

TERMS OF AGREEMENT

1. Definitions: In this Agreement, the following words shall have the following meanings:

"Background IP" shall mean all technical know-how and information known to the Unit, together with all IPR owned by the Unit at the start date of the Work.

"Collection Date" shall mean the date set out in the Proposal, upon which the Client shall collect or arrange for collection of the Materials upon completion of the Work.

"Conservation Report" shall mean the report prepared by the Client, detailing the quality, state condition and any damage to the Materials existing upon delivery of the Materials to the Unit.

"Copyright Works" shall mean works of any description in which copyright subsists by virtue of the Copyright, Design and Patents Act 1988, as amended from time to time.

"Delivery Date" shall mean the date set out in the Proposal, upon which the Client shall deliver or arrange for delivery of the Materials to the Unit for commencement of the Work.

"Digital Copies" shall mean the master electronic image files and digital surrogate files created by the Unit by copying the Materials using a scanner.

"Intellectual Property Rights (IPR)" shall mean patents, applications for patents and patentable know-how, trade marks or trading names (whether or not registered or registrable), designs (registered or registrable and including applications for registered designs), copyright (including related rights and any sui generis rights), topography rights and other rights in semi-conductor chips, rights in inventions, the right to claim damages for past infringements of the same and all rights having equivalent or similar effect wherever situated.

"Item Inventory" shall mean a list describing the Materials and where a Conservation Report is not provided, noting the general state, condition and any damage to the Materials.

"Method of Delivery" shall mean the delivery of the Digital Copies by the Unit to the Client as agreed by the Parties in writing using one of the methods set out in Annex 1.

"Proposal" shall mean the technical proposal for a programme of work ("**Work**") detailed specifically and in any supporting documents referred to therein, together with the Unit's estimate of costs set out therein.

"Specification" shall mean the requirements determined by the Parties setting out the resolution and layout which the Digital Copies are required to meet as set out in Annex 1 hereto.

"Unit" shall mean the University of Southampton acting through its digitisation unit known as BOPCRIS, in the Hartley Library.

"Materials" shall mean the physical items or materials listed in the Proposal and more fully set out in the Item Inventory, being loaned to the Unit to undertake the Work.

2. Incorporation

The conditions set out below shall together with the Proposal constitute the terms of the Agreement between the Unit and the Client together with any amendments or variations agreed in writing between the parties.

3. No variation or amendments to these conditions shall be valid unless agreed to in writing by the Parties.

4. The Client shall supply all pertinent data, information, the Materials, arrange for delivery and collection of the Materials and give such assistance as shall be required by the Unit for completion of the Work, free of charge.

5. Price

The Client will pay the full price for the conduct of the Work as set out in the Proposal. Where the Work is delayed through no fault of the Unit for more than 3 months then the Unit shall be entitled to submit an invoice for all work done up to that date and such invoice shall be payable within 30 days of receipt.

6. Ownership of Digital Copies and IP

Where the Materials contain Copyright Works, the Client warrants and represents that it is the copyright owner of all Copyright Works comprised in the Materials or that it has a binding copyright license from all copyright owners of the Copyright Works in the Materials with the ability to grant a sub-license to the Unit as set out herein. The Client hereby grants to the Unit a license (or sub-license as the case may be) in respect of the Copyright Works, to: make multiple copies, store, adapt, manipulate, process, deliver, run, load and undertake all activities required by the Unit for proper completion of the Work. In consideration for the Unit undertaking the Work, the license or sub-license granted to the Unit herein shall be free of charge and shall last for the duration of this Agreement and for a further 90 days following the delivery of the Digital Copies to the Client, whereupon it shall terminate automatically. Existing Background IP shall remain with the Unit. Upon full payment to the Unit of the price for the Work, any Intellectual Property Rights vesting in the Digital Copies shall pass to the Client. Until full payment is received by the Unit, the Client will not have the right to use, dispose of or in any way deal with such Digital Copies. Except as specified herein, nothing in this Agreement shall be taken as permitting the Unit to disseminate, publish, communicate or make available to the public, or distribute to any third parties in any form any of the Copyright Works, including the Digital Copies or to create an electronic library or similar resource from the Digital Copies.

7. Conservation Report

The Client warrants, represents and undertakes that the state and condition of the Materials are accurately described in the Conservation Report or where no Conservation Report is provided, the Item Inventory and that the Materials are of such a nature that they are able to withstand the process of digitisation to which they will be subjected. To the extent that during the process of scanning, the Unit finds that certain pages or sections of the Material can not be scanned without causing further damage to the item in question, the Unit shall not digitise the said pages(s) or sections and shall advise the Client of same upon delivery of the Digital Copies.

8. Transportation of the Materials

The Client shall deliver the Materials on the Delivery Date to the University of Southampton, Archives and Manuscripts Department in the Hartley Library at University Road, Highfield, Southampton, Hampshire, SO17 1BJ. The Client shall arrange for the collection of the Materials from the Unit on the Collection Date. The Client is solely responsible for the cost of collection and delivery of the Materials and shall at its own expense, arrange for and maintain appropriate insurance cover for this purpose. The Client shall comply with all applicable regulations and legal requirements concerning the packaging, labelling, packing and delivery of the Materials. The Materials must be marked in accordance with the Unit's instructions where given and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach the Unit in an undamaged condition. Risk of damage, loss, destruction or any other risk associated with safe-guarding the Materials or otherwise whilst on the Unit's premises shall only pass to the Unit after the Materials have been unpacked in the Archives and Manuscripts Department in the Hartley Library, in the presence of a representative of the Unit and the Inventory Report has been signed by both Parties confirming and accepting that all said items have been delivered to the Unit. Whilst on the premises of the Unit, the provisions of clause 9 and 11 shall apply in respect thereof and any risk of damage, loss, destruction or any other risk associated with safe-guarding the Materials or otherwise shall pass to the Client when it signs the Inventory Report on collection whereupon the Unit's obligations for safeguarding the Materials shall automatically cease.

9. Storage & Security of the Materials on the premises of the Unit

The Unit undertakes to use all reasonable measures to ensure that whilst it is in possession of the Materials, they shall be safe-guarded in the same manner as its own materials of a similar nature. In particular it is noted that the Unit and the Archives and Manuscripts Department is located in the Hartley Library and that a disaster plan is in place. The standard of care shall be in keeping with the nature of the Materials in question by taking into account the age of the Materials, scarcity, provenance and the like. No unauthorised personnel shall be allowed to enter the sections of the Unit designated for carrying out the Work. Where applicable, all employees of the Unit shall follow the *"Good Handling Principles and Practice for Library and Archive Materials"* as set out by the National Preservation Office in February 2000 for handling the Materials. Materials

will be housed over night in archive conditions with temperature and humidity controlled environments and shall not be exposed to natural light. During digitisation, Materials will be illuminated with cool and low ultra violet emitting light sources.

10. Delivery of the Digital Copies

The Unit shall deliver or otherwise transfer the Digital Copies to the Client using the Method of Delivery agreed and upon full payment of the costs associated with the Method of Delivery. The Unit shall not be liable for any loss or damage to the Digital Copies, save to the extent that such loss or damage was caused by the negligence of the Unit, its servants or agents. Risk of damage, loss, destruction or any other risk associated with the Method of Delivery shall pass to the Client once the Unit has commenced the transfer by handing the Digital Copies to the courier, carrier, post office or once the download or transfer of Digital Copies has commenced, whereupon the Work shall be completed.

11. Liabilities and Indemnities

- a) The Unit will carry out the Work with the due care and skill commensurate with Work of this nature but the Unit does not warrant that the Digital Copies will be fit for any particular purpose unless this is set out in the Specification.
- b) Subject to clause 11(e) and except under the indemnity in clause 11(d), the liability of either party to the other for any breach of this Agreement, any negligence, or arising in any other way out of the subject matter of this Agreement, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data, loss of agreements or opportunity, whether direct or indirect, even if the party bringing the claim has advised the other of the possibility of those losses, or if they were within the other party's contemplation.
- c) Subject to clause 11(e), and except under the indemnity in clause 11(d), the aggregate liability of each party to the other for all and any breaches of this Agreement, any tort or arising in any other way out of the subject matter of this Agreement will not exceed in total Two Hundred and Fifty Thousand Pounds (£250 000).
- d) The Client shall indemnify and keep indemnified the Unit, its employees, agents or subcontractors ("Indemnified Parties") against all actions, suits, proceedings, claims, demands and costs (including and legal costs or expenses properly incurred and any compensation costs and disbursements paid by the Unit on the advice of their legal advisers to compromise or settle any claim) occasioned to the Unit in consequence of any breach of the warranties given in this Agreement, or arising out of any claim concerning infringement of Intellectual Property Rights.
- e) Nothing in this Agreement limits or excludes either party's liability for death or personal injury; any fraud or for any sort of liability that, by law, cannot be limited or excluded; or any loss or damage caused by a deliberate breach of this Agreement.

12. Confidentiality

Any information relating to either Party's operations shall be regarded as confidential and will not, without the prior written consent of the other Party, be used communicated or disclosed by the Party receiving that confidential information, its employees subcontractors or consultants, except in connection with the Work. This restriction does not apply to information which: is or at the time of communication or disclosure was already in the public domain when it was provided by the Client; subsequently enters the public domain through no fault of the Unit; is received from a third party who has the right to provide it to the receiving party without imposing obligations of confidentiality; or is required to be disclosed by law, by an order of any court of competent jurisdiction or governmental authority.

13. Termination and Force Majeure

Notwithstanding either parties rights that may exist in law to terminate or treat as terminated this Agreement, either party may terminate this Agreement forthwith by written notice given to the other party if the other party is either (i) a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a

winding up order; or (ii) is an individual or a partnership which at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so. Except for payment, neither Party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances which could not have been contemplated, are beyond the Party's reasonable control and are not attributable to any act or failure to take preventive action by the Party concerned. If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

14. Announcements

Unless the Client explicitly requests otherwise, the Unit may announce or advertise that it has carried out work for the Client but otherwise neither Party shall make any press or other public announcement concerning details of this Agreement, or make any use of the trade marks or logos of the other Party in connection with or in consequence of this Agreement.

15. Governing Law

This Agreement shall be governed by the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts, save where the parties agree to resolve any dispute by arbitration, mediation or other similar means.

Annex 1

Specification

Method of Delivery

For the transfer of the Digital Copies one of the following methods will be used: portable hard drive, CD/DVD or File Transfer Protocols.

T&C/d4/01/07/2009

