions

for all Charges already made and those relating to termination and Permanent Withdrawal.

- 7.12 Time for payment shall be of the essence of the Contract.
- 7.13 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.14 Permanent Withdrawal Charges will apply when a Box, microfilm/microfiche cabinet, database or image is to be removed from the Supplier, or Suppliers' software systems, regardless of whether the removal occurs during the Contract term, at the end of the Contract term, expiry of the Contract, or as a result of Contract termination. Permanent Withdrawal is a charge for each item to be withdrawn from the Supplier and does not include retrieval, handling, shredding, deletion or return, which are charged in addition to Permanent Withdrawal.
- 7.15 All amounts due under this Agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 7.16 It is the Suppliers duty of care to ensure that all Customer Materials are safe and secure. Integrity checks are carried out, by the Supplier, during standard operational procedures involving the movement of boxes and dedicated box integrity audits. The Supplier will use its best endeavours to maintain suitable environmental conditions and safe handling of all stored boxes. A box is considered damaged if it has been torn, punctured, suffered crush damage, shows signs of water damage, has any damage to the lid or base, or shows any sign of structural failure. The Supplier will replace the box and repackage the contents to ensure future safety and security of the Customer Materials. The associated Charges will be invoiced to the Customer.

## **8. Intellectual Property Rights**

- 8.1 All Intellectual Property Rights and all other rights in FreeDocs and metadata and the metadata tables and i-Track are owned by the Supplier and no rights whatsoever

other than those set out in this clause 8 shall be granted. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of FreeDocs (and/or i-Track if agreed in writing by the Supplier) and the Services as is envisaged by the parties. If the Supplier terminates the Contract under clause 12.1, this licence will automatically terminate.

- 8.2 The Customer acknowledges that the Customer's use of any third party rights required in connection with the Services is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 8.3 Any Intellectual Property Rights in any discoveries, inventions, improvements, designs, drawings, calculations, formulae and other technical information, goods or items whether patentable or not, and in the whatsoever form, including, without limitation, any software made, discovered or developed by the Supplier, in the course of or by reason of performance of the Services, and all Intellectual Property Rights used in the provision of the Services, shall be and remain the absolute property of the Supplier at all times.

## **9. Confidentiality and Supplier's property and compliance with policies**

- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 9.2 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 be deemed to include information that:

- 9.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 9.2.2 was in the other party's lawful possession before the disclosure;
  - 9.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 9.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 9.3 Subject to clause 9.5, each party shall hold the other's Confidential Information in confidence and 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.
- 9.4 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.
- 9.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.6 All Customer Materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 9.7 The above provision of this clause 9 shall survive termination of the Contract, however arising.

9.8 In performing its obligations under this Agreement the Customer shall comply with the Mandatory Policies.

## **10. Customer Data**

10.1 The Customer shall own all right, title and interest in all of the Customer Materials and Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. All metadata created by the Supplier will remain the property of the Supplier.

10.2 The Supplier shall follow its internal procedures for handling Customer Data and will at all times comply with ISO27001. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with internal procedures. The Supplier 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 the Supplier to perform Services related to Customer Data and back-up for which it shall remain fully liable under clause 10.9).

10.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.4 The Supplier shall retain a copy of the Customer Data for 12 months after the completion of Services, unless otherwise requested by the Customer. If the Customer Data is stored within FreeDocs, the Customer Data will be retained until the Customer's subscription to FreeDocs ceases.

10.5 The parties acknowledge that:

10.5.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.



- 10.5.2 Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 10.5.3 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement.
- 10.6 Without prejudice to the generality of clause 10.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.
- 10.7 Without prejudice to the generality of clause 10.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- 10.7.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 10.7.2 not transfer any personal data outside of the European Economic Area and the United Kingdom, nor between the European Economic Area and the United Kingdom, unless the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

- (b) the data subject has enforceable rights and effective legal remedies;
  - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 10.7.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 10.7.4 notify the Customer without undue delay on becoming aware of a personal data breach;
- 10.7.5 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- 10.7.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Company if, in the opinion of the VAR, an instruction infringes the Data Protection Legislation.
- 10.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and Services,

ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- 10.9 The Customer consents to the Supplier appointing a third-party processor of personal data under this Agreement, if the Supplier deems it necessary. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement, substantially on that third party's standard terms of business, or incorporating terms which are substantially similar to those set out in this clause 10, and in either case which the VAR confirms or undertakes, and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.
- 10.10 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme, which shall apply when replaced by attachment to this Agreement.

## **11. Limitation of Liability**

- 11.1 The following provisions set out the entire financial liability of the Supplier, including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors, to the Customer in respect of:
- 11.1.1 any breach of the Contract howsoever arising;
  - 11.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and
  - 11.1.3 any representation, misrepresentation, whether innocent or negligent, statement or tortious act or omission, including without limitation negligence, arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes the liability of the Supplier:

11.3.1 for death or personal injury caused by the Supplier's negligence; or

11.3.2 for fraud or fraudulent misrepresentation.

11.4 Subject to clause 11.2 and clause 11.3:

11.4.1 the Supplier shall not in any circumstances be liable, whether in tort, including without limitation for negligence or breach of statutory duty howsoever arising, Contract, whether innocent or negligent, or otherwise for:

- (a) loss of profits; or
- (b) loss of business; or
- (c) depletion of goodwill or similar losses; or
- (d) loss of anticipated savings; or
- (e) loss of goods; or
- (f) loss of Contract; or
- (g) loss of use; or
- (h) loss or corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages or expenses.

11.4.2 the Supplier's total liability in Contract, tort, including without limitation negligence or breach of statutory duty howsoever arising, misrepresentation, whether innocent or negligent, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £5,000,000 which represents the upper limit of the Supplier's insurance.

## **12. Termination**

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- 12.1.1 the other party fails to pay any invoiced amounts due under this Agreement on the due date for payment and remains in default not less than [seven] days after being notified in writing to make such payment;
- 12.1.2 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 28 days after being notified in writing to do so;
- 12.1.3 the other party 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;
- 12.1.4 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;
- 12.1.5 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 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;
- 12.1.6 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 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;
- 12.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
- 12.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

- 12.1.9 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;
  - 12.1.10 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;
  - 12.1.11 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 12.1.4 to clause 12.1.10 (inclusive);
  - 12.1.12 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 12.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 12.3 Termination of this Agreement shall not affect 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. In addition:
- 12.3.1 the Customer also agrees to pay for any costs arising from the retrieval of all Items, including Boxes and Customer Data. Together with the applicable rates for Box retrieval, Box handling, Permanent Withdrawal, document destruction, permanent deletion, encryption, palletisation, shrink wrap, supply of removeable media, and return of Customer Materials.
  - 12.3.2 The Customer will pay the Supplier at the point of the termination all amounts due but not yet paid in respect of all Services provided prior to releasing Customer Materials.

## **13. Force Majeure**

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, whether involving the workforce of the Supplier or any other party, failure of a utility service or transport network, fuel shortage, act of God, terrorism, 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.

## **14. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **15. 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.

## **16. Severance**

16.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

16.2 If any provision or part-provision of this Agreement is deemed deleted under clause 16.1, the parties shall negotiate in good faith to amend such provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **17. Entire Agreement**

- 17.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, any purchase orders that may be purported to apply, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **18. Assignment**

- 18.1 Either party may at any time assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

## **19. No Partnership or Agency**

Nothing in the Contract is intended to, or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way, including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power.

## **20. Third Party Rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.



## **21. Notices**

21.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:

21.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or

21.1.2 sent by fax to its main fax number.

21.2 Any notice or communication shall be deemed to have been received:

21.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

21.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting, or at the time recorded by the delivery service;

21.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission.

21.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this condition, writing shall not include email.

## **22. Governing law**

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

## **23. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation, including non-contractual disputes or claims.