



## TERMS AND CONDITIONS FOR THE PROVISION OF OFFSITE TAPE STORAGE SERVICES



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# TERMS AND CONDITIONS

## 1 Definitions

1.1. In this Agreement, unless the context otherwise requires, the following words have the following meanings:

"Affiliate"	means in relation to a Party, any existing or future person which directly or indirectly controls, is controlled by or is under common control with such Party;
"Agreement"	means the contract for the provision of the Services pursuant to these Conditions including the Schedule and (unless the context otherwise requires) includes any additional terms and conditions agreed in writing between the Parties and attached to the Schedule;
"Applicable Laws"	means all present or future laws, statutes, by-laws, orders, enactments, regulations, legally binding guidelines, requirements, or industry codes of any Governmental Authority applicable to the performance of the Services or any other activities under this Agreement, including Data Protection Legislation;
"Approved Containers"	means the containers of a type size and style approved or supplied by the Service Provider as suitable for the storage of magnetic media;
"Articles"	means the Approved Containers and/or individual magnetic media agreed to be stored by the Service Provider in performance of the Services;
"Business Day"	means a day which is not a Saturday, Sunday or a public holiday in England and Wales;
"Change"	means any amendment to the Agreement, including any material alteration in the quality or quantity of the Services or the way in which they are performed, including the provision of additional services;
"Change Request"	means a formal written request describing a required Change to be reviewed and (where applicable) implemented in accordance with the Variation Procedure;
"Commencement Date"	means the date on which the Agreement shall become effective as set out in the Schedule, or where no such date is specified, the date of signing of the Schedule by the Customer;
"Confidential Information"	means (excluding the Articles) any information, communications or data, in any form, whether oral, written, graphic, electromagnetic, including all plans, proposals, forecasts, technical, methodologies, know-how, information about technological or organisational systems, customers, personnel, business activities, databases, IPR, the terms and conditions of this Agreement and other information in relation to it (and in the case of the Customer, all Customer Data and any other data relating to or provided by the Customer's customers), whether or not it is specifically marked confidential but excluding any information (other than Customer Data), which: (i) was already known to the Recipient before the time of its disclosure to the Recipient and is not subject to confidentiality restrictions; (ii) which is in the public domain at the date of its disclosure to the Recipient or which thereafter enters the public domain through no fault of the Recipient (but only after it becomes part of the public domain); (iii) which is received by the Recipient without obligation of confidence from a third party who the Recipient had no reason to believe was not lawfully in possession of such Confidential Information free of any obligation of confidence; or (iv) is independently developed by the Recipient without any use or reference to Confidential Information of the Disclosing Party, as evidenced by the records of the Recipient;
"Conditions"	means the terms and conditions set out in this document;
"CPIH"	means the general index for measuring consumer prices inflation which is published monthly in the United Kingdom by the Office for National Statistics;
"Customer"	means the (i) Customer as named in the Schedule; and (ii) its Affiliates (which may collectively also be referred to as the "Customer Group");

"Customer Authorised Personnel"	means the Personnel appointed by the Customer and/or End User and confirmed to the Service Provider in writing from time to time as authorised handlers of Articles and able to receive or handover Articles to/from the Service Provider;
"Customer Data"	shall have the meaning set out in Clause 9.1;
"Customer Representative"	means the person as may from time to time be appointed by the Customer and notified to the Service Provider;
"Data Protection Legislation"	means (i) EU Regulation 2016/679 ("GDPR"); (ii) any national laws and secondary legislation including the Data Protection Act 2018, relating to the handling of Personal Data, as amended or updated from time to time; and (iii) any successor legislation, as amended, consolidated, re-enacted or replaced from time to time;
"Disclosing Party"	means the party disclosing an item of Confidential Information;
"Emergency Request"	means as defined in Appendix 1 the pickup and/or delivery of Articles other than the Standard Collections (as defined in Appendix 1);
"End User"	means either (i) a separate entity set out on the Schedule and recognised by the Parties as a client of the Customer, and with which the Service Provider has no direct contractual or other responsibilities under this Agreement; or (ii) where no separate entity is set out on the Schedule, the Personnel of the Customer which may utilise the Services from time to time;
"Good Industry Practice"	means, in relation to any activity or requirement relevant to this Agreement, the exercise of that degree of skill, care diligence, prudence and foresight and using the practices, processes, procedures and guidelines which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of such activity or requirement under the same or similar circumstances and conditions in the United Kingdom;
"Governmental Authority"	means any court, government, regulatory agency or authority or like successor body (in each case whether international, national or local and in any competent jurisdiction) (including but not limited to the Information Commissioner's Office and its successors);
"Initial Term"	means the initial duration of the Agreement as set out in the Schedule;
"Inventory"	means the reference information maintained by the Customer or End User in accordance with Clause 3 and used by the Parties to confirm the delivery, receipt and storage of Articles by the Service Provider in performance of the Services;
"IPR"	means all intellectual property rights, wherever in the world, howsoever arising and in whatever media, whether or not registered, including copyright, patents, trademarks, service marks, trade names, rights in databases, trade secrets, utility models, semi-conductor rights, know-how, registered design, software, and all rights in the nature of unfair competition rights or rights to sue for passing off and any applications for protection or registration of these rights and all renewals and extensions thereof throughout the world;
"ISO 27001"	means the ISO/IEC 27001:2013 Information Security Management System (ISMS) standard published in September 2013 by the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (as amended, consolidated, re-enacted or replaced from time to time);
"Normal Working Hours"	means the hours of 09:00 – 17:30 on a Business Day;
"One Time Charges"	means the one-time charges set out in the Schedule for the set-up of the Services (including the provision of Approved Containers as requested by the Customer);
"Party"	means either the Service Provider or the Customer and "Parties" shall mean both of them;
"Personnel"	means officers, directors, employees, workers and agents (including any persons hired as consultants or contract staff) engaged in the use and/or provision of the Services (or part thereof);

"Premises"	means the Service Provider storage facilities and/or such other premises from which the Service Provider may deliver the Services from time to time;
"Recipient"	means the party receiving an item of Confidential Information;
"Regulatory Requirement"	means any legislation, lawful requirement or demand (including legally binding circulars and guidelines), as amended from time to time, of any Governmental Authority or court order relating to either of the Parties and/or the Services including regulations relating to insurance, banking, fund management, stock exchanges, data protection as well as any mandatory instructions or requests by any Governmental Authority;
"Schedule"	means the separate schedule to which these Conditions apply to include details such as the Commencement Date, Inventory, Initial Term, and Service Charges;
"Security Breach"	means any act or omission that compromises either the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organisational safeguards that relate to the protection of the security, confidentiality, or integrity of Customer Data;
"Security Interest"	means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security;
"Security Policy"	means the Service Provider Security Policy as at the Commencement Date and available to the Customer on request;
"Service Charges"	means the charge(s) for the Services as set out in the Schedule payable in advance at the intervals set out in the Schedule;
"Service Provider"	means the (i) Service Provider as named in the Schedule; and (ii) its Affiliates, which may both also be referred to as the <b>"Service Provider Group"</b> ;
"Service Provider Representative"	means the person as may from time to time be appointed by the Service Provider and approved in writing by the Customer (such approval not to be unreasonably withheld or delayed);
"Services"	means the services to be supplied by the Service Provider pursuant to this Agreement as identified in the Schedule, and more particularly as described in Appendix 1 of these Conditions;
"Site"	means (i) the premises as set out in the Schedule from which Articles will be collected and to which Articles will be delivered in the performance of the Services; or (ii) where no such premises is set out, the address of the Customer and/or End User as set out in the Schedule;
"Staff Screening"	means the process that the Service Provider follows, using at least Good Industry Practice, to screen its staff, including the taking up of references, background history, verifying the right to work in the United Kingdom, and carrying out Standard Disclosure and Barring Service (DBS) checks;
"Stored Inventory"	means the reference information maintained by the Service Provider which details the Articles that are currently located within the Premises; and
"Variation Procedure"	means the process referred to in Clause 14:

- 1.2. For the purposes of the Agreement (i) reference to legislation is, except as otherwise specifically referenced, to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; (ii) reference to a document or provision thereof is to that document or provision as amended, supplemented, replaced or novated; (iii) where the words "include", "includes", "including" or "in particular" (or similar derivatives) are used, they are deemed to be followed by the words "without limitation"; (iv) "will" and "shall" shall be interpreted as expressions of command, not merely expressions of future intent or expectation; (v) use of the singular imports the plural and vice versa; and (vi) headings are for purposes of reference only and will not in any way limit or affect the interpretation of any of the terms herein and references to any clause or paragraph in any document that forms part of the Agreement refer to the applicable clause or paragraph of that document, unless expressly stated otherwise, and "person" includes any individual, firm, corporation wherever incorporated, trust, joint venture (whether or not having a separate legal existence), partnership, limited liability company, association

(whether incorporated or not), or any other entity, or any governmental body or subdivision, agency, or authority. In the event of any inconsistency or conflict between the Conditions and the Schedule then the Schedule shall prevail over the Conditions.

## 2 Appointment and Duration

- 2.1. The Agreement shall commence on the Commencement Date and shall (subject to early termination in accordance with the Agreement) continue for the Initial Term and (unless specified otherwise on the Schedule) thereafter from year to year until terminated in accordance with the terms set out herein.
- 2.2. Notwithstanding the foregoing, and subject to any minimum duration specified on the Schedule, either Party may terminate the Agreement for convenience by giving the other not less than thirty (30) days prior written notice. In the event of such termination by the Service Provider, the Customer shall be entitled to a pro rata refund of any Service Charges and/or other pre-payments made in advance.

## 3 Inventory & Containers

- 3.1. On receipt by the Service Provider of new or returned Articles the Customer or End User must supply an Inventory of the Articles detailing the information that will be used by the Customer or End User to order subsequent retrievals and enable the Service Provider to prepare deliveries to the Customer or End User from the Stored Inventory.
- 3.2. The Service Provider will only accept magnetic media packed in Approved Containers and Articles shall only be given to or received from Customer Authorised Personnel.
- 3.3. If the Customer does not have containers suitable for use as Approved Containers the Service Provider shall, at the Customer's request, supply sufficient Approved Containers and will invoice the Customer for the Approved Containers supplied in accordance with the charges separately quoted by the Service Provider at the time.
- 3.4. Bar code labels will be supplied for all Approved Containers by the Service Provider. The labelling of any and all Articles not stored within Approved Containers is a Customer responsibility.

## 4 Withdrawals

- 4.1. The Service Provider will not hand over or permit withdrawals of any Articles to any person who is not on the list of Customer Authorised Personnel and/or when requested to do so, is unable to provide proof of identity satisfactory to the Service Provider.
- 4.2. If the Customer or End User wishes to collect any Articles from the Premises the Service Provider reserves the right to require the Customer and/or End User Personnel to be accompanied by a representative of the Service Provider whilst on the Premises.
- 4.3. The Customer must provide written notice of a request for permanent retrieval or destruction of Articles stored by the Service Provider. The Service Provider will comply with such reasonable written requests on the dates specified and will provide to the Customer documentary evidence of any requested destruction. Completion of any secure destruction requested by the Customer shall be subject to the Customer accepting the reasonable charges of the Supplier for any secure destruction.
- 4.4. Subject to Clause 4.3 and on expiry or termination of this Agreement, the Service Provider shall return the Articles owned by the Customer and/or End User to the Customer at the Site as the Customer requires.

## 5 Obligations of the Service Provider

- 5.1. At all times, the Service Provider shall perform the Services in accordance with Good Industry Practice, Applicable Laws, and this Agreement, and shall provide its Personnel in sufficient numbers to properly execute the Services.
- 5.2. Subject to and comprising part of the audit rights pursuant to Clause 10 the Service Provider shall permit the Customer, End User or their authorised representatives to inspect the Articles at the Premises and shall afford all necessary access, assistance and proper facilities for such inspections (whether located on premises under the Service Provider's or the Service Provider's permitted sub-contractor's control) and for this purpose the Service Provider authorises or shall procure that the Customer, End User and their authorised representatives are authorised to enter into the Premises at which the Articles may from time to time be located. The Customer, End User and authorised representatives shall be escorted by the Service Provider Representatives at all times.
- 5.3. The Service Provider shall not permit any other person other than Customer or Customer's nominee to utilise the Articles without the express written consent of Customer. Such consent by Customer may be revoked at any time.



## 6 Warranties and Undertakings

- 6.1. Each Party warrants and represents that it has all requisite consents, licences and authorities (whether statutory or otherwise) that are applicable or required in connection with the execution of and performance of its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of such Party; and that it has full capacity, power and authority to enter into, and perform fully in accordance with the terms of, this Agreement.
- 6.2. The Customer warrants and represents that it:
- a) has not been induced to enter into this Agreement by any prior representation or warranties, whether verbal or in writing, except as specifically contained in this Agreement;
  - b) is contracting as principal and not as agent and that the Customer is entitled to deal with the Articles in accordance with this Agreement; and
  - c) it has confirmed the Articles are not dangerous to persons or property when stored under normal conditions and are not especially inflammable and contain no explosive or contaminative substances.
- 6.3. The Service Provider warrants and undertakes that:
- a) the Services will be performed in accordance with Good Industry Practice by Personnel of appropriate numbers, skill and experience acting at all times in good faith and with due diligence and in accordance with the Service Provider's obligations under this Agreement;
  - b) it will only use technically competent and properly trained and qualified Personnel in the provision and performance of the Services and will maintain the required competencies for the term of the Agreement;
  - c) it will operate the Premises and the Services will be maintained and delivered using policies and procedures compliant with ISO 27001;
  - d) it will conduct appropriate recruitment and security vetting procedures in relation to all Personnel involved in the provision and performance of the Services, as required to comply with Staff Screening;
  - e) it will properly supervise the carrying out of the Services, and adequately manage the risks associated with the Services;
  - f) it will not attempt or hold itself out as having any power to sell, charge or otherwise encumber or sell or otherwise dispose of any Articles or as having any interest in any Articles nor shall it create, incur or suffer to exist any Security Interest in respect of any Articles; and
  - g) the Articles shall be used by the Service Provider only for the purposes set out in this Agreement. The Service Provider shall not cause or permit any Article or Approved Container to be employed, used or operated on in any manner contrary to any Applicable Laws.
- 6.4. The Service Provider excludes all warranties, conditions or other terms that are not expressly set out in this Agreement, whether implied by statute, common law, course of dealing or otherwise, to the maximum extent permitted by Applicable Laws.

## 7 Confidentiality

- 7.1. The Recipient shall (and shall procure that its Personnel) treat and keep confidential in accordance with the terms and conditions herein all Confidential Information of the Disclosing Party and may use the Confidential Information only for the performance of its obligations and the exercise of its rights under this Agreement.
- 7.2. All rights, title and interest in the Confidential Information of the Disclosing Party shall remain the property of the Disclosing Party. The Recipient acknowledges that it shall not acquire any right, title to, interest in or licence in respect of any part of the Confidential Information, except as expressly provided in this Agreement.
- 7.3. The Recipient may disclose Confidential Information to the extent required by law, by any Government Authority or other regulatory authority or by a court or other authority of competent jurisdiction. However, to the extent it is legally allowed to do so, the Recipient must give the Disclosing Party as much notice of that disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 7.3, it shall take into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.
- 7.4. Subject to the provisions of this Agreement, the Recipient may disclose the Confidential Information of the Disclosing Party to those of its (and of its Affiliates) Personnel, permitted sub-contractors, consultants, auditors, and professional advisers that have a need to know such Confidential Information for the purposes of complying with its obligations or exercising its rights under this Agreement. The Recipient shall take all reasonable measures to protect the Confidential Information of the Disclosing Party, in any event no less than those used to protect its own Confidential Information, and shall be responsible to the Disclosing Party for any breach of the provisions of this Clause 7 by any of its (and of its Affiliates) Personnel, permitted sub-contractors, consultants, auditors, and professional advisors as if it were a breach by the Recipient.

- 7.5. In the event that the Recipient learns of any unauthorised use or disclosure, or threatened unauthorised use or disclosure, of any Confidential Information of the Disclosing Party, the Recipient shall as soon as reasonably practicable notify the Disclosing Party of the particulars of such use or disclosure.
- 7.6. Upon expiration or termination of this Agreement (whichever is the sooner), the Recipient shall within fifteen (15) days where requested by the Disclosing Party in writing and reasonably and technically practicable:
  - a) return or destroy all Confidential Information of the Disclosing Party as required by the Disclosing Party and in the Recipient's or its Personnel's or subcontractor's possession or control, including whole or partial copies thereof in any media, all notes, memoranda, and other materials containing such Confidential Information; and
  - b) deliver written certification to the Disclosing Party that all of such Confidential Information of the Disclosing Party which the Recipient or its Personnel or subcontractors have had in their possession or control has been returned or securely destroyed, as required by the Disclosing Party.
- 7.7. Notwithstanding Clause 7.6, the Recipient may retain any Confidential Information of the Disclosing Party solely to the extent that it is obliged to store or retain such information due to legal or Regulatory Requirements. For the avoidance of doubt Confidential Information stored on system back-ups held for audit or disaster recovery purposes may be retained until deleted as part of the Recipient's normal operational procedures and the Recipient shall remain at all times subject to the obligations to maintain its confidentiality as provided in this Clause 7.
- 7.8. Promptly on the Customer's request, the Service Provider shall (and shall procure each of its Personnel) do all things and execute all further documents necessary to give full effect to this Clause 7.
- 7.9. The Parties acknowledge that a Disclosing Party may suffer irreparable harm in the event that the Recipient fails to comply with the terms of this Agreement and that monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other remedies available to it at law or in equity, the Disclosing Party shall be entitled to seek injunctive relief to enforce the terms of this Clause 7.
- 7.10. The Customer warrants that it will ensure that End Users and/or other third parties of the Customer maintaining and utilising the Services are under obligations of confidentiality that are substantially similar in effect to the terms of this Clause 7.
- 7.11. A Recipient's obligation to maintain the confidentiality of Confidential Information of the Disclosing Party and the restrictions on such Recipient's use of the Confidential Information, as provided in this Clause 7, shall survive the expiration or termination of this Agreement.

## 8 Intellectual Property Rights

- 8.1. Neither Party shall cause or permit anything that may infringe or exploit any of the IPR of the other Party or a third party without the written permission of the other Party. Nothing in this Agreement shall constitute or create any licence, right to use, right to exploit or other rights in respect of any of the Parties' IPR.
- 8.2. The Customer acknowledges that any products, software, services or paperwork provided by the Service Provider in the course of performing the Services may contain knowledge and code in the form of methods, techniques, modules, fragments, principles and algorithms developed over time by the Service Provider and its subcontractors not specifically for the Services. The Customer agrees that the Service Provider and its agents may reuse all such knowledge and code at entirely the Service Provider's own discretion.
- 8.3. The Service Provider shall fully indemnify the Customer against all claims, demands, actions, reasonable costs, reasonable expenses (including but not limited to reasonable legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any claim (including but not limited to the defence of such claim) that the Service Provider's IPR used in the provision of the Services infringes or allegedly infringes the IPR of a third party.
- 8.4. For the avoidance of doubt, the Service Provider acknowledges that Articles provided or made available to the Service Provider by or on behalf of the Customer and/or End User, shall be owned by and remain within the ownership of the Customer or End User (as applicable) and nothing in this Agreement or otherwise shall confer on the Service Provider any right, title or interest in respect of any Customer's and/or End User's IPR stored on such Articles.
- 8.5. The Customer will procure that in so far as any End User has access to or use of the Services such End User will comply with all the terms and obligations of this Clause 8 as if such End User was a party to this Agreement.

## 9 Data Protection

- 9.1. Both Parties shall comply with the Data Protection Legislation in so far as it is relevant in respect of the provision and use of the Services. For the purposes of this Agreement, the terms Data Controller, Data Processor, Data Subject, Personal Data, and Processing shall be as defined in the Data Protection Legislation, and Customer Data ("**Customer Data**") shall mean all information including Personal Data (where applicable) stored on Articles made available by the Customer and/or End Users to the Service Provider pursuant to this Agreement.



- 9.2. The Parties acknowledge that the Customer or End User (as applicable) is a Data Controller and that the Service Provider is not considered a Data Processor in providing the Services. The Service Provider further acknowledges that it has not been given any authority by the Customer to make any attempt to access the contents of Approved Containers or the Customer Data on the individual magnetic media and confirms that it shall not do so.
- 9.3. The Customer acknowledges that the Service Provider does not have and/or require access to, use of, or other rights to the Customer Data in order to deliver the Services and its obligations in accordance with the terms of this Agreement.
- 9.4. The Parties further acknowledge that it may be necessary to exchange Personal Data relating to their respective Personnel and/or the End User(s) in order to receive the benefit of or deliver the Services (as applicable). Where a Party receives any such Personal Data from the other Party, it does so as Data Controller and shall ensure that it fully complies with the Data Protection Legislation.
- 9.5. The Customer represents and warrants to the Service Provider that as of the Services Commencement Date it has, and where applicable the End User has, performed any required and/or appropriate due diligence on the Service Provider and implemented all appropriate technical measures on the Articles to be made available to Service Provider under this Agreement including where applicable pseudonymisation, encryption of Personal Data and/or use of locked Approved Containers with keys and/or combinations retained by the Customer. The Service Provider shall provide reasonable assistance to the Customer in the completion of further data protection assessments on reasonable written notice. The Customer shall request any changes to the Services arising from such assessments in accordance with the Variation Procedure.
- 9.6. The Customer shall remain the sole owner of the Customer Data together with all copyright, database rights and other IPR in such data and any compilation of such Customer Data. The Customer shall be responsible for ensuring the adequacy, integrity, accuracy, and quality of the content of the Customer Data stored on the Articles and its transmission, backup, or handling unless stated herein that it is the responsibility of the Service Provider in accordance with the terms of this Agreement.
- 9.7. The Service Provider shall:
  - a) use the Articles only on the instructions of the Customer or End User to perform its obligations under this Agreement;
  - b) keep the Articles secure and provide appropriate technical and organisational measures against unauthorised or unlawful access, accidental loss or destruction of or damage;
  - c) ensure the Articles are kept completely separate from other items being stored on behalf of any other customers of the Service Provider; and
  - d) provide such information as is reasonably necessary to enable the Customer to satisfy itself of the Service Provider's compliance with this Clause 9 and, subject to the audit rights pursuant to Clause 10, allow the Customer's Personnel access to any relevant premises during Normal Working Hours to inspect the procedures and measures referred to in this Clause 9; and
  - e) on expiry or termination of this Agreement or any part of it, and at any time on the written request of the Customer, either promptly return or destroy the Articles, subject to the Customer accepting the reasonable charges of the Service Provider for any secure destruction.
- 9.8. The Service Provider further agrees that it:
  - a) will promptly notify the Customer of any request for disclosure of the Customer Data from a Governmental Authority that does or could force it to disclose the contents of any Articles, unless such notification is forbidden by law;
  - b) notify the Customer promptly on, and in any event within five (5) Business Days of receipt of any communication received from a Data Subject, Governmental Authority or third party regarding the nature of the Services being provided and Personal Data that may be held;
  - c) it shall not transfer any Articles to any country or territory outside of the United Kingdom without the prior written consent of the Customer.
- 9.9. The Customer may at any time request a written description of the technical and organisational methods employed by the Service Provider referred to in Clause 9.7, in order to assist the Customer in demonstrating compliance with its obligations under the Data Protection Legislation, and any information provided by the Service Provider in respect of the same shall be treated as Confidential Information by the Customer. Within five (5) Business Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Customer can determine whether or not, in connection with Customer Data, any applicable data is protected in accordance with the Data Protection Legislation and the Customer's responsibilities as the Data Controller for the Customer Data. In addition, and subject to Clause 10.8, the Customer may carry out inspections at the Service Provider's premises in order to check the Service Provider's compliance with this Clause 9, observing an appropriate advance notice period. The Service Provider may make the inspection dependent on the signing of a confidentiality agreement regarding the data of its other customers and the technical and organisational measures undertaken by them.
- 9.10. The Service Provider shall promptly without undue delay and in any event within twenty four (24) hours inform the Customer if any Articles are known or suspected to be lost or destroyed or have become damaged, corrupted, or unusable and the Service

Provider shall provide the Customer with all reasonable assistance in providing information for, and co-operating with, and in the reporting of such event (where applicable) to a Governmental Authority.

- 9.11. The Customer will procure that in so far as an End User has access to or use of the Services such End User will comply with all the terms and obligations of this Clause 9 as if such End User was a party to this Agreement.

## 10 Regulated Activities and Audit

- 10.1. The Service Provider shall, and shall procure that its Personnel subcontractors and suppliers shall, comply with all known and applicable Regulatory Requirements deal with all Governmental Authorities in an open and co-operative manner, grant all Governmental Authorities access on request to the Service Provider's premises, Personnel and records during Normal Working Hours, provide all Governmental Authorities with such information as they may reasonably require and provide reasonable assistance to the Customer in the completion of risk assessments for outsourcing on reasonable written notice. The Customer shall request any changes to the Services arising from such risk assessments in accordance with the Variation Procedure.
- 10.2. For the avoidance of doubt the Customer is responsible for informing the Service Provider of any Regulatory Requirements that apply to the Customer's and/or End User's business and hence to the Services and (i) do not apply to all businesses operating within the United Kingdom; (ii) do not apply to all businesses operating within the United Kingdom and trading with the European Union; (iii) which are not explicitly stated in this Agreement, and (iv) to which the Service Provider must also comply. Where such Regulatory Requirements are not notified to the Service Provider in writing prior to the Commencement Date notification shall be as a Change in accordance with the Variation Procedure
- 10.3. Either Party shall be entitled to request modifications to the Services and/or the obligations hereunder in the event of a change to the Regulatory Requirements to secure compliance with Regulatory Requirements. Such Changes shall be subject to the Variation Procedure with costs covered pursuant to Clauses 10.4 to 10.6 (inclusive) as applicable.
- 10.4. Subject to Clause 10.2 the Parties agree that where a Governmental Authority requires changes to any Services which are specific to the Customer or End User and such changes are required over and above any general changes required by such Governmental Authority for other customers of the Service Provider governed by the same Governmental Authority, the Customer shall be liable to pay the reasonable costs of the Service Provider for implementing those changes to the Services to meet the requirements of the Governmental Authority.
- 10.5. The Parties agree that where a Governmental Authority requires changes to the Services and such changes are general changes required by such Governmental Authority for other customers of the Service Provider governed by the same Governmental Authority, the Service Provider shall apportion its reasonable costs for implementing those changes across those customers to whom the requirements of the Governmental Authority apply.
- 10.6. For the avoidance of doubt where a Governmental Authority requires changes to any Services which are; (i) specific to the Service Provider (and not its customers); (ii) apply to all businesses operating within the United Kingdom; and/or (iii) apply to all businesses operating within the United Kingdom and trading with the European Union, the Service Provider shall be liable to pay the costs for implementing those changes to the Services to meet the requirements of the Governmental Authority. Where changes apply to all businesses operating within the United Kingdom and the Customer requires the ability to specify how such related changes to the Services are implemented, the provisions of Clause 10.4 shall apply.
- 10.7. Each Party shall use commercially reasonable efforts to provide assistance, information and documentation to the other to the extent reasonably required to comply with any Regulatory Requirements or in that other Party's dealings with any Governmental Authority provided always that nothing in this Clause 10.7 shall oblige any Party to agree to any change to this Agreement. The Service Provider shall provide such information and at such times as requested by the Customer to enable the Customer to monitor the performance of the Service Provider and evaluate risks.
- 10.8. Upon reasonable notice (except where a Governmental Authority requires otherwise), and subject to a maximum of two (2) Business Days per annum (including completion of due diligence or other preparatory documentation as required by the Customer) the Service Provider shall (and shall procure that its subcontractors and suppliers shall) provide any auditors and inspectors as the Customer, End User or any Governmental Authority may designate:
- a) access during Normal Working Hours (except as may be necessary to perform audits) to the premises, Personnel and records of the Service Provider and/or its subcontractors and suppliers for the purpose of performing audits or inspections of the business of the Service Provider and/or the Services, including for the purpose of auditing and/or monitoring the performance of the Service Provider against the terms of this Agreement and reviewing the Service Provider's security practices and procedures; and
  - b) all further assistance, co-operation and information as reasonably requested and required for the purposes of this Agreement.
- 10.9. Except where the Customer can reasonably demonstrate to the Service Provider that the Customer believes the Service Provider to be in material breach of the Agreement, in the event the Customer requires more than two (2) Business Days per annum for the purpose of monitoring the performance of the Service Provider against the terms of this Agreement in accordance with

Clause 10.8 the Service Provider shall be entitled to reasonably charge for any such assistance provided to the Customer. All charges for the Service Provider Personnel providing such additional assistance shall be at the then current Service Provider day rates and the Customer will pay any sums invoiced as per Clause 13.

- 10.10. The Service Provider shall supply to the Customer promptly such information relating to the Service Provider's financial condition (including the annual audited and approved financial statement) and otherwise in relation to the business of the Service Provider as the Customer reasonably requests from time to time.

## 11 Security

- 11.1. The Service Provider will ensure that at all times it has in place and is operating in accordance with the Security Policy as contained in the Service Provider's ISO 27001 manual. The Service Provider shall remain certified under, and shall at all times operate in accordance with, ISO 27001 throughout the term of the Agreement and shall upon written request from the Customer from time to time provide the Customer with satisfactory evidence thereof.
- 11.2. The Service Provider shall establish and maintain reasonable safeguards against the destruction, loss or alteration of any data of the Customer and End Users in the possession of the Service Provider or accessed by the Service Provider including the storage of all Articles (except whilst in transit) in a facility maintained in compliance with the requirements of ISO 27001 to include a secure environment including CCTV and biometric access controls, a climate controlled facility with environmental monitoring, a direct link to the emergency services and/or remote security monitoring; and an automated fire detection and suppression system.
- 11.3. The Service Provider shall maintain and enforce safety and security systems and procedures at the Premises to prevent unauthorised access to Articles. Such safety and security systems and procedures shall as a minimum satisfy the requirements of and be consistent with Good Industry Practice and applicable Regulatory Requirements.
- 11.4. The Service Provider shall be responsible for any and all Security Breaches caused by Personnel, subcontractors, procedures and/or systems which are or could reasonably be expected to be under the Service Provider's control. Without prejudice to any rights and remedies of the Customer, upon the occurrence of any Security Breach the Service Provider shall promptly, and in any event within twenty four (24) hours, inform the Customer of such Security Breach (including all the known facts related to such Security Breach) and shall promptly provide the Customer with full co-operation and assistance in dealing with such Security breach, in particular in relation to resolving any data privacy or security issues involving Customer Data. The Service Provider shall (at its own cost) use all reasonable endeavours to remedy such Security Breach and to ensure that such Security Breach will not recur save that the Service Provider shall not be responsible for remedying any Security Breach directly caused by any act or omission of the Customer or its Personnel.
- 11.5. In the event that the Service Provider is served with a warrant, or any other order or request from a court or Governmental Authority or regulator with jurisdiction over it and/or the Customer which requires access to and/or disclosure of Customer Data the Service Provider will, as soon, as reasonably practical and where not in violation of law, deliver to the Customer a copy of such warrant, order or request and will not, without Customer's prior written consent, comply with the same unless and until required to do so under Applicable Laws.
- 11.6. The Service Provider agrees that it shall not inform any third party of any Security Breach without first obtaining the Customer's prior written consent except where required to do so due to Regulatory Requirements, order of a court or other Governmental Authority or regulator with jurisdiction over it and/or the Customer. For the avoidance of doubt the Service Provider reserves the right at all times to report criminal acts without requiring consent of the Customer.
- 11.7. Subject to Clause 11.6 the Service Provider shall promptly inform the Customer of any matters which the Service Provider is aware is reasonably likely to give rise to a Security Breach and all events and developments which are reasonably likely to or shall adversely affect the Service Provider's ability to provide the Services in accordance with the terms of the Agreement..

## 12 Customer Obligations

- 12.1. During the term of the Agreement, the Customer shall afford the Service Provider, or where applicable shall ensure the End User affords, such access to the Site and to relevant information, records and other material as is reasonably necessary to provide the Services and make available the Customer Representative to liaise with the Service Provider.
- 12.2. Courtesy is expected at all times. Services will be withdrawn from abusive Customer and End User contacts and incidents will be reported to the Service Provider management for further investigation. The Customer must advise the Service Provider of any errors or omissions set out in the Schedule, and any changes during the term of the Agreement.
- 12.3. The Articles owned by the Customer and/or End User shall be at the Customer's and/or End User's risk (as applicable) at all times, except to the extent of any act, omission or negligence by or on behalf of the Service Provider (including any of its Personnel).
- 12.4. The Customer is at its sole discretion responsible for insuring the Articles (including the contents thereof) against all risks and as otherwise deemed reasonable by the Customer or End User (as applicable) for protection of its business. The Customer also

acknowledges that it is responsible, at its sole discretion, for insuring itself for public liability, material damage and business interruption cover, and as required by Applicable Laws, as is necessary for all of the Customer's liabilities arising under this Agreement.

- 12.5. The Customer shall ensure that the Service Provider Personnel are made aware of all rules, procedures and other relevant matters in relation to health and safety in advance at any visits to Customer and/or End User premises or premises under the control of the Customer.
- 12.6. The Customer will procure that in so far as an End User has access to or use of the Services such End User will comply with all the terms and obligations of this Clause 12 as if such End User was a party to this Agreement.
- 12.7. The Customer is responsible to the End User for all the success and completion of any and all contractual obligations, responsibilities, costs and other implications of termination of this Agreement. Unless explicitly stated in this Agreement the Service Provider is only obligated to the Customer, and then only under the terms and conditions of this Agreement.

## 13 Payment

- 13.1. In consideration of the provision of the Services, the Customer shall pay to the Service Provider the Service Charges periodically in advance as set out in the Schedule, subject to (i) any agreed variations resulting from any Change Request to the Services approved in accordance with the Variation Procedure and/or (ii) other increases in accordance with this Clause 13.
- 13.2. All charges from the Service Provider are stated exclusive of value added tax ("VAT"), any similar sales tax and/or any tax that replaces such sales taxes. VAT shall be added to all sums invoiced under this Agreement at the rate prevailing at the date of the invoice in the country in which the Services are delivered and will be payable at the same time as the amount to which it relates.
- 13.3. The Customer shall pay to the Service Provider the total undisputed amount of each invoice in Pounds Sterling by electronic transfer to an account nominated in writing by the Service Provider in accordance with the payment terms on each correctly rendered invoice (the "**Due Date**"). Invoices for the Service Charges may be sent by the Service Provider at least forty five (45) days before commencement of the period for which the invoice applies.
- 13.4. The first payment of the Service Charges (or part thereof) will become due on the Commencement Date. The second and subsequent payments of the Service Charges will become due in accordance with the payment terms stated on the Schedule.
- 13.5. Unless otherwise specified in the Schedule invoices for any One Time Charges will be issued on delivery and payment is to be made by the relevant Due Date. Invoices for any incidental services authorised by the Customer will be issued upon satisfactory completion of said incidental services as applicable and payment is to be made by the relevant Due Date.
- 13.6. Subject to this Clause 13.6 and only to be effective after expiration of the Initial Term, the Service Provider shall be entitled from time to time to increase the Service Charges by giving to the Customer not less than ninety (90) days prior written notice. Such increase shall not exceed the percentage rate of CPIH at the date of notice being issued by the Service Provider and no more than one (1) increase in the Service Charges pursuant to this Clause 13.6 is permitted in any twelve (12) month period
- 13.7. The Service Provider reserves the right to make additional charges to the Customer for waiting time at the Service Provider's rate then prevailing if Articles requested for delivery or collection cannot be delivered or collected by the Service Provider on arrival at the Site due to unavailability of the Customer or End User or any other reason within the control of the Customer.
- 13.8. The Service Provider shall reserve the right to vary the Service Charges for changes in storage, handling and/or transportation volumes over and above those detailed in the Schedule. Credits and invoices will be raised at the unit contracted rate and issued to the Customer on a pro-rata basis.
- 13.9. If at any time during the term of the Agreement the net effect of any amendments to this Agreement (irrespective of any reductions in storage, handling and/or transportation volumes) would be to cause the annual value of the Service Charges to fall below eighty (80) percent of the annual value of the Service Charges as at the Commencement Date (the "**Minimum Contract Value**"), the Service Charges will be charged on the basis of the Minimum Contract Value
- 13.10. For the avoidance of doubt where the Customer requires the Service Provider to issue invoices against a written Customer requisition ("**Purchase Order**") and there is any ambiguity and/or conflict between the terms of a Purchase Order and this Agreement, the terms of this Agreement shall prevail. The Customer shall with fifteen (15) Business Days from a request by the Service Provider, provide the Service Provider with the applicable Purchase Order number relevant to the Services to be included on any invoice submitted by the Service Provider.
- 13.11. Where the Customer disputes an invoice, the nature and detail of the dispute shall be detailed in writing, and the Parties will act promptly and in good faith to resolve the matter. Payment for undisputed items on a disputed invoice shall be made in accordance with the normal payment terms for the invoice.
- 13.12. All payments made by the Customer under this Agreement shall be made in full without any set-off, restriction or condition and without any deductions for or on account of any counterclaim. No sums paid under the Agreement shall be refundable if a

Service is provided by the Service Provider but not used by the Customer (in whole or part) before the end of the period for which payment has been made in advance.

13.13. Where payment is due on a day which is not a Business Day, the amounts are due and payable on the next Business Day. The amount of the Service Charge and the timing and/or the method of payment of the same may be amended from time to time as agreed in writing between the Parties. If the Service Provider terminates this Agreement for any reason, any sums then currently due to the Service Provider will immediately become payable in full.

13.14. In the event that the Customer fails to pay any undisputed amount payable by it to the Service Provider within:

- a) thirty (30) days of the Due Date for payment, the Service Provider shall be entitled to charge interest on the undisputed amount outstanding at the rate of three (3) per cent above the then current base rate of the Bank of England, from the Due Date for payment until the date of payment (whether before or after judgment);
- b) sixty (60) days of the Due Date for payment, the Customer shall be deemed in material breach of the Agreement without prejudice to the right of either Party to determine that any other breach of the Agreement constitutes a material breach. In the event of such breach, the Service Provider shall have termination rights in accordance with Clause 17.1, provided that this Clause 13.14 shall apply only to the failure to pay a material amount owed..

## 14 Changes to the Services

14.1. Either Party may at any time request a Change in accordance with the procedures set out in this Clause 14. A Change shall only apply if there is an amendment to the terms and conditions of this Agreement (including changes to the type and/or quantity of Services) and where other procedures are not specified to apply.

14.2. Until such time as a Change is made in accordance with this Clause 14, the Parties shall, unless otherwise agreed in writing, continue to perform their respective obligations under this Agreement in compliance with its terms prior to the Change.

14.3. Either Party may initiate a Change by submitting a Change Request to the other Party. The Party receiving the Change Request shall within five (5) Business Days evaluate the Change Request and, as it deems appropriate (i) request further information from the other Party, (ii) arrange for the Change Request to be approved and signed by or on its behalf and notify the Party seeking the Change; (iii) notify the Party submitting the Change Request of its rejection and giving reasons for such rejection; or (iv) notify the Party submitting the Change Request of any amendments, or additional terms and conditions, required to be incorporated in the Change Request before it can be implemented.

14.4. In the case of any Change Request initiated by the Customer, if the Service Provider does not notify the Customer of the rejection of the Change Request, the Service Provider shall in addition, where relevant, promptly respond to the Change Request by confirming in writing details of any variation to be made to the Service Charges as a result of introducing the relevant Change Request as part of the Services.

14.5. Except as provided in this Clause 14 neither Party shall be obliged to agree a Change Request provided that neither Party shall withhold agreement to any Change Request required to comply with any Regulatory Requirement or Applicable Laws. In the event of a Change related to a Regulatory Requirement or Applicable Laws the Parties will work in good faith to agree an appropriate revision to the Agreement and/or Services, and the costs related to the implementation and maintenance of such Change shall be allocated in accordance with the provisions of Clause 10.

14.6. Each Party shall bear its own costs in connection with the preparation of all documentation relating to and negotiation of proposed Changes. Any discussions, negotiations, or other communications that may take place between the Parties in connection with any proposed Change shall be without prejudice to the rights of either Party.

14.7. Following confirmation of satisfactory implementation of a Change, as applicable, the Agreement shall be amended as appropriate so that it includes a description of the Change and the Service Provider shall be entitled to vary the Service Charges (where applicable), with effect from the date of implementation of the Change, by an amount equal to the amount notified to the Customer under this Clause 14.

## 15 Liability

15.1. The Parties accept that nothing in this Agreement limits or excludes any liability for fraud or fraudulent misrepresentation or for liability for death or personal injury resulting from their negligent acts or omissions in connection with this Agreement or any liability which cannot by Applicable Law be limited or excluded.

15.2. Notwithstanding anything else contained in these Conditions, neither Party shall be liable to the other for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever (including loss or damage suffered by the other Party as a result of an action brought by a third party) even if such loss was reasonably foreseeable or a Party had been advised of the possibility of the other Party incurring the same.



- 15.3. The Service Provider will not be liable to the Customer for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of Articles) resulting from any breakdown, defects or error in the Articles except to the extent that such loss or damage arises from an negligent act or omission of Service Provider.
- 15.4. Subject to Clause 15.3 the Service Provider shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence, breach of contract or otherwise of Service Provider or its Personnel or sub-contractors subject to a limit of £1,000,000 (one million Pounds Sterling).
- 15.5. Except for the liabilities which are not limited or excluded by the Parties under Clause 15.1 and the liabilities with respect to tangible property under Clause 15.4, each Party's total aggregate 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 £10,000 (ten thousand Pounds Sterling) except where prohibited by law.
- 15.6. Except in the case of any a loss arising under Clause 15.1 the Service Provider shall have no liability to the Customer in respect of any loss unless the Customer shall have served written notice of the same upon the Service Provider within three (3) months of the date it became aware of the circumstances giving rise to the loss or the date when it ought reasonably to have become so aware.
- 15.7. For the avoidance of doubt the Customer is responsible to the End Users for all obligations and liability in respect of, the performance, and/or availability of the Services, or their non-performance and non-availability. Unless explicitly stated in this Agreement the Service Provider is only obligated to the Customer for the provision and performance of the Services, and then only under the terms and conditions of this Agreement
- 15.8. The provisions of this Clause 15 shall survive the termination of this Agreement howsoever caused.

## 16 Subcontracting & Offshoring

- 16.1. After the Commencement Date the Service Provider shall not sub-contract or materially change any sub-contracting of any of its obligations under this Agreement without the prior written consent of the Customer. In the event that the Customer consents to the Service Provider sub-contracting or materially change any sub-contracting of any of its obligations under this Agreement, the Service Provider shall procure and ensure that its permitted sub-contractors:
- a) enter into an agreement with substantially the same confidentiality and data protection provisions as this Agreement for the benefit of each Party;
  - b) shall perform the relevant sub-contracted services in accordance with Applicable Laws and all known Regulatory Requirements applicable to the Service Provider and Customer;
  - c) comply with all additional reasonable and lawful conditions for each sub-contracted service as agreed between the Parties pursuant to a relevant Change and/or Addendum to the Agreement; and
  - d) are authorised, licensed, qualified, approved and permitted to provide the sub-contracted goods or services in accordance with Good Industry Practice and as required by any Governmental Authority or other relevant persons
- 16.2. Notwithstanding the sub-contracting of any of its obligations, the Service Provider shall be and shall remain responsible and liable for all its obligations pursuant to this Agreement and for all acts and omissions of its sub-contractors.
- 16.3. After the Commencement Date the Service Provider shall not relocate the provision of the Services or its obligations under this Agreement outside of the United Kingdom without the prior written consent of the Customer which will not be unreasonably withheld.

## 17 Termination

- 17.1. Notwithstanding anything else contained herein, the Agreement may be terminated by either Party forthwith on giving notice in writing to the other Party if the other Party:
- e) commits any material breach of any term of the Agreement and (in the case of a material breach capable of being remedied) shall have failed, within thirty (30) days after the receipt of a request in writing from the other Party so to do, to remedy the material breach (such request to contain a warning of such Party's intention to terminate). For the avoidance of doubt, and subject to Clause 13.14 b) the failure by the Customer to pay any material amount of any undisputed sums due under this Agreement shall be considered a breach of a material obligation; or
  - f) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a Court of competent jurisdiction shall make an order to that effect, or if the other Party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.



- 17.2. For the avoidance of doubt a breach of Party's obligations under Clauses 24 and 25 shall be deemed a material breach not capable of remedy and the non-breaching Party may terminate the Agreement in writing with immediate effect.
- 17.3. If the Service Provider is affected by an Event of Force Majeure and is unable to cure the effect of the Force Majeure within twenty (20) days, the Customer may terminate this Agreement immediately on written notice and acquire an alternate service in replacement of the Services, without penalty, and the Customer shall be entitled to invoke the termination assistance provisions in Clause 18.
- 17.4. Termination or expiry of this Agreement shall be without prejudice to any rights and remedies of the Parties accrued before such termination or expiration or which are expressly stated herein to survive termination hereof and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 17.5. On expiration of this Agreement or in the event that the Customer terminates this Agreement, the Customer may also request at its discretion that the Service Provider continues to provide the Services for a reasonable time after the termination date, but in any event for no more than six (6) months. The Customer will be liable for pro-rata Service Charges to the Service Provider for the Services in this period together with any additional costs incurred by the Service Provider which can reasonably be demonstrated as still being unavoidable for the continued provision of the Services including third party costs that are subject a minimum term that is later than the termination date. For the avoidance of doubt and in the event that the Customer does not request any continued provision of the Services pursuant to this Clause 17.5, the Service Provider may at its sole discretion and without liability suspend provision of the Services following the date of termination of this Agreement.

## 18 Consequences of Termination

- 18.1. On termination or expiry of this Agreement for any reason, the Service Provider shall promptly and fully answer all reasonable questions about the Services which may be asked by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or any future service provider to conduct due diligence.
- 18.2. Where the Customer has so directed, the Service Provider shall return all Articles, records, documentation, information and other property relating to or which is relevant to the provision of the Services ("**Customer Property**") in its possession or under its control, in a format acceptable to the Customer no later than fifteen (15) days after expiration or termination of the Agreement (unless agreed otherwise in writing). In default of compliance with this Clause **Error! Reference source not found.** the Customer may recover possession thereof and the Service Provider hereby grants licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service where any such items may be held.
- 18.3. The Customer shall provide details to the Service Provider of any Customer Property which the Customer requires to be destroyed by the Service Provider, subject to the Customer being responsible for any reasonable costs associated with or otherwise incurred by the Service Provider in undertaking such destruction. Where the Customer requests the destruction of any Customer Property pursuant to this Clause 18.3, the Service Provider shall warrant to the Customer that the said destruction has been undertaken in accordance with the Customer's security requirements as notified by the Customer in writing to the Service Provider, and where requested in writing by the Customer, within five (5) days of the completion of the destruction of such Customer Property, provide to the Customer with a certificate (in a format approved by the Customer) as proof that said destruction has taken place .
- 18.4. Unless termination of the Agreement was as the result of breach by the Service Provider, all charges for the Service Provider complying with its obligations under this Clause 18 (including but not limited to the destruction of Customer Property) shall be at the then current Service Provider rates (or as specified in Appendix 1 where applicable) and agreed in writing prior to execution. The Customer will pay any sums invoiced in accordance with Clause 13.
- 18.5. At any time up to sixty (60) days after expiration or termination of this Agreement, the Customer may (on giving no less than twenty-four (24) hours prior written notice to the Service Provider) visit the Service Provider's Premises and examine the Service Provider systems and records to ensure that the Service Provider no longer retains any Customer Property that ought to have been returned to the Customer in accordance with Clause 18.2.
- 18.6. The provisions of this Clause 18 shall survive the termination of this Agreement.

## 19 Force Majeure

- 19.1. Subject to Clause 19.2 neither Party shall be in breach of this Agreement, or otherwise be liable to the other for any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any cause beyond its reasonable control including but not limited to the force majeure declaration of suppliers or strike, lockout or other form of industrial action (other than a strike, lockout or other form of industrial action of or by its own staff) (an "**Event of Force Majeure**").
- 19.2. The Party affected by any Event of Force Majeure shall use all reasonable endeavours to mitigate the effect of the Event of Force Majeure and shall immediately give the other Party written notification of the nature and extent of the Event of Force

Majeure and the Parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

- 19.3. A Party cannot claim relief if the Event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Event of Force Majeure and provided it is not an event that the relevant Party would reasonably be expected to manage via its business continuity or disaster recovery planning in accordance with agreed processes or Good Industry Practice.
- 19.4. The Customer may, during the continuance of any Force Majeure Event, terminate this Agreement in accordance with Clause 17.3 in the circumstances set out in that Clause.

## 20 Solicitation

During the term of this Agreement and for twelve (12) months thereafter, neither Party may solicit, directly or indirectly, any employee of the other Party who was involved in the provision or receipt of the Services. This Clause 20 shall not restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign.

## 21 Suspension of the Services

- 21.1. The Service Provider reserves the right at all times to suspend the Services:
- a) upon ten (10) Business Days notice where the Customer has materially breached any of the terms contained in this Agreement and has failed to rectify the breach after being notified by the Service Provider pursuant to Clause 17; and/or
  - b) in the event of the Customer using any part of the Services fraudulently, or attempting to do so, or of committing any other illegal or unlawful act in connection with the use of the Services.
- 21.2. The Service Provider, upon giving as much written notice to the Customer as legally permitted, may without liability, suspend forthwith provision of all or any of the Services until further written notice is given in the event, and to the extent, that a court or other Governmental Authority with jurisdiction over it and/or the Customer requires it to do so, provided that in such circumstances (where permitted to do so) it provides written evidence to the Customer as provided by the relevant court or Governmental Authority of the requirement for the Service Provider to suspend the Services being provided to the Customer.
- 21.3. In the event that any of the Services are correctly suspended pursuant to Clauses 21.1 or 21.2 as a consequence of the act or omission of the Customer or Customer Personnel, or is due to a written order and/or notice referred to in Clause 21.2 against the Customer and not the Service Provider), the Customer shall pay (in advance of recommencement of the Services) all of the Service Provider's reasonable charges and other expenses incurred in the implementation of such suspension and any subsequent recommencement of the provision of any Services.

## 22 Dispute Resolution

- 22.1. Any dispute or difference between the Parties relating to this Agreement shall be dealt with as follows:
- a) the dispute shall first be referred to the Service Provider Representative and the Customer Representative who shall promptly use all reasonable endeavours to resolve such matter as reasonably practicable;
  - b) if the Service Provider Representative and the Customer Representative are unable or unwilling to resolve the matter between themselves, either of them may request a meeting of the Managing Director of the Service Provider and a senior representative of the Customer nominated by the Customer Representative to be convened at the earliest practicable time;
  - c) if the matter is not resolved by agreement between the Parties within thirty (30) days after such meeting, the Parties may by agreement seek to settle the dispute by non-binding mediation with an accredited alternative dispute resolution practitioner, the cost of which shall be borne by both Parties equally; and
  - d) unless otherwise mutually agreed between the Parties in writing, during the dispute resolution process, the Service Provider must continue to provide uninterrupted Services to the Customer in accordance with this Agreement.
- 22.2. Nothing in this Clause 22 shall have the effect of excluding either Party's right at any time to take up their remedies under law, including any application to a relevant court for injunctive or other emergency or interim relief in relation to its IPR or Confidential Information.

## 23 Insurance

The Service Provider will at its cost maintain in force throughout the term of the Agreement, and for claims made after the term of the Agreement in respect of events occurring during the term of the Agreement, insurance to cover the following with a reputable insurer:

- a) Product Liability Insurance for the minimum amount of £15.0 million per annum;
- b) Professional Indemnity insurance for the minimum amount of £15.0 million per annum;

- c) Cyber Security Liability Insurance for the minimum amount of £7.0 million per annum;
- d) Public Liability Insurance for the minimum amount of £15.0 million per occurrence;
- e) Employers' Liability Insurance for the minimum amount of £10.0 million per occurrence,

and shall provide the Customer with copies of insurance certificates of the same if so requested.

## 24 Anti-Bribery

Both parties agree to comply with all applicable laws, regulations, legally binding codes and sanctions relating to anti-bribery and anti-corruption ("**Anti-Bribery Law**"). In the event that a Party is found not to comply with Anti-Bribery Law or has reasonable grounds for suspecting the other Party of not being in compliance, it shall as soon as reasonably practicable, notify the other Party in writing of the particulars of such non-compliance and/or suspicions.

## 25 Modern Slavery

Both Parties shall comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to modern slavery and human trafficking (the "**Slavery Rules**") and the Service Provider shall comply with any reasonable written request received from the Customer for the purposes of any annual reporting requirements under the Slavery Rules. In the event that a Party is found not to comply with the Slavery Rules or has reasonable grounds for suspecting the other Party of not being in compliance, it shall as soon as reasonably practicable, notify the other Party in writing of the particulars of such non-compliance and/or suspicions.

## 26 Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Schedule or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 26. Any such notice shall be deemed to have been served if by hand when delivered, if by first class post forty eight (48) hours after posting.

## 27 General

- 27.1. This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes all prior arrangements or understandings, whether oral or written, between the Parties relating to the subject matter hereof.
- 27.2. The Parties acknowledge that they have entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, neither Party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.
- 27.3. Neither Party shall assign the Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 27.4. No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by the Service Provider of any breach of the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 27.5. The Service Provider is a member of the group of companies and accordingly the Service Provider may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Service Provider.
- 27.6. The Service Provider shall provide, and the Customer shall accept the Services subject to the terms of the Agreement, which shall govern the Services to the exclusion of any other terms and conditions.
- 27.7. No variation to the Agreement shall be binding unless agreed in writing between the authorised representatives of the Customer and the Service Provider.
- 27.8. The Parties acknowledge that no rights or benefits are expressly conferred upon or implied as conferred upon any other person or third party under the Agreement, however, the Service Provider acknowledges that this Agreement and the Services are for the benefit of the members of the Customer Group and agrees that each member of the Customer Group shall be entitled to enforce the terms of this Agreement in its own right. For the avoidance of doubt only a member of the Customer Group that directly suffers under this Agreement shall be entitled to make a claim against the Service Provider.
- 27.9. Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect.
- 27.10. The Agreement shall be governed by the laws of England and Wales, and the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

## 28 Survival

The expiry or termination of this Agreement for any reason will not affect those provisions which are expressly or by implication to survive expiry or termination of this Agreement and those provisions shall continue in full force and effect.

## APPENDIX 1 – SERVICE OVERVIEW

### 1 General

The clauses herein describe the Services that shall be delivered by the Service Provider to the Customer during the Initial Term and any agreed extension thereof under the terms of this Agreement and subject to the Service components and Service Charges detailed in the Schedule. The Customer shall pay the Service Provider the Service Charges as specified in the Schedule in order to receive the Services. Any variance in the Standard Collections shall be handled in accordance with Clause 14 of the Agreement

### 2 Collection and Delivery

- 2.1. The Service Provider will undertake regular collections and deliveries of Articles to and/or from the Site(s) in Normal Working Hours as set out in the Schedule (the “**Standard Collections**”) to coincide with Customer Article usage schedules.
- 2.2. All collections and deliveries will be fully recorded by the Service Provider and auditable through signed collection and delivery notes that will include the information provided by the Customer as the Inventory.

### 3 Transport

- 3.1. The transportation component of the Services and Service Charges covers the movement of Articles between the Premises utilised as part of the Services and the Site(s) for the purposes of Standard Collections only.
- 3.2. All transportation will be undertaken using secure Service Provider vehicles fitted with state of the art alarms, trackers, immobilisers and locking systems for additional transit security. The Service Provider reserves the right to use third party couriers or other transport methods.
- 3.3. Subject to Clause 4 of this Appendix 1 the transportation of any Articles to / from locations other than the Site may be subject to additional charges as quoted by the Service Provider at the time.

### 4 Request Handling Service Levels

- 4.1. In addition to the Standard Collections the Service Provider shall complete Emergency Requests received using one of the following contact methods, subject to such requests being submitted by Customer Authorised Personnel. The Service Provider Service Desk is available 24x7x365:

Contact Type	Contact Information
Service Desk	0330 0940 400
Email	mediastorage@bluechip.co.uk

- 4.2. Emergency Requests can include delivery of Articles to either the Site or an alternate address such as the Customer’s disaster recovery location, details of which can be provided at the time the Emergency Request is submitted.
- 4.3. For the purposes of this Agreement the Service Provider recognises the following categories of Emergency Request with charges (where applicable) as specified in the following table:
  - a) Emergency Delivery Severity 1; a request for additional Articles to be delivered as part of the next Standard Collection or to an alternate address subject to twenty four (24) hours notice of delivery requirements;
  - b) Emergency Delivery Severity 2; a request received between 9am and 1pm on a Business Day for delivery of Articles within three (3) hours of receipt of such request; and
  - c) Emergency Delivery Severity 3; a request received between 1pm and 9am on a Business Day or during any weekend or Public/Bank Holiday for delivery of Articles within three (3) hours of receipt of such request.

Emergency Request Category	Charge Per Request
Emergency Delivery Severity 1 (to a Site)	-
Emergency Delivery Severity 1 (to other than a Site)	£125.00
Emergency Delivery Severity 2	£175.00
Emergency Delivery Severity 3	£250.00