

# FIRST SCOTTISH DOCUMENT MANAGEMENT LIMITED

## STANDARD TERMS AND CONDITIONS OF BUSINESS

### WHEREAS

- (A) FIRST SCOTTISH DOCUMENT MANAGEMENT LIMITED, a private limited company incorporated in Scotland (SC241058) and having its registered office at 11 Atholl Crescent, Edinburgh EH3 8HE (the "Company") undertakes to provide the Services at the Company's premises with reasonable skill and care; and
- (B) the Customer agrees to pay the Company for the Services in accordance with the Quotation; and
- (C) the Company and the Customer agrees that the Services shall be provided subject to these Standard Terms and Conditions of Business.

### 1 Definitions

"**Agreement**" means the Quotation and these Standard Terms and Conditions of Business;

"**Articles**" means the items comprising data records, papers, documentation and other materials agreed to be stored by the Company;

"**Confidential Information**" means any information (without regard to the medium on which such information may be recorded, whether written, visual, audio, graphic, computerised or otherwise) concerning or relating to the property, business and affairs of Customer;

"**Indexation**" means any increase in the Consumer Prices Index published by the Office for National Statistics over the period from the date when the Charges were initially set or last increased by the Company for the Customer or its customers generally until the date of the proposed increase in the Charges;

"**Quotation**" means the quotation relating to the provision of the Services (as amended from time to time by mutual consent in writing) signed by the Customer by way of acceptance of its terms and conditions and the terms and conditions of these Standard Terms and Conditions of Business;

"**Year**" means the first and each such succeeding period of twelve (12) consecutive months starting on the Commencement Date and thereafter on each such subsequent anniversary of the Commencement Date for the duration of the agreement.

Words and expressions defined in the Quotation shall (unless the context otherwise requires) have the same meaning for the purposes of these Standard Terms and Condition of Business.

### 2 Services

- 2.1 The Company shall use its reasonable endeavours to meet the targets as set out in the Quotation subject in each case, where and insofar as relevant, to the Customer meeting any Customer prerequisite as detailed in the Quotation (except where and in so far as a failure to meet such prerequisite is attributable to the Company, its agents and/or employees).
- 2.2 The Customer may request in writing a change to the Services being provided at the time of such request but the Company shall not be obliged to provide or implement the same. Any change which is agreed in writing between the parties, insofar as not inconsistent, shall be subject to the provisions of the Quotation and these Standard Terms and Conditions of Business.
- 2.3 The Company will promptly advise the Customer if for any reason it does not expect to be able to meet the Customer's request response times as set out in the Quotation or as otherwise agreed in writing. All other terms, conditions and warranties, whether express or implied, statutory or otherwise, are excluded save to the extent provided in these Standard Terms and Conditions of Business.

### 3 Charges

- 3.1 All charges for the Services shall be specified in the Quotation, and all rates set forth in the Quotation are exclusive of VAT or any similar duty or tax which will be included in all relevant invoices. Charges for the Services may be changed by the Company at any time upon thirty (30) days' written notice. Save in respect of increases to the Charges not exceeding Indexation, the Customer

has the right within twenty eight (28) days of receiving such notice to provide the Company with thirty (30) days' written notice of termination of the Agreement. The Company will not seek to apply any increased charges during the Customer's thirty-day period of notice of termination of the Agreement.

- 3.2 The Company reserves the right to charge the Customer for waiting time at Company's rate then prevailing if any delay is encountered or journey aborted or frustrated because Articles requested for delivery or pickup cannot be delivered or collected by the Company at the appointed time due to the fault of the Customer.

- 3.3 If at any time containers holding the Articles are damaged or deteriorate to such an extent that the Articles are at risk of damage, the Company will replace the contents into one of its containers. The container and the handling fee will be charged to the Customer at Company's rate then prevailing.

### 4. Term, Termination, Storage and Service Commitment

- 4.1 The initial term shall be 1 year ("Initial Term"). Thereafter the term will continue with automatic renewals for a further Year and so on thereafter, unless written notice of non-renewal is delivered by the Customer to the Company not less than ninety (90) days prior to the beginning of the subsequent Year. All terms and conditions will continue to apply after the notice period date until all Articles are removed from Company's premises.

- 4.2 After the Initial Term, the Company shall be entitled to terminate the Agreement at any time on giving not less than ninety (90) days prior written notice to the Customer.

- 4.3 This Agreement may be terminated immediately by notice in writing:

- 4.3.1 by the Company if Customer fails to pay any sums due under this Agreement by the due date without prejudice to any other provisions relating to late payment in this Agreement;

- 4.3.2 by either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) for a period of 30 days after written notice by the non-breaching party;

- 4.3.3 by either party if the other party is involved in any legal proceedings concerning its insolvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or appoints an administrator or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or equivalent circumstances occur in any other jurisdiction.

- 4.4 Any termination of this Agreement under this Paragraph 4 will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination

- 4.5 The charges set forth in the Quotation are calculated on the understanding that the storage volume and service activity frequency anticipated by the parties, will not decline materially during the term of the Agreement. In the event that the Customer's storage volume is reduced by more than twenty percent (20%) over the actual average monthly storage volume, net of destructions, provided by the Company to the Customer during the first six months of the Agreement, or, its service volume is reduced by more than twenty percent (20%) over the actual average monthly service frequency provided by the Company to the Customer during the first six (6) months of the Agreement, then, in either of such events, the Company reserves the right to review and adjust its pricing based on such decreased storage/service frequency.

### 5. Invoicing and Payment

- 5.1 The Company may invoice the Customer at any time, and from time to time, on a weekly or monthly basis as the company sees fit, in respect of the Services performed in whole or in part.

5.2 Payment terms are thirty days from the date of the invoice. If the Customer fails to pay the charges of the Company for a period of forty-five (45) days after the date of the invoice, the Company may, after giving ten (10) business days' written notice, as its option (a) redeliver the Articles to the Customer at its address contained in the Quotation; or (b) refuse access to Articles. The Customer shall be liable for late payment of any sums due at the rate of 5% over the base rate of the Royal Bank of Scotland, compounded annually, and all expenses incurred in collecting charges which are in arrears, including reasonable legal fees.

## **6 Lien**

6.1 Without prejudice to any other remedies available to it, the Company shall have a general lien over all Articles belonging to the Customer in its possession in respect of any unpaid debts or other sums due to it (including interest) and shall be entitled upon the expiry of one month's written notice to the customer to dispose of such Articles as it thinks fit and apply the proceeds in payment of such debt. In the event the Company take any actions pursuant to this Paragraph, it shall have no liability to the Customer or anyone claiming by or through the Customer.

## **7 Access, Procedures, Force Majeure, Confidentiality**

7.1 Articles and information contained in the said Articles may be delivered pursuant to the direction of the Customer or its agents identified by the Customer to the Company. Authority granted to any agent identified to the Company shall constitute that agent as the Customer's representative having full authority to order any Service for or removal of the Customer's Articles, and to deliver and receive such Articles. Such identification may be given in person, by telephone (including fax), by electronic messaging or in writing.

7.2 The Customer shall comply with the Company's reasonable operational requirements, as modified from time to time, regarding containers, delivery volumes, security, access and similar matters. The Customer acknowledges that extraordinary volumes or service requests, including permanent removals, may require the Company to incur additional costs, for which the Company shall be entitled to charge a premium of 20%.

7.3 The Company shall not be liable for delay or inability to perform caused by acts of God, governmental actions, labour unrest, riots, terrorist acts, unusual traffic delays or other causes beyond its control.

7.4 The Company may comply with any court order, warrant or similar order related to the Articles, provided that the Company notifies the Customer promptly upon receipt thereof, unless such notice is prohibited by law. The Customer shall pay the Company's reasonable charges for such compliance.

7.5 Unless such Confidential Information was previously known to the Company free of any obligation to keep it confidential, is subsequently made public by the Customer or by a third party having a legal right to make such disclosure, or was known to the Company prior to receipt of same from the Customer, the Company shall (subject to Paragraph 15.1 below) hold Confidential Information in confidence and it shall be used only for the purposes provided for in the Agreement. The Company shall use the same degree of care to safeguard the Confidential Information of the Customer as it utilises to safeguard its own confidential information.

## **8. Data Protection**

The parties acknowledge that, in the course of providing the Services and storing the Articles, the Company may have access to data or information controlled by the Customer which is personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679). Customer warrants that all information and data provided by it is accurate and complete in all respects and that it has obtained any and all necessary permissions, approvals and consents so as to allow the Company to process and use such data in such manner as it may determine. The Company will not evaluate the Articles and the Customer warrants that it will provide instructions to the Company as to the appropriate retention period of the Articles. The Company will process such

personal data and store the Articles only in accordance with the Customer's instructions and will take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data. Personal data will be processed in accordance with the Company's privacy policy which can be accessed at [www.firstscottish.com](http://www.firstscottish.com). The Company and the Customer each undertake to comply with any and all laws and regulations relating to the processing of personal data and privacy which may be in force from time to time.

## **9. Limitation of Liability**

9.1 The Company shall not be liable for any loss of or damage to Articles, however caused, unless such loss or damage resulted from the failure by the Company to exercise such care in regard thereto as a reasonably careful person would exercise under like circumstances: the Company is not liable for loss or damage which could not have been avoided by the exercise of such care. If liable, the aggregate amount of the Company's liability for all and any claims arising out of this Agreement is limited as provided under these Standard Terms and Conditions of Business and in no event shall exceed the payments made by the Customer pursuant to this Agreement. Articles deposited by the Customer with the Company are not insured by the Company against loss or damage, however caused. The Customer may insure Articles through third-party insurers for any amount, including amounts in excess of the limitation of liability. The Customer shall cause its insurers of stored materials to waive any right of subrogation against the Company.

9.2 In no event shall the Company be liable for any loss of business, loss of profit, loss of contracts, loss of goodwill or any consequential or incidental damages arising as a result of the Articles and the related Services to be provided pursuant to the terms of the Agreement.

9.3 The Company cannot reasonably assess the value of the Customer of the information comprised in the Articles being stored and cannot replace that information if Articles are lost or destroyed. The Company cannot reasonably obtain insurance for such eventualities so the Company shall not be liable for any loss or damage suffered or incurred by the Customer arising out of or in connection with any loss or misdelivery of or damage to Articles or other breach of Company of its obligations under the Agreement (including, without limitation, those set forth in Paragraph 9.2 above), save that any exclusion or limitation shall not extend to any liability of the Company in respect of any death or personal injury caused by the negligence of the Company.

## **10. Notice of Claim and Raising of Proceedings**

10.1 Claims by the Customer must be presented in writing to the Company within a reasonable time, and in no event longer than sixty (60) days after delivery or return of the Articles to the Customer or sixty (60) days after Customer is notified by the Company that loss, damage or destruction to part or all of the Articles has occurred.

10.2 No claim or proceedings may be raised by the Customer or others against the Company for loss, damage or destruction of Articles, unless timely written claim has been given as provided in Paragraph 10.1, and unless such action is commenced either within nine (9) months after (i) the date of delivery or return by the Company or (ii) the date the Customer is notified that loss, damage or destruction to part or all of Articles has occurred.

10.3 When Articles have been lost, damaged or destroyed and have not been delivered or returned to the Customer, notice thereof may be given in writing to the Customer. In the event notice of loss, damage or destruction is given, the time limitation for presentation of a claim and commencement of proceedings begins three (3) days following the date of such notice by the Company.

11. **Retention and Destruction of Data**

On termination of this Agreement, First Scottish will either return to the Customer the Articles in its possession or, pursuant to the Customer's written direction, will securely delete or destroy (insofar as technically reasonable and practicable) the Articles.

The Customer releases and shall hold harmless the Company from all liability by reason of the destruction of Articles pursuant to the Customer's written direction..

12. **Notices**

Any notice made pursuant to the Agreement may be given or made in writing at the parties' last known addresses of the parties. Notices to Company shall be sent for the attention of its Directors.

13. **Ownership Warranty**

The Customer warrants that it is the owner or legal custodian of the Articles and has full authority to store the said Articles and direct their disposition in accordance with the terms of the Agreement.

14. **Indemnification**

The Customer agrees to fully indemnify and hold harmless the Company and its employees and agents for any liability, cost or expense (including litigation expenses and reasonable legal fees) arising out of (i) the Company's possession of the Customer's Articles; (ii) the Customer's breach of any terms or provisions of the Agreement; (iii) the Company's relationship with the Customer or the Customer's agents pursuant to the Agreement, or (iv) if the Customer is deemed to be a "public authority", as defined in the Human Rights Act 1998 ("H.R. Act"), then the foregoing indemnification by Customer shall also apply to any claim or action brought against the Company for any breach of the H.R. Act, unless any of the foregoing are caused solely by the negligence or wilful misconduct of the Company.

15. **Restrictions on Articles, Customer Premises**

15.1 Customer shall not, at any time, store with the Company Articles considered to be highly flammable, explosive, toxic, or otherwise dangerous or unsafe to store or handle any illegal substance or any material which is regulated under any national or local law or regulation relating to the environment or hazardous materials or otherwise ("Illegal Items"). Where the Company suspects that any Article may be an Illegal Item, it shall be entitled to reject and/or inspect (or procure the inspection by any third party) of such Article.

15.2 The Customer shall not store items which have intrinsic market value.

15.3 All the Customer's premises where the Company's employees perform services or make deliveries shall be free of all hazardous substances and any other hazardous or dangerous conditions.

16. **Modification, Assignment**

The Agreement binds the successors and assignees of the parties. The Agreement may not be assigned by the Customer without the written consent of the Company.

17. **Licence**

If the Customer is being charged a technology service fee hereunder in order to have limited access, upon terms to be decided from time to time by the Company, to the inventory management software ("Software") used by the Company to provide services to the Customer pursuant to the terms of the Agreement, then, in such event, the Company hereby grants a limited, non-exclusive licence to Customer to use the Software during the term of the Agreement, but solely for its own internal purposes in order to view or retrieve electronic copies of any Article via such medium as the parties may be agreed in the Quotation. No warranties are given in respect of the right to use the Software or in respect of its functionality, nor that it shall be free from error.

18. **General**

18.1 In the event that any additional Customer locations are added to the Agreement, then the term of the Agreement for such additional locations shall be coterminous with the term initially established herein. In addition, unless otherwise expressly agreed to in writing by the Company, the anniversary date of pricing increases for all of Customer's locations serviced under the Agreement shall be the anniversary date of the Agreement.

18.2 The Agreement, together with the Quotation, represents the entire agreement between the Company and the Customer, and may not be amended or modified without a written amendment to the Agreement signed by both the Company and the Customer. Any alternative or additional terms and conditions proposed by the Customer not expressly set forth in an amendment to the Agreement signed by the Company are hereby rejected by the Company.

18.3 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

18.4 The Agreement shall be governed by and construed in accordance with Scottish law. If either party has any claim against the other party arising out of or in connection with the Agreement such claim (save to the extent that the Agreement otherwise expressly provides to the contrary) shall be referred to the non-exclusive jurisdiction of the Scottish Courts.

May 2018