

**STORETEC<sup>®</sup>**

**TERMS OF SERVICE**

Revision 6, 11/03/2024



## **1. Interpretation**

The definitions and rules of interpretation in this clause 1 apply in these Terms.

### **1.1 Definitions:**

<b>Blank Image</b>	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 is below 5 kilobytes).
<b>Box</b>	any box, container or receptacle sent by the Customer for storage or scanning.
<b>Charges</b>	the charge rates for all services or items as set out in Appendix 1, to be paid by the Customer in accordance with these Terms.
<b>Contract</b>	where the Customer agrees to proceed with the Services on the basis of the Proposal (whether orally or in writing) and the Supplier agrees to deliver the Services as detailed under clause 2, the Proposal, these Terms and all the Appendices to these Terms.
<b>Customer</b>	the person, firm or company who purchases Services from the Supplier.
<b>Customer Data</b>	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.
<b>Customer Contact</b>	the Customer's representative for the Services appointed in accordance with clause 5.1.1.

<b>Customer Materials</b>	any Items provided by the Customer to the Supplier which form the subject of the Services, 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.
<b>Data Controller</b>	is as defined in the Data Protection Legislation;
<b>Data Image</b>	is a scanned impression of one side of a sheet or page.
<b>Data Processor/ Sub Processor</b>	is as defined in the Data Protection Legislation;
<b>Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR and the Data Protection Act 2018 (and regulations made thereunder)
<b>Data Subject</b>	has the meaning given in the Data Protection Legislation;
<b>Deliverables</b>	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).
<b>Document Handling</b>	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.

<b>Instructions</b>	the orders, tasks and responsibilities contemplated in the Contract for providing the Processing Operations.
<b>i-Trac</b>	the records management system designed and developed by the Supplier, of which the Customer may be an authorised user. i-Trac is used for managing archive box storage.
<b>Image Preparation</b>	is a term used to describe all activities and time spent in the manipulation, indexing, database building, checking and uploading of all images.
<b>Intellectual Property Rights</b>	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 or unfair competition, 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 Appendix 5 of these terms, and controlled, or amended by the Supplier.
<b>MDI Cloud</b>	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. MDI Cloud is a secure system hosted in the UK using Amazon AWS and is delivered as a 'Software as a Service' (SaaS) using a software licensing model.

**Permanent Withdrawal** applies to any item that will not be returned to, or is to be permanently removed from, the Supplier.

**Personal Data** is as defined in the Data Protection Legislation.

**Process, Processed or Processing** is as defined in the Data Protection Legislation.

**Proposal** 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 scanning is complete.

**Regulator** the UK Information Commissioner's Office.

**Services** the services to be provided by the Supplier under this Contract.

**Standard Box** is a storage box up to 1.3 cubic feet and/or 12 kilograms and/or 2,300 Data Images.

**Supplier** Storetec Services Limited, UK Company Registration Number 04719444.

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| <b>Supplier Project Manager</b> | the Supplier's internal project manager for the Services, appointed in accordance with clause 4.3. |
| <b>Term</b>                     | the term of the Contract as referred to in clause 3.   |
| <b>Terms</b>                    | these Terms of Service.  |
| <b>VAT</b>                      | UK value added tax chargeable for the time being and any similar additional tax.                   |
- 1.2 Clause, Appendix and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A person encompasses natural persons, companies, and unincorporated bodies, regardless of 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, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to 'writing' or 'written' refers to email communication and traditional mail correspondence but not faxes.
- 1.8 References to a clause and an Appendix are to the clauses and Appendices of these Terms and references to paragraphs are to paragraphs of the relevant Appendix.

## **2. The Contract**

- 2.1 The Customer's order (oral or written) Customer's order, whether oral or written, constitutes an offer to purchase the specified Services on the terms of the Proposal and these Terms, including the Appendices. The Contract shall come into existence upon the Customer signing and returning this Contract or upon the Customer supplying Customer Materials to the Supplier in connection with provision of Services under this Contract.
- 2.2 These Terms shall apply to and be incorporated in the Contract and prevail to the exclusion of any other terms that the Customer seeks to impose or incorporate in, or referred to in, the Customer's purchase order, confirmation of the order, or specification or otherwise, or implied by law, trade custom, practice or course of dealing.
- 2.3 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. Term**

- 3.1 The Contract shall remain in force for 12 months from the Commencement Date and shall continue thereafter (unless terminated earlier in accordance with its terms), renewing for successive periods of 12 months from each anniversary of the Commencement Date, unless and until terminated by not less than 90 days' written notice given by either party.

## **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, materially in accordance with the Proposal. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

- 4.2 The Supplier shall use reasonable endeavours to perform the Services by 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 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 in safe custody and where applicable in accordance with the British Standard ISO27001, and maintain the Customer Materials in good condition until returned to the Customer, or destroyed with the consent of the Customer.
  - 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, in accordance with procedures as set out in the Supplier Procedures Manual, the basis of which is the BSI Standard BS EN 10008, "Evidential Weight and Legal Admissibility of Electronic Information" if scanning is applicable and has been provided for 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 required by the Supplier for the performance of the Services; and
  - 5.1.3 provide in a timely manner such information as the Supplier may reasonably 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 or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 5.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 5.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause; and

5.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

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 termination of the Contract for any reason, 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 and was engaged in the provision of the Services to a material extent, 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 at 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, or, 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 Services outlined in the Proposal is found to exist, or for any other reasons as may be agreed between the parties.

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 on the 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 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 end of each calendar month, or on completion of the Services to be delivered if a lesser period.
- 7.2 The Customer agrees to pay the Charges within thirty (30) days of the date of receipt of the invoice, unless otherwise agreed in writing by the Supplier.
- 7.3 The Supplier will conduct a review of the Charges on each 1<sup>st</sup> of April following the commencement date of the contract. The Supplier reserves the right to adjust the Charges at any time. Any adjustments shall be based on the greater of the following, unless mutually agreed upon by the Customer:

- 7.3.1 The percentage increase in the Consumer Prices Index in the preceding 12-month period which shall be based on the latest available figure for the percentage increase in the Consumer Prices Index; or;
- 7.3.2 A fixed increase of 3% on all Charges under the Contract.
- 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. Additional Charges will apply for any extra collections, vehicle fuel supplements, pro-rata Charges for non-standard Boxes, temporary storage, Permanent Withdrawal, data transfers, additional quality checking, removal of Blank Images or Data Images upon request, 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 amount of such credit or without charge Services on the Customer's account. If the Customer or Supplier terminates the Contract for any reason, the amount of any such credit together with the cost of any Services provided without charge, plus interest if applicable, will be re-charged to the Customer , and must be settled in full prior to exit or removal of items.
- 7.7 Data Images, including Blank Images, will be charged at the rates detailed in writing. The Supplier will not remove Blank Images, unless instructed otherwise by the Customer.

- 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.
- 7.10 Following the completion of the scanning process, any paper documentation not specifically authorised in writing 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 suspend all Services until payment has been made in full;
  - 7.11.2 terminate the Contract under clause 11.1.1 and commence recovery actions for all Charges already made and those relating to termination and Permanent Withdrawal.
- 7.12 In the event payment is not made within thirty (30) days of the due date of the invoice, unless there is a bona fide complaint or issue with the invoice, which the Supplier has been made aware of prior to the due date for payment of the invoice, the Supplier may:
- 7.12.1 charge the Customer interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.12.1 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - 7.12.2 charge a late payment fee of 3% per month of the outstanding balance, applicable from the due date for payment specified on the invoice.

- 7.13 Time for payment shall be of the essence of the Contract.
- 7.14 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, notwithstanding any other provision of the Contract. This is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.15 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 Term, at the end of the Term, 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.
- 7.16 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.
- 7.17 The Supplier will use best endeavours to ensure safe storage and handling of all boxes. Damaged boxes, defined by tear, puncture, crush, water damage, lid/base impairment, or structural failure, are promptly replaced and contents repackaged for future security. Charges for replacement are invoiced to the Customer.
- 7.18 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the

Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

## **8. Intellectual Property Rights**

- 8.1 All Intellectual Property Rights and all other rights in MDI Cloud and any associated metadata and the metadata tables and i-Trac are owned by the Supplier and no rights whatsoever other than those set out in this clause 8 shall be granted therein or thereto. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis but only to such extent as is necessary to enable the Customer to use the Services in accordance with the Contract. If the Contract terminates for any reason, this licence will automatically terminate.
- 8.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.1.
- 8.3 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.
- 8.4 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 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, Supplier Property and Compliance, and Data Protection**

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. 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 concerning the business, affairs, customers, clients or suppliers of the other party in the course of performance of the Services or otherwise under the Contract (**Confidential Information**). 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; or

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 the Contract.
- 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 Contract.
- 9.5 A party may disclose Confidential Information of the other party 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 and means of such disclosure.
- 9.6 All 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 Contract or 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 Supplier shall comply with the Mandatory Policies.

9.9 Appendix 2 sets out the party's obligations in relation to Personal Data comprised within the Customer Materials.

## **10. Limitation of Liability**

10.1 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).

10.2 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:

10.2.1 any breach of the Contract howsoever arising;

10.2.2 any use made by the Customer of the Services, the Deliverables or any part of them; and

10.2.3 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.

10.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. In particular, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.4 Nothing in these conditions excludes any liability of the Supplier which cannot legally be limited including:

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

10.4.2 for fraud or fraudulent misrepresentation.

10.5 Subject to clause 10.4:

10.5.1 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, misrepresentation (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 information assets; or
- (f) loss of contract; or
- (g) loss of use; or
- (h) any special, indirect, consequential or economic loss, costs, damages or expenses.

10.5.2 the Supplier's total liability, whether in tort, including without limitation for negligence or breach of statutory duty howsoever arising, contract, misrepresentation (whether innocent or negligent), or otherwise, shall be subject to the following limitation:

- (a) the aggregate liability under the Contract shall be limited to a maximum of three times (3x) the charges associated with the Contract for its first year.

10.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **11. Termination**

11.1 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:

11.1.1 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;

11.1.2 the other party commits a material breach of any other term of the Contract 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;

11.1.3 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 1986J;

- 11.1.4 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;
- 11.1.5 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;
- 11.1.6 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;
- 11.1.7 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;
- 11.1.8 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;
- 11.1.9 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;

- 11.1.10 the other party's financial position deteriorates to such an extent that, in the terminating party's reasonable opinion, the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 11.1.11 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 11.1.3 to clause 11.1.10 (inclusive).
- 11.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 11.3 Termination of the Contract 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 Contract which existed at or before the date of termination. In addition and whatever the reasons for termination:
- 11.3.1 the Customer agrees to pay for any costs arising from the retrieval of Customer Materials, including Boxes and Customer Data, including all applicable charges for Box retrieval, Box handling, Permanent Withdrawal, document destruction, permanent deletion, encryption, palletisation, shrink wrap, supply of removeable media, and return of Customer Materials;
  - 11.3.2 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 release by the Supplier of Customer Materials; and

11.3.3 in case of termination due to Supplier insolvency or inability to fulfil the terms of the Contract, all Customer Data will be returned within 30 days. It will be returned securely through SFTP or encrypted USB drive..

## **12. Force Majeure**

Neither party shall have any liability to the other under the Contract if 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 party in question 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.

## **13. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

## **14. Rights and Remedies**

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

**15. Severance**

- 15.1 If any provision or part-provision of the Contract 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 the Contract.
- 15.2 If any provision or part-provision of the Contract is deemed deleted under clause 15.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, it achieves the intended commercial result of the original provision.

**16. Entire Agreement**

- 16.1 The Contract 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.
- 16.2 Each party acknowledges that, in entering into the Contract, 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 the Contract.
- 16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**17. Assignment**

- 17.1 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.



**18. 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.

**19. Third Party Rights**

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

**20. Notices**

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

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

20.1.2 sent by email to an agreed contact, as listed in Appendix 4.

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

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

20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business (**Business Day**) after posting, or at the time recorded by the delivery service;

20.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.

20.3 This clause 20 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.

## **21. Contacts & Escalation**

21.1 The Supplier shall provide a list of contacts for enquiries and issue escalation, which is attached hereto as Appendix 4.

21.2 It is agreed that all complaints should be made in writing to the Supplier through the agreed process as set out by the terms of the Complaints and Escalation Policy, which is a mandatory policy under this Agreement and shall be available to the Customer upon request, as stated in Appendix 5.

## **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 exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation, including non-contractual disputes or claims.