

## STORMAN SOFTWARE AS A SERVICE AGREEMENT

### New Zealand

**WARNING:** READ THIS AGREEMENT CAREFULLY. BY ACCESSING THE SERVICE YOU ARE AGREEING TO THE FOLLOWING TERMS AND THE TERMS IN THE QUOTE. IF YOU DO NOT AGREE, DO NOT ACCESS THE SERVICE.

STORMAN RESERVES THE RIGHT TO CHANGE THE TERMS OF THIS AGREEMENT IN ACCORDANCE WITH CLAUSE 6.4 AND 17 OF THIS AGREEMENT. IF WE PROPOSE TO MODIFY THIS AGREEMENT, WE WILL NOTIFY YOU IN ACCORDANCE WITH CLAUSE 6.4 OR 17, AS RELEVANT.

THIS AGREEMENT REPLACES AND SUPERSEDES ANY PRIOR AGREEMENT BETWEEN YOU AND STORMAN.

#### 1. Definitions

1.1 In this Agreement, the following definitions apply:

- (1) "**Add-On(s)**" means any additional module or component to the Service, which is not part of the base functionality of the Service, and which is licensed as an optional module or component by Storman ("**Service Add-On(s)**") and any software licensed by Storman to be hosted by You for accessing or otherwise using the Service including Storman's local plug-in ("**Local Add-On(s)**");
- (2) "**Agreement**" means this agreement and Quote(s), which has (or have) been executed by You and returned to Storman within the acceptance period specified in the Quote or as otherwise agreed to in writing by Storman and any variations to them made in accordance with the terms of this agreement;
- (3) "**Authorised User**" means a person who is authorised or permitted by You to access the Service using Your credentials;
- (4) "**Business Day**" means any day other than a Saturday, Sunday or public holiday in Auckland (New Zealand);
- (5) "**Business Hours**" means 8:30am to 5pm (inclusive) on a Business Day;
- (6) "**Confidential Information**" means, without limitation:
  - (a) the Intellectual Property relating to the Service, Add-Ons, Documentation, Support Services and Professional Services;
  - (b) any information, whether technical or otherwise, trade secrets, advice, training programs, techniques, data, formula and other proprietary information and know-how, records, concepts, ideas, systems, designs, plans, drawings, specifications, visual representations, and any other methods and processes (and copies and extracts made of or from that information or data) concerning the Service, Add-Ons, Documentation, Support Services or Professional Services ;
  - (c) any information regarding the terms of this Agreement, or the commercial arrangements between the parties; or
  - (d) any other information which by its nature is confidential, is designated confidential or which the other party knows, or ought to know, is confidential, which is not in the public domain except by the failure of a party to perform and observe its obligations under this Agreement;
- (7) "**Consumer Guarantees**" means the consumer guarantees set out in the *Consumer Guarantees Act 1993*;
- (8) "**Customer**" or "**You**" means the company or other legal entity listed in the Quote, and where the context permits includes any Authorised User;
- (9) "**Customer Content**" means all content or data uploaded or transmitted by You in the course of Your use of the Service;

- (10) "**Documentation**" means the user manuals, training manuals and other standard associated documentation (if any) for the Service or Add-On, provided by Storman to You or made available to You through Storman's online knowledge base or other online repository of standard documentation;
- (11) "**Fees**" means the Subscription Fee and the Professional Services Fee and any other fee or out of pocket expense payable by You under this Agreement;
- (12) "**GST**", "**GST Law**" and other terms used in clause 16 have the meaning given to those terms in the *Goods and Services Tax Act 1985*;
- (13) "**Initial Subscription Term**" means:
- (a) the period specified in the Quote; or
  - (b) if no period is specified in the Quote, the period of one month, commencing on the date that Storman notifies You that Your Service is fully configured and ready for use;
- (14) "**Insolvency Event**" means: a party resolves to be wound up or dissolved; has a winding up application presented against it; has a statutory manager, receiver, receiver/manager or administrator appointed to it, or over all or part of its business or assets; has a liquidator or a provisional liquidator or official assignee appointed to it; is insolvent or unable to pay its debts when they fall due; is bankrupt or commits any act of bankruptcy; enters into any arrangement or assignment for the benefit of its creditors; or anything analogous, or having substantially similar effect, to the occurrence of these events in relation to a party;
- (15) "**Intellectual Property**" means any industrial and intellectual property rights throughout the world and for the duration of the rights including:
- (a) any patents, copyright including future copyright, registered or unregistered trade marks or service marks, trade names, brand names, registered or unregistered designs, commercial names, circuit layouts, database rights;
  - (b) any inventions, discoveries, processes, methods, trade secrets, know-how, computer software, confidential information and scientific, technical and product information;
- (c) the right to apply for any industrial and intellectual property rights; and
- (d) any other similar or analogous rights and any intellectual or industrial rights whether now existing or which come into existence in the future;
- (16) "**Notice Address**" means in respect of:
- (a) You, the address specified in the Quote and Your email address specified in the Quote; and
  - (b) Storman: Level 4, 63 Albert Street, Auckland 1010 and sales@storman.com, or such other address or email address last notified to the other party in accordance with clause 14.2;
- (17) "**Permitted Purpose**" means Your internal business purposes for Your storage management business, marina management business or vault management business in accordance with the applicable Documentation;
- (18) "**Personal Information**" has the meaning given to that term in the *Privacy Act 1993*;
- (19) "**Professional Services**" means any implementation, training, or consultancy services which Storman agrees to provide from time to time under this Agreement and excluding Support Services;
- (20) "**Professional Services Fee**" means the amount payable by You for the Professional Services as specified in the Quote, subject to variation in accordance with this Agreement, or as otherwise calculated in accordance with this Agreement;
- (21) "**Quote**" means the document entitled "Quotation" issued by Storman to You and which You accept by executing and returning to Storman;
- (22) "**Related Company**" has the same meaning as in section 2(3) of the *Companies Act 1993* read as if references to "company" include any body corporate wherever incorporated;
- (23) "**Renewal Term**" means each month to month automatic renewal period after the Initial Subscription Term described in

clause 2.2;

- (24) "**Service**" means Storman's software as a service providing access to, and use of, storage management, marina management and vault management software as specified in a Quote and elsewhere in this Agreement;
- (25) "**Site**" means the storage facility, marina or vault operated by You specified in the Quote or otherwise agreed in accordance with clause 4.2;
- (26) "**Storman**" or "**we**" or "**us**" or "**our**" means Storman Software Limited (Company number 5119262);
- (27) "**Storman Personnel**" means Storman, its Related Companies and any of Storman's and its Related Companies' officers, employees, contractors and agents;
- (28) "**Subscription Fee**" means the amount payable by You (as specified in the Quote) for the Services and any relevant Add-Ons or Support Services, subject to variation in accordance with this Agreement;
- (29) "**Support Hours**" means the hours specified in Storman's Product Support Program, subject to reasonable changes from time to time, during which Storman provides the Support Services without additional charge (details can be found at <https://storman.com/services/technical-support/>);
- (30) "**Support Services**" means telephone or online support services for the Service or Add-Ons provided in accordance with Storman's Product Support Program subject to reasonable changes from time to time (details can be found at <https://storman.com/services/technical-support/>);
- (31) "**Term**" has the meaning given to that term in clause 2.3;
- (32) "**Unit**" means a separate physical and lockable space at the Site, whether a storage unit, marina or vault, and with each Site consisting of multiple storage units, marinas or vaults;
- (33) "**Updates**" means any subsequent release (major or minor) of the storage

management software or other component of the Service or Add-Ons which Storman has agreed to provide to You, but excludes any module, component or software that is marketed and priced separately by Storman to its customers such as Add-Ons themselves; and

- (34) "**Website**" means the website(s) notified to You by Storman to access the Service.

## 2. Term

2.1 This Agreement commences on:

- 2.1.1 the date Storman receives an executed copy of the Quote from You within the acceptance period specified in the Quote or otherwise agreed to in writing by Storman, unless Storman notifies You in writing before that date, that it has withdrawn its Quote; or
- 2.1.2 such other date (if any) the parties agree in writing is the date for commencement of this Agreement.

2.2 This Agreement automatically continues on a month to month basis after the expiry of the Initial Subscription Term (with any annual Subscription Fees to be charged on a pro rata basis). This is subject to a party's right to terminate this Agreement at the end of the Initial Subscription Term or any Renewal Term by giving not less than 30 days' prior written notice before the end of a Renewal Term in accordance with clause 9.4 or termination otherwise occurs in accordance with this Agreement.

2.3 The period determined in accordance with clause 2.1 and 2.2 is the "**Term**" of this Agreement.

## 3. Supply of Service

3.1 Storman is not required to commence providing any implementation services for the Service or provide You with access to the Service until You have paid the upfront Professional Services Fee (as specified in the Quote) for such implementation services.

3.2 During the Term, Storman grants You the right to access and use the Service, and where relevant Service Add-Ons, via the Website and to use the Documentation and, where relevant Local Add-Ons, for the Permitted Purpose. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement.

3.3 You acknowledge and agree that Storman owns all rights, title and interest, including

Intellectual Property rights, in the Service, Add-Ons and Documentation and, as they are created, any changes or improvements to the Service, Add-Ons or Documentation made by or for us, You or anyone else. Your limited right to use the Service, Add-Ons and Documentation is set out in this Agreement and You have no right, title or interest in the Service, Add-Ons or Documentation except as set out in this clause 3. To the extent, notwithstanding this clause 3.3, any Intellectual Property rights or other rights in the Service, Add-Ons or Documentation vests in You or any of your contractors or agents, You hereby assign ownership of all such rights free of any encumbrance or security interest to Storman (and must procure the assignment of all such rights by Your contractors and agents) and You must take all steps reasonably necessary to give effect to this provision.

- 3.4 By entering into this Agreement, You are not entitled to use or access Add-Ons, unless they are specified in a Quote. In the event that we agree to provide You an Add-On, the terms of this Agreement will apply to the Add-On.

#### **4. Restrictions on access and use**

- 4.1 Unless expressly stated otherwise in this Agreement, You:
- 4.1.1 may only access and use the Service and Add-Ons for your management of the Site and up to the maximum number of Units specified in the Quote;
  - 4.1.2 must not modify, adapt, enhance or otherwise create derivative works from the Service, Add-Ons or Documentation;
  - 4.1.3 must not rent, lease, loan, distribute, sublicense, sell, copy, reproduce, or otherwise transfer all or any part of the Service, Add-Ons or Documentation to any other person or provide access to any third party;
  - 4.1.4 must not use the Service in a service bureau or time sharing arrangement;
  - 4.1.5 must not attempt to disassemble, decompile or otherwise reverse engineer any software within the Service or Add-Ons, except as permitted by the *Copyright Act 1994*;
  - 4.1.6 must not grant any security interest over this Agreement or the Service, Add-Ons or Documentation; and
  - 4.1.7 must maintain and not alter or remove any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Service, Add-Ons or Documentation,

and You must not directly or indirectly assist or permit any other person to do any of these things.

- 4.2 If You wish to add or vary the Sites or increase the number of Units, You must obtain our agreement in writing and execute an additional Quote and pay additional Fees specified in the Quote.
- 4.3 You must comply with the security and other access protocols in the Documentation or as otherwise notified to You from time to time. You must keep all user names, passwords and other access credentials issued by Storman confidential and secure and must not disclose such credentials to any person other than Your Authorised Users and you must ensure that Your Authorised Users similarly comply and do not share them. You must immediately notify us if You know or suspect unauthorised use of access credentials or if You know or suspect a person knows access credentials where they are not entitled to do so.
- 4.4 You must ensure that Your Authorised Users' access and use of the Service, Service Add-Ons, Locals Add-Ons and Documentation complies with any restrictions in this clause 4 and elsewhere in this Agreement, and You are responsible for their acts or omissions as if they were Your own.

#### **5. Availability, Support and Maintenance, Professional Services**

##### *Availability*

- 5.1 Subject to clause 5.2 and 5.3, Storman will use reasonable endeavours to ensure that the Service and Service Add-Ons are available to You via the Website on a 24 hour, 7 day a week basis.
- 5.2 You agree that Storman may suspend the Service or Service Add-Ons at any time for the purpose of conducting scheduled maintenance or repairs, so long as Storman provides you with reasonable notice and attempts to schedule maintenance at a time which has minimal impact on Your use of the Service or Service Add-Ons during Business Hours.
- 5.3 Without limiting clause 5.2, Storman may suspend Your access to the Service or Service Add-Ons in order to carry out unscheduled maintenance that we determine, acting reasonably, is required urgently to prevent or mitigate an incident which may adversely affect the Service or Service Add-ons, or for circumstances beyond Storman's control.

Storman must use its reasonable endeavours to mitigate the duration of the suspension.

- 5.4 Without limiting clause 5.2, Storman may also suspend your Service or Service Add-Ons, acting reasonably, to prevent or mitigate an incident which may adversely affect the security or proper functioning of the Service or Service Add-Ons or Storman's equipment or software, relating to security threats, viruses and other contaminants or your use of the Service or Service Add-Ons in breach of the Documentation or other provisions of this Agreement or other misuse. Storman must use its reasonable endeavours to mitigate the duration of the suspension.
- 5.5 Where the Service and Service Add-Ons are unavailable, Storman will use its reasonable endeavours to include a notice on the Website informing You that the Service and Service Add-Ons are unavailable.
- 5.6 If Storman is unable to provide the Service for a period in excess of eighteen hours on a Business Day (or consecutive Business Days) (excluding periods of unavailability for scheduled maintenance and circumstances caused or contributed by You or beyond our reasonable control), Storman will credit You a service credit against your next Subscription Fee (or if no further Subscription Fee is payable, will pay to You within 30 days of Your demand), which reflects the proportion of the Subscription Fee attributable to the time the Service was unavailable. The service credit is Your exclusive financial remedy for unavailability of the Service. For the avoidance of doubt, this clause 5.6 does not apply to Service Add-Ons.

#### *Support and Maintenance*

- 5.7 Storman will provide Support Services during Support Hours during the Term. Subject to clause 5.13, Storman will provide the Support Services using reasonable skill and care.
- 5.8 You agree that the software within the Service or Service Add-Ons may automatically be Updated. Storman expressly excludes any representation or warranty that Updates will not adversely affect any existing configuration or implementation of the Service or Service Add-Ons. If an existing configuration or implementation is adversely affected by an Update, You are entitled to request general advice through the Support Services or request Professional Services, or both.

- 5.9 If You request Storman to provide Support Services outside Support Hours, and Storman agrees to provide Support Services, Storman will use reasonable endeavours to do so provided You pay (and you must pay) Storman at its current time and materials rates for such Support Services and any out of pocket expenses for travel, accommodation and subsistence if Storman provides the Support Services at your Site or other premises.
- 5.10 You agree that Storman (and any of the Storman Personnel) are entitled to access Your Customer Content to enable Storman to perform the Support Services.
- 5.11 Storman (and any of the Storman Personnel) may use technical information provided by You as part of the Support Services, for product support and development.
- 5.12 If a bug is discovered in the software within the Service or Add-On, it will be prioritised based on Storman's "Bug Fix Policy" (as updated from time to time and available at <https://storman-help.freshdesk.com/support/solutions/articles/48001220085-storman-software-bug-fix-policy>).
- 5.13 Storman makes no representation or warranty that all bugs will be fixed or all software will be Updated. In addition, as part of the Support Services, Storman may make available information on its roadmap about future Updates or other lists of bugs and planned features, which Storman is considering it may fix or deliver in the future. This information is provided as background information on Storman's current considerations for the Service or Add-Ons and is not an agreement by Storman or any form of representation, guarantee, warranty or other commitment that Storman will provide Updates in accordance with that roadmap or other information.
- 5.14 Storman has no obligation to maintain or support any problems, issues, defects or non-compliances in the Service or Add-Ons, to the extent caused or contributed to by the access to, or use of, the Service or Add-Ons in breach of the Documentation or other provisions of this Agreement or other misuse or arising from the acts or omissions of a third party (other than Storman Personnel) (**Excluded Defect**).
- 5.15 If You request Storman to provide Support Services for an Excluded Defect and Storman agrees to provide Support Services for them, Storman will use reasonable endeavours to do

so provided You pay (and you must pay) Storman at its current time and materials rates for such Support Services and out of pocket expenses for travel, accommodation and subsistence in providing such Support Services at your Site or other premises.

#### *Professional Services*

- 5.16 You may request from Storman, and Storman may agree to provide to You, Professional Services as specified in a Quote. In the event that we agree to provide Professional Services to You, the terms of this Agreement will apply to the provision of the Professional Services and the payment of the Professional Services Fee by You. Storman will provide the Professional Services using reasonable skill and care. Unless specified otherwise in a Quote, You must pay for our Professional Services at our current time and materials rates for such Professional Services and our out of pocket expenses for travel, accommodation and subsistence if Storman provides such Professional Services at your Site or other premises.

#### **6. Payment of Fees**

- 6.1 During the Term, You must pay the Subscription Fee (and other Fees under this Agreement) within 30 days of receipt of an invoice or if earlier by such other due date (if any) as specified in a Quote and in the manner directed by Storman from time to time. Unless otherwise specified in a Quote or elsewhere in this Agreement, Storman is entitled to invoice all Fees in advance.
- 6.2 Your first invoice for the Subscription Fees will be issued once Storman notifies You that Your Service is fully configured and ready for use.
- 6.3 Storman is entitled to charge you interest of 1% per month (or the maximum rate permitted by law, whichever is the lower), for any amounts which remain unpaid by You after the due date, until such amount is paid, and You must pay such interest on demand.
- 6.4 Fees which are specified in this Agreement to be charged based on Storman's current rates or fees are to be charged based on those rates or fees from time to time. For your Subscription Fee or any other recurring Fee, which is a specified amount, we are entitled to vary such Fee for the first Renewal Term and any Renewal Term thereafter, on not less than 45 days written notice prior to the commencement of the relevant Renewal Term, when the varied Fee is to apply. If you do not wish to pay the varied Fee for the

relevant Renewal Term, You must terminate this Agreement before the commencement of that Renewal Term by giving us not less than 30 days' written notice prior to the commencement of the Renewal Term in respect of which the varied Fee is to apply.

#### **7. Confidentiality**

- 7.1 Each party (**Recipient**) must:
- 7.1.1 keep confidential, and not use or disclose, any Confidential Information of the other party (**Disclosing Party**), except as permitted by this Agreement; and
  - 7.1.2 immediately notify the Disclosing Party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any Confidential Information of the Disclosing Party.
- 7.2 Each Recipient may, to the extent reasonably required:
- 7.2.1 use Confidential Information of the Disclosing Party for the purposes of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Agreement;
  - 7.2.2 subject to clause 7.3, in the case of Storman as Recipient, disclose Confidential Information to the Storman Personnel, and in the case of You as Recipient disclose to Your employees, agents and contractors, in each case, who have a specific need to access that Confidential Information for the purpose of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Agreement; and
  - 7.2.3 disclose Confidential Information to its professional advisers and insurers for professional advice or insurance purposes, provided they are under duties of confidentiality for professional advice or insurance purposes.
- 7.3 Each Recipient must ensure that the persons to whom it discloses Confidential Information in clause 7.2.2 comply with obligations of confidence equivalent to those set out in this Agreement.
- 7.4 The obligations in clause 7.1 do not apply to any disclosure required by law (including any order of a court of competent jurisdiction) provided that (where permitted by the disclosure requirement and to the extent reasonably practical) the Recipient gives prior written notice to the Disclosing Party of the disclosure requirement or any disclosure required by the rules of any stock exchange.

## 8. Customer Content, Data Security and compliance with laws

- 8.1 Subject to clause 10.3, Storman will treat the Customer Content as Your property.
- 8.2 You grant us a perpetual, non-exclusive, worldwide, royalty-free, irrevocable and sub-licensable licence and right to collect, use, copy, store, transmit, modify and create derivative works of the Customer Content for the purpose of providing the Service, Add-Ons, Support Services and Professional Services to You and for the analysis and enhancement of the Service, Add-Ons, Support Services and Professional Services, and for any other purpose permitted by this Agreement.
- 8.3 If You enable third-party applications or systems to interface with the Service or Add-Ons, You agree that Storman may allow the providers of those third-party applications or systems to access Your Customer Content as required for the interoperation of such third-party applications or systems with the Service or Add-Ons. Storman is not responsible or liable for any disclosure, modification or deletion of Your Customer Content resulting from the acts or omissions of such third-party application or system providers, except Storman does not exclude liability arising from its breach of this Agreement.
- 8.4 You agree that we may disclose the Customer Content to Storman's service providers and suppliers (for example payment gateway providers, SMS providers or email providers), and transmit the Customer Content to and from Storman's service providers and suppliers, and You agree that those service providers and suppliers can also store and transmit the Customer Content, for the purposes of this Agreement.
- 8.5 You acknowledge and agree that Storman may use de-identified Customer Content to identify trends and statistics relating to the Service, Add-Ons, Support Services and Professional Services, and that Storman may use de-identified Customer Content on an aggregate basis for analysis and marketing purposes.
- 8.6 Nothing in this Agreement restricts us from disclosing Customer Content if we are legally required or compelled to do so by a court, a government authority or some other body with the legal authority to compel disclosure.

### *Back ups and retention*

- 8.7 Storman will make a back-up of Your Customer Content one time in each 24 hour period (such

back-up to be made outside Business Hours), and will store that back-up in a location separate to that which hosts the server through which the Service is provided.

- 8.8 If there is loss or corruption of Customer Content as a result of Storman's breach of this Agreement, Your exclusive remedy is for Storman, at its option, to remedy the loss or corruption as part of the Support Services, or to restore the Customer Content to the last available back-up, which is not lost or corrupted. If there is any other loss or corruption of Customer Content, You may request Storman to provide Support Services or Professional Services, pursuant to and subject to clauses 5.14 and 5.16, to assist in the repair, or You may request Storman to restore the Customer Content to the last available back-up of Your Customer Content, which is not lost or corrupted.
- 8.9 You agree that we have no obligation to retain Customer Content after 30 days following the expiry or termination of this Agreement and that Customer Content may be irretrievably deleted by us any time after 30 days following the expiry or termination of this Agreement.

### *Compliance with laws and security*

- 8.10 Storman must comply with the *Privacy Act 1993* and with its privacy policy (located at <https://storman.com/privacy-policy/>) (as may be updated from time to time). Storman must take reasonable steps to ensure that the Personal Information which has been provided by You is protected against misuse, interference or loss and from unauthorised access, modification or disclosure.
- 8.11 If Storman becomes aware of any actual or suspected unauthorised access to, unauthorised disclosure of, or loss of Personal Information provided by You, Storman will promptly investigate the incident and Storman will provide You with information on the incident and provide reasonable co-operation as reasonably required for Your compliance with any notifiable data breach regime under the *Privacy Act 1993*.
- 8.12 Without limiting our obligations in clause 8.10, Storman does not represent or warrant that the Service is completely secure and Storman excludes responsibility and liability for security issues beyond its reasonable control.

- 8.13 You agree that You:
- 8.13.1 must comply with all applicable laws (including privacy and spam laws) in

connection with Your use of the Service, Add-Ons, Documentation, Support Services and Professional Services; and

- 8.13.2 are responsible for complying with Your obligations to third parties and Your obligations under all applicable laws, including notifying and obtaining the consent of third parties (where applicable), in relation to the use, transfer and disclosure of Customer Content as contemplated by this Agreement.

- 8.14 By uploading or transmitting Customer Content, You represent and warrant to us that the Customer Content and its transmission and use by Storman (and Storman Personnel) as contemplated by this Agreement will not contravene any laws and that You have the necessary authorisations, rights, consents and licences to make Customer Content available to us to use as contemplated by this Agreement. You agree to indemnify Storman in relation to any loss it suffers to the extent such loss is caused or contributed to by a breach of this representation and warranty, except to the extent caused or contributed to by our breach of this Agreement.

## **9. Suspension and Termination**

- 9.1 If either party commits a material breach of its obligations under this Agreement and fails to remedy that breach within 14 days of notification from the other party, then the party giving notice may terminate this Agreement by further written notice with immediate effect or on such prior written notice specified in the further written notice.
- 9.2 If either party suffers an Insolvency Event, the other party may terminate this Agreement with immediate effect, by written notice or on such prior written notice specified in the written notice.
- 9.3 If You fail to make any payment in accordance with this Agreement, and you fail to remedy the non-payment within 7 days of our notice to You requesting payment, Storman may (without prejudice to Storman's other rights and remedies under this Agreement or at law) suspend performance of any or all of Storman's obligations under this Agreement, including providing the Service and Add-ons or performing the Support Services or Professional Services until payment is made in full. In addition, if You fail to make any payment in accordance with this Agreement, and you fail to remedy the non-payment within 14 days of our notice to You requesting payment, Storman may terminate this

Agreement by further written notice with immediate effect or on such prior written notice specified in the further written notice.

- 9.4 Either party may terminate this Agreement at the end of the Initial Subscription Term or at the end of any Renewal Term by giving not less than 30 days' prior written notice to the other party.

## **10. Effect of Termination**

- 10.1 In the event of expiry or termination of this Agreement, You must immediately cease using the Service, any Add-Ons, Documentation, Support Services and Professional Services.
- 10.2 Following expiry or termination, You must return or destroy all copies of the Documentation, Local Add-Ons and/or any of Storman's Confidential Information held by You.
- 10.3 Subject to any applicable laws, for a period of 30 days commencing from the date of termination or expiry of this Agreement, You may request that Storman provides You with read only access to the Service to transfer Your Customer Content and You may request that Storman provides reasonable assistance to You in transferring Customer Content to You. Storman reserves the right to charge You its prevailing hourly market rates depending on the nature of assistance required to transfer the Customer Content (for example if You ask Storman to extract Customer Content in a particular format). Storman will have no further obligations under this clause following the expiry of the 30 day period in respect of the matter set out in this clause.
- 10.4 All obligations of confidentiality and restrictions on use, and all other provisions that are expressed or implied to survive the expiry or termination of this Agreement, shall survive expiry or termination including clauses 7, 8, 10, 12 and 13.

## **11. Representations and Warranties**

- 11.1 Storman warrants that during the Term the Service and Add-Ons will perform materially in accordance with the Documentation.
- 11.2 Subject to clause 12.1, and to the maximum the extent permitted by law, Storman expressly excludes all express guarantees, warranties, representation or other terms and conditions which are not contained in this Agreement and expressly excludes all implied guarantees, warranties, representations or other terms and conditions relating to this

Agreement or its subject matter including any implied guarantees, warranties, representations or other terms and conditions of merchantable quality, acceptable quality, fitness for a particular purpose or non-infringement of Intellectual Property. Storman expressly excludes guarantees, warranties, representations or other terms and conditions that the Service or Add-Ons will be provided uninterrupted or are error-free.

- 11.3 Your exclusive remedy for any breach of the warranty in clause 11.1 is for Storman to remedy the defect through the Support Services.
- 11.4 Storman is not responsible or liable for a failure in the Service or Add-On to the extent caused or contributed to you by Your use of the Service or Add-On in breach of the Documentation or other terms of this Agreement or other incorrect use.
- 11.5 You agree that You have relied on Your own skill and judgement in deciding to enter into this Agreement and that You have not relied on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

## 12. Limitations of Liability

- 12.1 Subject to Clause 12.2, nothing in this Agreement has the effect of excluding, restricting or modifying Your rights and our liability under any Consumer Guarantee.
- 12.2 To the extent permitted by law, Storman's liability for breach of any Consumer Guarantee is limited, at Storman's option:
  - 12.2.1 in the case of any service, to the re-supply of that service or payment of the cost of having the service supplied again; and
  - 12.2.2 in the case of any good, (a) the replacement of the good or the supply of any equivalent good or (b) the repair of the good or (c) the payment of the cost of replacing the good, acquiring an equivalent good or having the good repaired, provided it is fair and reasonable for us to rely on this clause. This clause does not apply in relation to a title guarantee relating to goods.
- 12.3 To the extent permitted by law and subject to clauses 12.1, 12.2 and 12.4:
  - 12.3.1 Storman's aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty,

misrepresentation or otherwise will not exceed the aggregate of the Fees You have paid to Storman in the previous 12 months prior to the event or series of related events giving rise to the liability; and

- 12.3.2 Storman excludes liability whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise for any loss of profit, loss of revenue, loss of business, loss of opportunity, loss of anticipated savings, loss of or corruption of data, business interruption, and any indirect or consequential loss.
- 12.4 Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.
- 12.5 Each of clauses 5.6, 8.8, 11.3, 12.2 and 13.2 to 13.6, which provide an exclusive or limited remedy, do not exclude Storman's liability for breach of its obligation to perform such exclusive or limited remedy.

## 13. Indemnity

- 13.1 You must indemnify and continue to indemnify Storman against all actions, claims, loss, damage, liabilities, costs and expenses which Storman may incur arising from or in connection with the Customer Content, Your breach of Your obligations of confidentiality, Your breach of applicable law, or any claim by a third party against Storman that the provision or use of the Service or any Add-On infringes the Intellectual Property of that third party, caused or contributed to by Your breach of this Agreement, but in all cases excluding to the extent caused or contributed by Storman's breach of this Agreement.
- 13.2 Subject to the remainder of this clause 13 and clause 12, Storman will defend You against a claim by a third party, and indemnify You against any liability under any settlement approved by Storman in writing or award of damages against You in a final judgement in proceedings brought by a third party against You alleging that Your use of the Service, Add-On or Documentation in accordance with this Agreement in Australia infringes the Intellectual Property rights of a third party.
- 13.3 The indemnity under clause 13.2 will apply only if You:
  - 13.3.1 notify Storman in writing as soon as possible after becoming aware of any claim against You for infringement, suspected infringement or alleged infringement of another person's Intellectual Property

- rights (**IPR Claim**);
- 13.3.2 give Storman sole right to conduct the defence or settlement of the IPR Claim;
  - 13.3.3 provide Storman with reasonable assistance in conducting the defence of the IPR Claim; and
- 13.4 In connection with any IPR Claim, Storman is entitled at its discretion to:
- 13.4.1 modify, alter or replace the Service, Add-On or Documentation;
  - 13.4.2 procure for You the right to use the Service, Add-On or Documentation or otherwise obtain the rights to perform its obligations under this Agreement, each so as to not infringe another person's Intellectual Property rights; or
  - 13.4.3 terminate this Agreement on not less than 30 days' prior written notice, and refund to You any Fees prepaid for services or software after the date of termination calculated on a pro rata basis.
- 13.5 Clause 13.2 will not apply if an IPR Claim arises from:
- 13.5.1 use of the Service, Add-On or Documentation which is not in accordance with the Documentation or this Agreement;
  - 13.5.2 use of the Service, Add-On or Documentation in combination with software or other products not approved by Storman;
  - 13.5.3 the modification or alteration of the Service, Add-On or Documentation by any person other than Storman; or
  - 13.5.4 use of any release or version of the Service, Add-On or Documentation, other than the most current release or version, after Storman has notified You that the earlier release or version is alleged to infringe Intellectual Property rights of a third party.
- 13.6 The cap on liability in clause 12.3.1 does not apply to Storman's indemnity in clauses 13.2 to 13.5. Clauses 13.2 to 13.5 specify Storman's entire liability and exclusive remedy for infringement claims and infringing products and services.

#### **14. Notices**

- 14.1 Notices given by You under this Agreement must be in writing in accordance with clause 14.2 and sent to the Notice Address of the person to whom the notice is to be given. Notice given by Storman under this Agreement must be in writing in accordance with clause 14.2 and sent to the Notice Address of the person to whom the notice is to be given or in accordance with clause 14.3.

- 14.2 A notice will be deemed received:
- 14.2.1 if delivered by hand, at the time of delivery;
  - 14.2.2 if delivered by post, 3 Business Days after the day of sending (or 7 Business Days if sent internationally); and
  - 14.2.3 if delivered by email, at the time it is sent by the sender's email server, unless the sender receives an automated message that the email has not been delivered within 4 hours of the time sent.
- 14.3 A notice from Storman will be also be deemed received by You after it is posted on the Service or Website.

#### **15. Assignment**

- 15.1 You must not deal with this Agreement in any way by assignment, sub-licence, transfer of obligations or otherwise without the written consent of Storman.
- 15.2 Storman may assign its rights to payment to any person. Storman may also assign its rights or novate its rights and obligations under this Agreement on written notice to You to a Related Body Corporate or third party which purchases Storman's business or assets or any part of them or any other third party which is to provide the Service.

#### **16. GST and other Taxes**

- 16.1 Each party is responsible for its own taxes relating to this transaction and shall report and pay any relevant taxes to the respective tax authorities in the respective country in accordance with the applicable laws.
- 16.2 If this Agreement or any supply under or in respect of this Agreement becomes subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Agreement, the parties agree that the amount payable for any supply under or in respect of this Agreement by any party shall be adjusted by the amount of the GST.
- 16.3 Each party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other party/ies to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.
- 16.4 If the payment for the purchases is subject to any withholding tax or other taxes under any applicable laws, You shall, in accordance with such applicable laws, declare and make the

payment to the relevant tax authorities such withholding tax or taxes on behalf of Storman. It has been agreed that You shall bear the costs of withholding tax or taxes (if any) relating to this transaction.

- 16.5 You shall prepare and file all required applications which would avail You of any favourable and applicable provisions under double tax treaties or domestic tax laws.

## 17. Variation

- 17.1 Storman's right to vary fees is set out in clause 6.4. Storman may amend other terms of this Agreement on prior written notice to You. We will give You not less than 45 days prior written notice prior to the commencement of the amendment, unless we are making the amendment to comply with law or the amendment is not to Your detriment, in which case Storman must use its reasonable endeavours to provide you with prior written notice.
- 17.2 If the amendment is to come into effect during an Initial Subscription Term or during a Renewal Term (rather than at the beginning of a Renewal Term) and is detrimental to You, and is not required by us to comply with law, You are entitled to terminate this Agreement on the date the amendment takes effect, provided You notify us within 15 days of our notification to You of the amendment. We will provide You with a pro rata refund of any prepaid Fees attributable to the period from the date of termination until the end of Initial Subscription Term or Renewal Term, as relevant. This clause does not affect Your additional rights to terminate this Agreement for convenience at the end of an Initial Subscription Term or a Renewal Term in accordance with clause 9.4.

## 18. Force majeure

If a party is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event then the relevant obligations under this Agreement will be suspended for as long as the Force Majeure Event continues to the extent that the party is prevented or delayed from performing them. This clause does not apply to your payment obligations. A **Force Majeure Event** is a cause or event beyond a person's reasonable control including acts of God, strikes, lockouts, riots, acts of war, epidemics, Internet and other communication line failures, power failures, denial of service attacks and similar malicious attacks.

## 19. General

- 19.1 In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (a) this agreement; (b) the Quote; and (c) the Documentation.
- 19.2 Failure or neglect by either party to enforce the terms of this Agreement at any time does not amount to a waiver of that party's rights under this Agreement.
- 19.3 This Agreement contains the whole agreement between You and Storman and supersedes all previous agreements between You and Storman relating to its subject matter.
- 19.4 Unless expressly required by the terms of this Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- 19.5 Each party's rights under each provision of this Agreement are cumulative and without prejudice to the party's other rights under another provision of this Agreement or otherwise in law.
- 19.6 The laws of New Zealand govern this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 19.7 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.
- 19.8 No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.
- 19.9 You agree that all references to "Storman" (including in its capacity as a "party") in clauses 12 and 13 shall be deemed to include Storman's Related Companies, and the benefit of the exclusions and limitations of liability and indemnities set out in those clauses are held by Storman on its own behalf and on trust for the benefit of Storman's Related Companies. Storman may vary, amend, enforce, or

otherwise act under, this Agreement without seeking the approval of any of Storman's Related Companies.

19.10 A reference to an amount of dollars, New Zealand dollars, \$ or NZ\$ is a reference to the lawful currency of New Zealand, unless the amount is specifically denominated in another currency.

19.11 Specifying anything in this Agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.

