



# Box-it Group

Terms and Conditions for the provision of  
Records Management Services

**box-it**<sup>®</sup>

Storage / Scanning /  
Shredding / Out-Sourcing

**Terms and Conditions**

**1 INTERPRETATION**

1.1 In these Terms and Conditions (**Terms**) the following definitions and rules of interpretation apply:

**Aggregate Archive:**The total number of all Boxes stored by the Company as part of the Storage Services during any twelve (12) month period (including any Boxes which are the subject of a Retrieval);

**Authorised Users:**those employees, agents and independent contractors and clients of the Customer who are authorised by the Customer to use the Digital Services

**Box:** A box containing physical Customer Materials;

**Company:** the company specified in the Schedule of Work as the provider of the Services and/or Consumables;

**Company Materials:**All documents, information and materials provided by the Company relating to the Services which existed prior to the commencement of the Contract and/or were generated independently of the Contract including computer programs, data, reports and specifications;

**Consumables:**The storage boxes, labels, shredding sacks and tags, recycling secure containers and other consumable items or any part of them which the Company provides or agrees to provide to the Customer;

**Contract:** any contract between the Company and the Customer for the supply of the Services and/or Products, incorporating these Terms and the Schedule of Services and formed in accordance with clause 3.3;

**CPI:**the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles the Consumer Prices Index;

**Customer:** the person, firm or company who purchases the Services and/or Consumables from the Company;

**Customer Materials:** All documents, information and materials provided by the Customer relating to the Services including computer programs, data, reports and specifications;

**Deliverables:** The deliverables set out in the Schedule of Services produced by the Company for the Customer;

**Digital Processing Services:** The services provided to create digital content from scanned paper documents or digital documents sent to the Company as specified in the Schedule of Services;

**Digital Services:** The cloud based services made available by the Company to the Customer under the Contract as specified in the Schedule of Services.

**Effective Date:** The date specified as such in the Schedule of Services or if not specified the date an order for Services is accepted in accordance with clause 3.3;

**Exit:**A Retrieval made in the circumstances set out in clause 7.3;

**File:**A file, folder or other Customer Materials contained within a Box which is stored by the Company as part of the Storage Services;

**Intellectual Property Rights:** Patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Permanent Retrieval:**A Retrieval other than an Exit where the Customer notifies the Company in writing at the time of making the Retrieval that the Customer does not intend to make a Return;

**Prohibited Material:**Any material which: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal, hazardous, a risk to health and safety or causes damage or injury to any person or property;

**Reference Number:** The number allocated by the Company to these Terms and Conditions and all related Schedules;

**Schedule of Services:** the Company's schedule of services which may be attached to these Terms containing details of the Services, delivery and charges;

**Services:** The services to be provided by the Company under the Contract as more particularly described in the Schedule of Services including any Digital Services, Digital Processing Services and Storage Services the Company provides or agrees to provide to the Customer together with any other services which the Company provides or agrees to provide to the Customer;

**Storage Services:** the service of storing Boxes as more particularly described in the Schedule of Services;

**Term:** The period from the Effective Date until termination of the Contract;

**Third Party Software:** Software programs used in the delivery of the Services which are proprietary to third parties;

**User Licences:**the User Licences purchased by the Customer from time to time which entitle Authorised Users to access, manage and use the Services in accordance with the Contract;

**Viruses:** any worms, trojan horses, viruses and other similar things or devices (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of or access to any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; and

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. Reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 A reference to **writing** or **written** includes e-mail or on line communication through the Digital Service but excludes fax communication.

1.4 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2 APPLICATION OF TERMS**

2.1 These Terms shall: (i) apply to and be incorporated into each Contract; and (ii) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues, or brochures, are issued or published for the sole purpose of giving an approximate idea of the Consumables and/or Services described in them. They shall not form part of the Contract or have any contractual force.

**3 BASIS OF CONTRACT**

3.1 Each order for Services from the Customer to the Company shall be deemed to be an offer by the Customer to purchase Services in accordance with these Terms.

3.2 These Terms apply to the exclusion of all other terms which the Customer seeks to impose or incorporate, or which are implied by trade, customer, practice or course of dealing.

3.3 No order for Services placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences work to fulfil the order at which point a Contract for the provision of Services under these Terms will come into effect.

3.4 Any quotation given by the Company shall not constitute an offer, and is valid only for the period stated in the Schedule of Services or if no period is stated a period of 30 days from its date, provided that the Company has not previously withdrawn it.

**4 COMMENCEMENT AND DURATION**

4.1 The Contract shall commence on the Effective Date. Unless terminated earlier in accordance with clause 19 or this clause, the Contract shall continue for the initial period specified in the schedule of services (**Initial Term**) and shall automatically extend for 12 months (or such other period as may be specified) (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may terminate the Contract by giving to the other party not less than 3 months written notice (or such other notice period as may be specified below) before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term as the case may be.

**5 SERVICES**

5.1 The Company shall provide the Services, and deliver the Consumables and Deliverables to the Customer, in accordance in all material respects with the Contract.

5.2 The Company shall perform the Services in accordance with any service levels specified in the Schedule of Services.

5.3 Where the Company agrees that a specification is required in respect of all or any part of the Services (**Specification**), the Company shall prepare a draft Specification based on the Schedule of Services and the parties will discuss and use reasonable endeavours to agree the draft Specification. Once the draft Specification is agreed in writing by both parties it will become a schedule to the Schedule of Services and subject to the Contract. If at the Customer's request work commences prior to the Customer accepting the Specification, the Customer is deemed to have accepted the terms of the last version of the Specification issued by the Company.

5.4 Time shall not be of the essence for delivery and any other obligation of the Company under the Contract and shall not be made of the essence by notice.

5.5 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

5.6 The Company shall perform the Services in accordance, in all material respects, with its documented quality management and information security standards. On the Customer's written request, the Company shall make available to the Customer, copies of any ISO accreditation certificates that it holds from time to time.

5.7 The Customer grants the Company a non-exclusive licence to create such digital copies of any Customer Materials as are necessary to enable the Company to provide the Digital Processing Services.

**6 DIGITAL SERVICES**

6.1 Subject to the restrictions set out in this clause 6 and the other terms and conditions of the Contract, the Company hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Digital Services during the Term solely for the Customer's internal business operations.

6.2 In relation to the Authorised Users, the Customer undertakes that: (i) the maximum number of Authorised Users that it authorises to access and use the Digital Services shall not exceed the number of User Licences it has purchased from time to time; (ii) each Authorised User shall keep a secure password for his use of the Digital Services and keep his password confidential; (iii) it shall permit the Company to audit the Digital Services in order to establish the name of each Authorised User.

6.3 The Customer shall not and shall procure that Authorised Users shall not access, store, distribute or transmit any Viruses or any material that is Prohibited Material during the course of its use of the Services. The Company has the right (but not the obligation) to disable the Customer's or any Authorised User's access to any material that breaches this clause 6.3.

6.4 The Customer shall not and shall procure that Authorised Users shall not: (i) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (a) and except to the extent expressly permitted under the Contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the online software applications provided by the Company as part of the Digital Services (**Software**) (as applicable) in any form or media or by any means; or (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or (ii) subject to clause 6.4(i), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Digital Services available to anyone except the Authorised Users, or (iii) attempt to obtain, or assist third parties in obtaining, access to the Digital Services, other than as provided under this clause 6.

6.5 The rights provided under this clause 6 are granted to the Customer only.

6.6 If the Customer wishes to purchase additional User Licences, the Customer shall submit its request to the Company in writing.

**7 STORAGE SERVICES**

7.1 From time to time as part of the Storage Services the Customer may request the retrieval of Boxes or Files from the Company to the Customer via the digital services or as specified in the schedule (a **Retrieval**) and the return of such Boxes or Files from the Customer to the Company (a **Return**). The Company will treat all Retrievals as temporary and has the right (but not the obligation) to reserve space for the Return unless the Retrieval is a Permanent Retrieval.

7.2 Notwithstanding that a Box or File has been retrieved from the Company, unless or until the Retrieval is a Permanent Retrieval or an Exit, the Customer shall pay for the Storage Services in respect of any Box or File that is the subject of a Retrieval.

7.3 A Retrieval is deemed to be an Exit where: (i) the Customer notifies the Company that it wishes a Retrieval to be treated as an Exit; (ii) in any twelve (12) month period ending on the date of the Customer's request, the Customer requests the Retrieval of fifteen per cent (15%) or more of the Aggregate Archive calculated on the date of the Customer's request; (iii) If in any month ending on the date of the Customer's request, the Customer requests Retrieval of five per cent (5%) or more of the Aggregate Archive calculated on the date of the Customer's request; or (iv) the Agreement is terminated.

7.4 Subject to clause 13.9 if the Customer wishes to make a Permanent Retrieval or an Exit it must notify the Company in writing and must pay the Company's charges for the relevant Permanent Retrieval or Exit in force from time to time. The Company may refuse to fulfil a request for an Exit

unless or until, the Company's charges for any Exit and all outstanding invoices have been paid.

7.5 The Customer understands and agrees that: (i) it shall only use boxes supplied or approved by the Company for the storage of Customer Materials as part of the Storage Services; (ii) the total weight of any Box must not exceed 16kg or such other maximum weight as the Company may specify from time to time in line with Health and Safety guidelines for best practice in manual handling; (iii) The Company is only responsible for Boxes filled with Customer Materials which have no or minimal inherent or face value and is not responsible for Boxes containing anything of greater value than the value of paper based on the weight of the contents of the Box; (iv) Boxes must not contain Prohibited Materials; and (v) the Company may refuse to collect or handle in any way a Box which does not comply with the Contract or which the Company reasonably believes contains Prohibited Materials.

**8 SUPPLY OF THIRD PARTY SOFTWARE**

8.1 If the Company supplies or provides any Third Party Software to the Customer then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision.

8.2 The Customer acknowledges that it is the Customer's responsibility to obtain and maintain all necessary licences and consents in relation to any third party software used by the Customer to receive the Services.

**9 CUSTOMER'S OBLIGATIONS**

9.1 The Customer undertakes and agrees without charge or delay to: (i) provide all such co-operation, access, facilities and assistance as the Company may reasonable require to enable the Company (including its employees, agents and sub-contractors) to provide the Services and any Consumables; (ii) provide the Customer Materials and other information as the Company may request and ensure that they are complete and accurate in all respects and the Company shall be entitled to rely on the Customer Materials and other information; (iii) ensure that the Customer's computing environment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant UK standards or requirements; and (iv) comply with such reasonable instructions as the Company may issue from time to time in connection with the Services and the Consumables so that the Company can provide the same to the Customer; and (v) comply with such reasonable instructions as the Company may issue from time to time in connection with the Customer's use of the Services.

9.2 The Company shall be entitled to rely upon the specification and any advice given by the Customer (its employees, directors, agents and sub-contractors) (in relation to the suitability of the Services for meeting the Customer's requirements) such that to the extent that the Services comply with such specification and or such advice then the Company shall be deemed to have supplied the same in accordance with the Contract.

9.3 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**): (i) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Contract 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 to the extent the Customer Default prevents or delays the Company's performance of any of its obligations; (ii) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 9.4; and (iii) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

9.4 The Customer understands and agrees that where the Company purchases goods and/or services for the Customer from a third party the Company shall purchase such goods and/or services as agent for the Customer and it shall be the Customer's responsibility to ensure that such goods and/or services are suitable for its requirements and the Company shall have no responsibility or liability for such goods and/or services (whether for their suitability, performance or otherwise).

9.5 The Customer shall not resell any of the Services to third parties without the Company's prior written consent.

9.6 The Customer agrees that where it is deemed to be a "public authority", as defined in the Human Rights Act 1998, to indemnify fully the Company and its employees and agents for any liability and costs arising from a claim or action brought against the Company for any breach of such Act.

**10 WARRANTIES**

10.1 Each party warrants to the other it has full power and authority to enter into and perform its obligations under the Agreement.

- 10.2 The Customer warrants that it is the owner or authorised licensee of the Customer Materials and that the Company's use of the Customer Materials in accordance with the Contract will not infringe the Intellectual Property Rights or any other rights of any third party.
- 10.3 The Company warrants that the Services and Deliverables will not infringe the Intellectual Property Rights of any third party.
- 10.4 The Customer warrants that it has undertaken a Health and Safety Risk Assessment covering access to its premises by the Company, or its duly appointed persons, for the safe collection and delivery of Customer Materials.
- 11 TITLE AND RISK**
- 11.1 Risk in all Consumables and Deliverables will pass to the Customer on delivery.
- 11.2 Ownership of the Consumables and Deliverables shall not pass to the Customer until the Company has received in cleared funds all sums due to it in respect of the Deliverables and/or Products Provided That, for the avoidance of doubt, ownership of any Intellectual Property Rights in the Deliverables shall not pass to the Customer.
- 12 ORDER FOR CONSUMABLES**
- 12.1 From time to time the Customer may submit orders for Consumables from the Customer and the Company shall be free to accept or decline any such orders at its absolute discretion.
- 13 CHARGES AND PAYMENT**
- 13.1 The Customer will pay the charges for Services and Consumables set out in the Schedule of Services, if no charges are specified, the charges shall be the Company's standard charges as at the date the relevant Services or Consumables are provided. Time for payment shall be of the essence of the Contract
- 13.2 Except as otherwise specified in the Contract any charges contained in the Schedule of Services exclude delivery, packaging, packing, shipping, carriage insurance, value added or other applicable sales tax and other charges and duties, and rescheduling or cancellation charges for the Services which shall be paid by the Customer in addition to the charges payable for the Services and Products.
- 13.3 The Customer may not cancel or reschedule Services once they have been scheduled without the Company's prior written approval which may be conditional on payment of a cancellation fee.
- 13.4 All sums payable to the Company under the Contract shall be paid in cleared funds, within 28 days of the date of the Company's invoice.
- 13.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.
- 13.6 The Customer shall pay all amounts due under the Contract in full without any deductions or withholding (except as required by law).
- 13.7 Subject to clause 13.8, the Company may, increase the charges payable under the Contract on an annual basis with effect from each anniversary of the Effective Date in line with the percentage increase in the CPI in the preceding 12-month period and to reflect any increase in the cost of labour. The first such increase shall take effect at the beginning of the first Extended Term and the percentage increase in the CPI shall be based on the latest available figure for the percentage increase in the CPI at the beginning of the last month of the previous year.
- 13.8 Notwithstanding clause 13.7, at any time during the Term, the Company may, by giving not less than 21 days written notice to the Customer increase the price of the Services to reflect any increase in the cost of the Services that is due to any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, increase in the cost of fuel and increases in labour, materials and other manufacturing costs) and the price increase shall take effect on the expiry of the notice period.
- 13.9 Notwithstanding clause 13.7, the Company reserves the right to review its standard storage and handling charges from time to time and to implement any increases it considers necessary. Any such increases shall be notified to the Customer and shall take effect 21 days after notification. If within the aforesaid 21 days, the Customer does not notify the Company in writing of any objection to such increases, it will be deemed to have accepted them. If, the Customer notifies its objection such increases and exercises its right to terminate the Contract in accordance with clause 4.1 above such increase in charges shall not be applied during the three-month notice period referred to in clause 4.1.
- 13.10 The Company shall have a particular lien as well as a general lien over all Customer Materials deposited with it by the Customer from time to time, entitling the Company to retain the same as security for payment of all and any sums due from the Customer. Charges for the provision of Services shall continue to accrue on any goods detained under lien.
- 13.11 If within six months of the Effective Date: (i) the total number of Boxes stored by the Company for the Customer as part of the Storage Services is fewer than 80% of the number of Boxes that the Customer agreed to place in storage with the Company as specified in the Schedule of Services; or (ii) the volume of Customer Materials provided to the Company for processing as part of the Digital Services is less than 80% of the volume specified in the Schedule of Services, the Company will be entitled to increase its charges for the provision of such Services by giving written notice to the Customer.
- 14 INTELLECTUAL PROPERTY RIGHTS**
- 14.1 The Company acknowledges that the Intellectual Property Rights in Customer Materials are proprietary to the Customer.
- 14.2 Except for Customer Materials, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 14.3 All Company Materials are the exclusive property of the Company.
- 15 CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall keep the confidential information of the other party confidential and shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information: (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 16 LIMITATION OF LIABILITY AND INDEMNITY**
- 16.1 Nothing in these Terms shall limit or exclude the Company's liability for: (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); (iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 16.2 Subject to clause 16.1 the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any: loss of profit; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; loss use or corruption of software, data or information; or any indirect or consequential loss arising under or in connection with the Contract.
- 16.3 Subject to clause 16.1, the Company's total liability to the Customer for any loss of or damage or destruction to any physical Customer Materials while such materials are in the possession or control of the Company shall be limited to damages of an amount equal to one hundred pounds (£100) per tonne of Customer Materials stored on behalf of the Customer. (For the avoidance of doubt for the purposes of this clause 16.3, the weight of a Box will be treated as having both a minimum and maximum weight of 16kg irrespective of its actual weight.)
- 16.4 Subject to clause 16.1, the Company's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate fee paid by the Customer in accordance with the Contract or (where the Contract operates for more than 12 months) the fee shall be deemed to be the average sum paid to the Company in a 12 month period of the Contract.
- 16.5 The Company is not expected to know what each Box contains or its value. It is the Customer's responsibility to obtain and maintain appropriate insurance covering the value of the contents of the Box during transit and storage by the Company (or its sub-contractors or agents) and the Customer shall procure that its insurers waive any right of subrogation against the Company.
- 16.6 Unless otherwise stated in the schedule of services, the Company is not responsible for checking the contents of any Boxes on collection or arrival at the Company's premises. All and any claims made by the Customer in respect of alleged loss, damage or shortage of Customer Materials

- contained in returned Boxes must be notified in writing to the Company within 7 days of the date of the Return in the absence of which the Customer is deemed to have waived all and any rights it has or might have in relation to the alleged loss damage or shortage and the Company shall have no liability to the Customer with respect to such Boxes.
- 16.7 The Customer agrees to indemnify fully and keep indemnified the Company against any claim brought by an employee or former employee of the Company or any of its contractors/suppliers by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as updated from time to time.
- 16.8 The Company shall not be liable to the Customer for any loss or damage to Boxes or Files which are destroyed pursuant to the Customer's (including its employees, agents and sub-contractors) instructions.
- 16.9 Subject to clause 16.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 16.10 This clause 16 shall survive termination of the Contract.
- 17 DATA PROTECTION**
- 17.1 For the purposes of this clause 17 references to "personal data", "data subject", "personal data breach", "processing", "data processor" and "data controller" shall have the meaning specified in the Data Protection Act 1998 or with effect from 25th May 2018 the General Data Protection Regulation (EU) 2016/679 and any legislation replacing or supplementing the same.
- 17.2 Each party shall comply with any applicable data protection, privacy or similar laws anywhere in the world ("**Data Protection Laws**"), including, the Data Protection Act 1998 and the General Data Protection Regulation (EU) 2016/679, that apply in relation to any personal data processed in connection with this Contract, and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other party.
- 17.3 When the Company processes any personal data collected from or about individuals on the Customer's behalf when performing its obligations under this Contract, the parties record their intention that the Customer shall be the data controller in respect of such personal data and the Company shall be the data processor in relation to such personal data and the Company agrees that it will:
- 17.3.1 process such personal data only in accordance with the Customer's written instructions;
- 17.3.2 promptly notify the Customer if the Company receives notice of any complaint or communication which relates to the processing of such personal data or to either party's compliance with Data Protection Laws unless legally prohibited;
- 17.3.3 take appropriate technical and organisational security measures against unauthorised or unlawful processing of such personal data and against accidental loss of or damage to such personal data in accordance with the Seventh Data Protection Principle as set out in the Data Protection Act 1998 and any legislation replacing or supplementing the same, which shall include the measures set out in this Contract;
- 17.3.4 not engage another processor without the prior specific or general written consent of the Customer;
- 17.3.5 as an exception to the requirements of 17.3.4, the Customer agrees that in an emergency situation where disclosure or transfer of such personal data is necessary to preserve the integrity of the personal data, the Company shall be entitled to disclose or transfer such personal data to a third party to the extent only as is required for such purpose. The Company shall inform the Customer of the intended disclosure or transfer, together with the identity of the third party, where possible prior to the event or where pre-notification is not possible as soon as possible after the event, in order to give the Customer the opportunity to object to such disclosure or transfer;
- 17.3.6 ensure that with effect from 25th May 2018 any disclosure or transfer of such personal data to third parties pursuant to clauses 17.3.4 or 17.3.5 shall be made subject to the same data protection obligations as contained in this clause 17.3 by way of a contract or other legal act under EU or Member State law;
- 17.3.7 not cause or permit any personal data to be transferred to countries outside the European Economic Area that have not received a binding adequacy decision by the European Commission or competent national data protection authority unless subject to the terms of the EU Standard Contractual Clauses or other appropriate transfer mechanism that provides an adequate level of protection in accordance with applicable Data Protection Laws;
- 17.3.8 give reasonable assistance to the Customer to enable it to respond within required timescales to a request made by a data subject to exercise his or her rights under Data Protection Laws in relation to personal data processed by the Company on behalf of the Customer and where it provides such assistance pursuant to this clause and clause 17.3.9.1 below, Company shall be entitled to charge the Customer for such assistance on its then current rates;
- 17.3.9 taking into account the nature of the Company's processing and the information available to the Company;
- 17.3.9.1 provide reasonable assistance to the Customer in undertaking data protection impact assessments relating to the Services provided by the Company; and
- 17.3.9.2 provide reasonable assistance to the Customer in ensuring compliance with the Customer's security and breach notification obligations under Data Protection Laws;
- 17.3.10 ensure that persons authorized on behalf of the Company and its sub-contractors to process such personal data are committed to contractually binding confidentiality commitments or are subject to a statutory obligation of confidentiality;
- 17.3.11 promptly notify the Customer if it becomes aware of any personal data breach that involves personal data processed by the Company on behalf of the Customer;
- 17.3.12 take all reasonable steps to address such a personal data breach, including, where appropriate, measures to mitigate its possible adverse effects and shall consult with the Customer in respect of such resolution or mitigation;
- 17.3.13 at the Customer's option, delete or return all such personal data to the Customer on termination of this Contract, and delete existing copies except to the extent that retention of the personal data is required by law; and
- 17.3.14 make available to the Customer and its regulators all information necessary to demonstrate compliance with the obligations in this clause 17.3.
- 17.4 The Customer acknowledges and agrees that Company is reliant upon Customer as Controller for the lawful direction and documented instructions as to the extent to which Company is entitled to Process any Personal Data and, consequently, the Customer agrees that Company will not be liable and it shall fully and effectively indemnify Company for any claim brought by a Data Subject, any Supervisory Authority, competent authority or body or third party arising from any act or omission of Company, to the extent that such act or omission resulted from Company following the Customers instructions given to Company with respect to the Processing of such Personal Data or complying with this Agreement.
- 17.5 The parties agree that company liability for any breach of its obligations under this Agreement shall not exceed the charges payable for the services in the twelve (12) months prior to the first event giving rise to the breach.
- 17.6 Further to Clause 17.5 the Customer acknowledges and agrees that Company shall not be liable in the event that any failure to comply with its obligations under this Agreement caused by or results from the acts or omissions of the Customer in which case the Customer shall be fully liable.
- 18 SUSPENSION**
- 18.1 Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services and/or all further deliveries of Products under the Contract if: (i) the Customer fails to pay any amount due under the Contract on the due date for payment; or (ii) the Customer becomes subject to any of the events listed in Clause 19.1 or the Company reasonably believes that the Customer is about to become subject to any of them.
- 19 TERMINATION**
- 19.1 Either party may terminate the Contract immediately, by giving written notice to the other party if: (i) The other party commits a material breach of the Contract (which in the case of the Customer shall include the Customer's failure to pay any amount due under the Contract on the due date for payment) and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of being notified in writing of the breach; or (ii) The other party ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for the purpose of winding the other party up or the other party enters into liquidation, whether compulsorily or voluntarily, or compounds with its creditors generally or has an administrator appointed over it or has a receiver appointed over all or any part of its assets or is the subject of a bankruptcy petition or order; or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 19.2 On termination of the Contract for any reason: (i) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; (ii) the Customer shall promptly

- return all of the Company Materials, Consumables and Deliverables in respect of which ownership has not transferred to the Customer under clause 11. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; (iii) the Customer shall immediately collect all Customer Materials being stored on its behalf by the Company (the Company making such Customer Materials available for collection). The Company shall be entitled to charge the Customer in respect of readying such materials for collection and such charge (together with any other charges remaining unpaid by the Customer) must be paid in full by the Customer prior to collection; (iv) The Company's rights of lien referred to in clause 13.9 above shall remain in force until all outstanding charges shall have been paid in full; (v) The Company shall be entitled to charge and be paid in full in respect of ongoing storage and/or handling charges following up to the date of collection of the Customer Materials being stored (or previously stored) on behalf of the Customer; (vi) Upon notice of termination the Customer shall specify the format in which the Customer Data shall be returned to the Customer and/or instruct the Company to destroy some or all the Customer Materials. Destruction or export of the Customer Data will be subject to costs to be agreed at the time which will be based on the Company's published charges in force at the date of termination; (vii) the Company shall provide such exit assistance as is specified in the Schedule of Services subject to the Customer's payment of the Company's charges for such exit assistance which will be based on the Company's published charges in force at the date of termination.
- 19.3 At any time following termination, if the Customer has not collected the Customer Materials, the Company shall have the right (but not the obligation) to serve not less than six weeks notice (or such other period as may be specified in the Schedule of Services) of its intention to dispose of the Customer Materials (**Disposal Notice**). The Disposal Notice shall be served at last known address of the Customer. Unless all aforesaid Customer Materials being stored by the Company are collected within the aforesaid notice period and all its outstanding and ongoing storage and/or handling charges are paid in full prior to collection, then without prejudice to any other rights the Company has or may have in respect of any such unpaid charges, the Company shall be entitled at any time following the expiration of the aforesaid notice period (and without any liability whatsoever to the Customer or to any other party or parties) to shred, or otherwise dispose of in any manner it deems fit, the aforesaid Customer Materials
- 19.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 20 **GENERAL**
- 20.1 Except for the Customer's obligation to make payment, neither party shall be in breach of this Contract or liable for delay in performing or failure to perform any of its obligations under the Contract if such delay or failure results from events, causes or circumstances beyond its reasonable control.
- 20.2 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.3 The Contract together with any documents referred to in the Contract constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to the Services and Consumables. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.
- 20.4 The Customer shall not assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with the Contract or any of its rights and obligations under or arising out of the Contract.
- 20.5 Nothing in the Contract is intended to create a partnership or joint venture of any kind between any of the parties, nor constitute the Customer an agent of the Company for any purpose. The Customer has no authority to act in the name or on behalf of or otherwise to bind the Company in any way.
- 20.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 20.7 Notice given under the Contract shall be properly served only if it is in writing, sent by email, or first class pre-paid post to the receiving party, at the address, or email address given in the Contract or otherwise notified to the other party. Notice may not be given by fax.
- 20.8 The Contract and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 20.9 The parties to the Contract irrevocably agree that, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Contract or their subject matter or formation (including non-contractual claims).