

# ELECTRONIC STORAGE TERMS AND CONDITIONS

These electronic storage terms and conditions (the "Terms") govern the electronic storage by Western Overseas Corporation ("WOC") of records you must keep under the customs laws and regulations of the United States (the "Service"). Please carefully read these Terms. By contracting WOC for the Service, you agree to be bound by these Terms.

**1.0 The Service.** WOC arranges electronic storage of records and routine access services for its customs and transportation services customers through WOC's website, [www.westernoverseas.com](http://www.westernoverseas.com). The Service consists of off-site encrypted data storage and data access. You are responsible for obtaining and maintaining all computer hardware, software, and communications equipment and services you will need to access the Service. WOC makes no guarantees as to the continuous availability of the Service or of any specific features of the Service. WOC may change the Service or these Terms upon written notice to you at the e-mail address or addresses associated with your purchase of the Service. The Service is for your convenience and by performing the Service, WOC neither undertakes nor shall become your custodian of records. Records compliance remains your responsibility and WOC neither undertakes nor assumes your responsibility or the legal consequences of your non-compliance with the governing customs laws and regulations.

**2.0 Term and Termination.** The term of the Service shall be for one year from your registration date (the "Service Term") and shall automatically renew for successive one-year periods (each, a "Renewal Service Term"). Either party may terminate the Service at any time by giving 30 days' prior written notice by e-mail. Upon either party's termination of the Service, WOC will make the Data available to you for download for 15 business days after the termination date.

**3.0 Included Access; Out-of-Scope Access; and No Carryover.**

**3.1** The Service entitles you to access your records, up to 25 complete entry packets (the "Included Access") per Service Term or Renewal Service Term. Included Access applies to records WOC maintains in the ordinary course of business and does not include reconstruction, reassembly, or re-creation of incomplete or missing records.

**3.2** Requests beyond 25 complete entry packets or requests that in WOC's sole discretion require material additional processing, including the reconstruction of entry files, assembly of records that WOC does not maintain in the ordinary course of business, or large-scale or multi-period retrievals will be subject to separate project-based billing that WOC will quote at the time of such a request beyond the scope of the Included Access.

**3.3** The Included Access is per Service Term or Renewal Service Term, with no carryover.

**4.0 Opt-Out; Manual Document Retrieval.** You may opt out of the Service, in which case WOC will issue you a credit for the fee for the Service. You understand and agree that WOC's charge for manual document retrieval, upon your written request, will be \$150 per hour.

**5.0 Your Responsibilities.** As WOC's Terms and Conditions of Service state, you have the duty and are solely liable to United States Customs and Border Protection ("CBP") to comply with its recordkeeping requirements, as well as any other such requirements under the laws and regulations of the United States that apply to you. By agreeing to perform the Service, WOC neither assumes nor accepts any of your recordkeeping responsibilities, and WOC neither provides nor will provide any legal advice to you as to your recordkeeping responsibilities. By your purchase of the Service, you give WOC permission to use your information, data, files, and other content you store or provide (collectively, the "Data") solely to do what is necessary to provide the Service. WOC shall not sell your Data to third parties and WOC shall not use your files or information for advertising purposes.

**6.0 Restrictions and Policies.** You agree to use the Service for lawful purposes, in compliance with all applicable laws and regulations including, including those of CBP. Unlawful uses of the Service include storing, distributing, or transmitting any unlawful material, or attempting to compromise the security of any networked account or site. You agree to defend and indemnify WOC against any claim or action that arises from your use of the Service in an unlawful manner or in any manner inconsistent with the restrictions and policies of these Terms. WOC reserves the right in its sole discretion to terminate the Service and to remove and return to you any Data from WOC's system.

**7.0 Support.** WOC provides support by e-mail ([AP@westernoverseas.com](mailto:AP@westernoverseas.com)) between Monday and Friday, between 9:00 a.m. and 5:00 p.m., Pacific time.

**8.0 Payment of Service Fee.** WOC charges annually for the Service (the "Service Fee"). The Service Fee for the Service Term or for any Renewal Service Term is nonrefundable and WOC will bill the Service Fee in advance. You must provide WOC with accurate and complete billing information, including your legal name, at least one e-mail address, your physical address, and your telephone number. You agree to update that information within three business days of any change. WOC reserves the right to change at any time, upon 30 days' prior notice to you by e-mail.

**9.0 Post-Termination Document Requests.** Termination of the Service or of your brokerage relationship with WOC will also terminate all Included Access rights. Any post-termination requests for access to records will be subject to project-based billing that WOC will quote at the time of such a request.

**10.0 Non-use and Nondisclosure.** WOC will not use the Data for any purpose except to provide the Service. WOC will not disclose the Data to any third parties. WOC will exercise reasonable care to protect the confidentiality of the Data and to avoid its disclosure. WOC will notify you in writing of any misuse or misappropriation of the Data that may come to WOC's attention.

**11.0 Mandatory Disclosure.** If WOC is requested or required by legal process to disclose any of the Data, then WOC will give you prompt written notice, if legally permissible, so that you may seek a protective order or other appropriate relief. If there were to be no such protective order, then WOC shall disclose only that portion of the Data that WOC's counsel advises that WOC is legally required to disclose.

**12.0 Warranty Disclaimer.** YOU UNDERSTAND AND AGREE THAT WOC PROVIDES THE SERVICE "AS IS," WITHOUT ANY WARRANTY. WOC DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**13.0 Notice of Claim and Time-Bar.**

**13.1** You must give WOC written notice of a claim for any loss of or damage to the Data within 30 days of your date of discovery of such loss or damage, or within 30 days from the date on which, in the exercise of reasonable diligence, you should have discovered such loss or damage. You understand and agree that the consequence of your failure to give a timely written notice of claim is that your claim will be time-barred.

**13.2** You understand and agree that WOC shall be discharged from all liability to you as to any claim for loss of or damage to the Data unless you file an action in the mandatory venue in section 15.4 within six months of your date of discovery of such loss or damage, or within 30 days from the date on which, in the exercise of reasonable diligence, you should have discovered such loss or damage.

**14.0 Limitation of Liability.** You understand and agree that WOC's liability, if any, as to the loss of or damage to the Data, the Service, or these Terms, including liability arising out of contract, tort, strict liability, breach of warranty, or otherwise will be limited to a refund of the Service Fee for the year in question. In no event will WOC be liable for loss or inaccuracy of the Data, or for any indirect, special, incidental, or consequential damages, irrespective of prior notice to WOC of the possibility of such damages.

**15.0 Force Majeure.**

**15.1** If a Force Majeure Event occurs, the party that is prevented by that Force Majeure Event from performing any one or more obligations under this agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that it complies with its obligations under section 15.3.

**15.2** "Force Majeure Event" means any event or circumstance, regardless of whether it was foreseeable, that prevents a party from performing any of its obligations under this agreement, other than an obligation to pay money, on condition that that party uses reasonable efforts to do so.

**15.3** Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that party expects it to last. Thereafter, the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the Performing Party and to resume its performance under this agreement.

**16.0 Miscellaneous.**

**16.1 Entire Agreement and Modifications.** These Terms state the parties' final expression and entire agreement arising out of or in any way related to the Service. These Terms state the parties' understanding and they supersede any prior or contemporaneous communication, agreement, or understanding of any kind, oral or written, concerning the Service. No modification of or amendment to these Terms shall be effective unless in writing and signed by both parties, including WOC's chief executive officer.

**16.2 Severability.** If any portion of these Terms shall for any reason be held to be invalid or unenforceable, then the remainder of the Terms shall be unaffected thereby and remain in full force and effect.

**16.3 Non-Waiver and Non-Assignment.** No waiver by either party of any breach or default under these Terms shall be deemed to be a waiver of any other breach or default under these Terms. You may not assign or otherwise transfer your rights under these Terms without the prior written consent of WOC's chief executive officer.

**16.4 Mandatory Law, Venue, and Jurisdiction.** All claims or disputes arising out of or in any way connected to the Service or these Terms shall be determined under the laws of the State of California, without regard to its conflict of laws rules. The exclusive and mandatory venue for any of the above claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and thereby waive any jurisdictional, venue, or inconvenient forum objections to those courts.

**16.5 Attorneys' Fees.** If a claim or dispute were to result in litigation between the parties, then the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees and costs.