

# **THE MALTINGS LIMITED**

**AGREEMENT  
for  
RECORDS MANAGEMENT SERVICES**

## **AGREEMENT is dated**

**Customer Account Number:**

### **PARTIES**

(1) The Maltings Limited incorporated and registered in England and Wales with company number 1365451 whose registered office is at The Maltings, East Tyndall Street, Cardiff Bay, CF24 5EA (**Supplier**).

(2), incorporated and registered in England and Wales with company number ##### whose registered office is (**Customer**).

### **BACKGROUND**

A. The Supplier provides a records management service which includes, inter alia, the collection, storage, retrieval, delivery and destruction of Records (defined herein)

B. The Customer wishes to procure the services of the Supplier to manage the Customer's Records on the terms and conditions set out in this agreement.

### **AGREED TERMS**

#### **1. INTERPRETATION**

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

**Customer:** the person, firm or company who purchases Services from the Supplier;

**Minimum Contract Period:** the period of twelve months, starting on the day when the Customer first receives Services for which a charge is due under this Agreement

**Permanent Removal:** the permanent removal from storage and collection by the Customer from the Suppliers premises of such Records as the Customer specifies;

**Records:** means any data, documents, files, records, papers or other materials in respect of which the Supplier agrees to provide the Services to the Client;

**RPIX:** means the Retail Prices Index (excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties agree;

**Services:** the services to be provided by the Supplier under this agreement as set out in Schedule 1 together with any other services which the Supplier provides or agrees to provide to the Customer;

**Temporary Removal:** the temporary removal from storage and delivery by the Supplier to the Customer of such Records as the Customer specifies;

**Unit:** a self managed Customer storage unit;

**VAT:** value added tax chargeable under the laws of England and Wales for the time being and any similar additional tax.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 References to conditions and schedules are to the conditions and schedules of this agreement.

## **2. COMMENCEMENT AND DURATION**

2.1 The Services supplied under this agreement shall be provided by the Supplier to the Customer from [Date]

2.2 The Services supplied under this agreement shall continue to be supplied for the Minimum Contract Period after that, shall continue to be supplied unless this agreement is terminated by one of the parties giving to the other not less than three months' notice, such notice to expire at any time after the end of the Minimum Contract Period unless this agreement is terminated earlier in accordance with condition 9.

## **3. SUPPLIER'S OBLIGATIONS**

3.1 The Supplier shall use reasonable endeavours to provide the Services, to the Customer, in accordance in all material respects with Schedule 1.

## **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (a) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (b) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Services are to start;
- (c) observe all security requirements that apply at any of the Supplier's premises

(d) warrant that it is either solely beneficially entitled to the Records or has the authority of all those interested in the Records to enter into this agreement and to bind them to its terms.

## **5. CHARGES AND PAYMENT**

5.1 The charges payable for the Services shall be calculated in accordance with Schedule 2.

5.2 The Supplier shall invoice the Customer monthly in arrears for the charges that are payable, together with VAT, where appropriate.

5.3 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt.

5.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

(a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Services until payment has been made in full.

5.5 Time for payment shall be of the essence of this agreement.

5.6 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This condition 5.6 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

5.7 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.

## **6. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

6.1 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.

6.2 This condition 6 shall survive termination of this agreement, however arising.

## **7. LIMITATION OF LIABILITY**

7.1 This condition 7 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of this agreement;

- (b) any use made by the Customer of the Services; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

7.3 Nothing in this agreement limits or excludes the liability of the Supplier for death or personal injury resulting from negligence.

7.4 Subject to condition 7.2 and condition 7.3

(a) the Supplier shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the annual price paid for the Services.

## **8. DATA PROTECTION**

8.1 Both parties acknowledge that data contained in the Records may be subject to the Data Protection Act 1998.

8.2 The Customer and the Supplier warrant to each other that they are respectively compliant with the Data Protection Act 1998.

8.3 The Customer warrants that it has obtained all necessary consents from individuals whose Personal Data (as defined in the Data Protection Act 1998) the Supplier may have access to in providing the Services.

## **9. TERMINATION**

9.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than three months written notice to expire at any time after the end of the Minimum Contract Period in accordance with Clause 2.2 or immediately on giving notice to the other if:

(a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

9.2 On termination of this agreement for any reason:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the

Supplier may submit an invoice, which shall be payable immediately on receipt;

(b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### **10. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement if such delay is due to any cause whatsoever beyond its reasonable control.

#### **11. VARIATION**

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

#### **12. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that, in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

#### **13. ASSIGNMENT**

13.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

13.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

#### **14. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement 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 the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### **15. RIGHTS OF THIRD PARTIES**

This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

## **16. NOTICES**

Save where expressed otherwise, notice given under this agreement shall be in writing, sent for the attention of the person, and to the address, given in this agreement (or such other address or person as the relevant party may notify to the other party) and shall be delivered personally or sent by pre-paid, first-class post either recorded delivery or registered and will be deemed to have been communicated only upon the date of actual delivery

## **17. GOVERNING LAW AND JURISDICTION**

17.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.

## Schedule 1 Services

### 1. Collection

1.1 The Customer shall notify the Supplier by fax or e-mail only of the Records for collection and shall confirm the approximate quantity of such Records.

1.2 The Supplier shall collect the Records from the address specified by the Customer within a reasonable period of time of the receipt by the Supplier of the Customer's notification.

1.3 The Customer will ensure that the Records are properly and securely packed for collection and will provide the Supplier's driver with any special instructions relating to the Records such special instructions to be clearly marked upon the boxes and/or files within which the said Records are contained.

1.4 The Supplier will provide adequate labour and equipment to facilitate the efficient loading of the Records.

1.5 The Customer shall sign a note ("the Collection Note") produced by the Supplier in respect of the collected Records. As between the parties the Collection Note shall be conclusive evidence as to the fact and time of collection of the said Records.

1.6 The Supplier shall transport the Records, by such means as may be appropriate, to the Suppliers premises where the said Records will be held in storage.

1.7 The Supplier shall ensure that the Records are at all times from collection to storage in the actual custody of a responsible person employed by the Supplier or an agent or sub-contractor of the Supplier or employed by such sub-contractor.

1.8 The Supplier shall, as agreed between the Supplier and the Customer, comply with any reasonable specific collection and storage instructions, such instructions to be recorded and acknowledged by the parties.

1.9 The Customer shall not submit for collection and the Supplier shall not be obliged to store:

1.9.1 any written printed or pictorial matter which is or might reasonably be held to be obscene, blasphemous, scandalous, defamatory, proscribed or prohibited in the United Kingdom;

1.9.2 any article the possession of which is unlawful by the law of the United Kingdom

## 2. Storage

2.1 The Supplier shall store the Customer's Records at any of the Supplier's premises.

2.2 The Supplier shall, if applicable, attribute a unique reference number to the Customer's Records.

2.3 The Customer shall be solely responsible for insuring the Records whilst such Records are in the custody of the Supplier.

## 3. Temporary Removal

3.1 The Customer shall request a Temporary Removal by (i) notifying the Supplier by way of post, fax or e-mail only and (ii) quoting, if applicable, the unique reference number attributed to the applicable Records.

3.2 The Supplier shall respond to the request for Temporary Removal within a reasonable period of time of the receipt by the Supplier of the Customer's notification.

3.3 The Customer shall sign a note ("the Delivery Note") produced by the Supplier in respect of the Temporary Removal. As between the parties the Delivery Note shall be conclusive evidence as to the fact and time of delivery of the relevant Records

## 4. Permanent Removal

4.1 Records subject to Permanent Removal, shall, unless otherwise agreed between the parties, be collected from the Supplier's premises by the Customer following expiry of this contract pursuant to a notice given under Clause 2.2.

4.2 Should the customer request a Permanent Removal before the expiry of this contract, in addition to the Permanent Removal charge an early removal charge will be applicable, calculated by the number of boxes being Permanently Removed multiplied by the Collection and Storage charges as set out in Schedule 2 for the relevant period. The relevant period means (1) where the request is made during the first 9 months of the Minimum Contract Period, the remainder of the Minimum Contract Period (2) where the request is made afterwards, three months.

4.3 Subject to Condition 6 of this Schedule, the Customer shall notify the Supplier by post, fax or e-mail only, of the Permanent Removal quoting the unique reference number attributed to the relevant Records.

4.4 Where Clause 4.2 applies, the Supplier shall use reasonable endeavours to respond to the request for Permanent Removal within a reasonable period of time of the receipt by the Supplier of the Customer's notification.

4.5 The Customer shall sign a note ("the Note") produced by the Supplier in relation to the Permanent Removal. As between the parties the Note shall be conclusive evidence as to the fact and time of the Permanent Removal.

## 5. Destruction

5.1 The Customer will be provided, on request, with a list setting out the designated destruction dates for the Customer's Records **PROVIDED THAT** the Customer has previously endorsed the said Records with the applicable destruction date and communicated the same to the Supplier.

5.2 In the event that the Customer requests the Supplier to carry out the destruction of certain Records then the Customer shall indicate by reference to the list (referred to in 5.1 above) the Records to be destroyed and return the said list (hereinafter "the Destruction Order") by post or fax only to the Supplier.

5.3 Upon receipt of the Destruction Order the Supplier shall send the Customer a letter ("the Letter of Indemnity"), (which the Customer shall acknowledge), and thereafter a notification that the Destruction Order has been acted upon.

## 6. Self Managed Units.

6.1 In the event that the Customer's Records are stored in a Unit then the Customer shall (unless agreed otherwise by the parties) be solely responsible for the delivery, storage and collection of such Records.

## **Schedule 2 Pricing**

1. The charges payable for the Services shall be calculated as set out in this Schedule 2

2. The charges payable for the Services may be amended from time to time by the Supplier giving not less than three months written notice to the Customer

A. Collection and Storage

B. Temporary Removal

C. Permanent Removal

D. Destruction

E. Database Entry

F. Delivery/Collection Charge

Signed by Kathleen R. Fox ..... duly  
authorised to sign on behalf of

**THE MALTINGS LIMITED** Director

Signed by: .....

Print name: .....

Duly authorised to sign on behalf of

**[Customer]** Director  
*[or specify other office held]*

OR

Signed by .....

OR

Signed by .....

Partner