

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 any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company, and Holding Company and Subsidiary shall have the meaning given to them in the Companies Act 2006 or its successors;
"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, regulatory policies, 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 Request"	means any alteration in the quality or quantity of the Services or the way in which they are performed, including the provision of additional services;
"Commencement Date"	means the date on which the Agreement shall become effective as set out in the Schedule;
"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 the End Users), whether or not it is specifically marked confidential but excluding any information, which: (i) was already known to the Recipient at 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, following its disclosure by the Disclosing Party to the Recipient, 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 information free of any obligation of confidence; or (iv) is independently developed by the Recipient without any 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;
"Contract Period"	means the Initial Term and any period for the continued provision of the Services following expiry of the Initial Term as agreed in accordance with the terms of the Agreement;
"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 both also be referred to as the " Customer Group ") to whom the Service Provider has agreed to provide the Services in accordance with this Agreement;

"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 10.1;
"Customer's Representative"	means the person as may from time to time be appointed by the Customer and notified to the Service Provider;
"Data Protection Assessment"	means a data protection impact assessment (as defined in applicable Data Protection Legislation) or other appropriate reviews to identify the Personal Data (if any) to be handled and confirm the appropriate security controls, measures, safeguards and other mechanisms envisaged for protecting such Personal Data;
"Data Protection Legislation"	means (i) for as long as it remains directly applicable in the UK, EU Regulation 2016/679 (" GDPR "), and any national implementing laws and secondary legislation including the Data Protection Act 2018, as amended or updated from time to time and (ii) any successor legislation to the GDPR in the UK, as amended, consolidated, re-enacted or replaced from time to time relating to the handling of Personal Data;
"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 Standing Request;
"End User"	means either (i) the 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, 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;
"ISO27001"	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 in the United Kingdom;

"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 required by and 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 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) as set out in the Schedule payable in advance at the intervals set out in the Schedule, and which may be varied in accordance with Clause 14;
"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 "Service Provider Group" ;
"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 this Agreement;
"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.
"Variation Procedure"	means the process referred to in Clause 15:

1.2. References in this Agreement to clauses or schedules are to clauses of, or Schedules to, this Agreement.

1.3. In this Agreement, unless the context otherwise requires:

- a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- b) words defined in the Schedules or on the signature page of this Agreement have the meaning set out in that definition;
- c) a reference to:
 - (i) any Party includes its successors in title and permitted assigns;
 - (ii) a "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;
 - (iii) "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms; and
- (iv) "in writing" includes, except for the purposes of Clause 27, communications via electronic mail.

1.4. The headings in this Agreement are for convenience and are not to be used in interpreting the Agreement.

1.5. Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

1.6. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement. If there is any ambiguity between the terms of a Schedule or this Agreement the Schedule shall prevail.

2 Appointment and Duration

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 by the Service Provider giving the Customer or the Customer giving the Service Provider not less than ninety (90) days prior written notice to expire on the last day of the Initial Term or any subsequent anniversary thereof

3 Inventory & Storage Location

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 shall store all Articles (except whilst in transit) in a facility maintained in compliance with the requirements of the ISO27001 including (but not limited to) the following:

- a) a secure environment including CCTV and biometric access controls;
- b) a climate controlled facility with environmental monitoring;
- c) a direct link to the emergency services and/or remote security monitoring; and
- d) an automated fire detection and suppression system.

4 Containers

4.1. The Service Provider will only accept magnetic media packed in Approved Containers.

4.2. 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.

4.3. 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.

5 Withdrawals

5.1. 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.

5.2. 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,

5.3. 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

6 Obligations of the Service Provider

- 6.1. The Service Provider shall provide all Service Provider Personnel in sufficient numbers to properly execute the Services.
- 6.2. Subject to and comprising part of the audit rights pursuant to Clause 11 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.
- 6.3. Subject to Clause 5.3 and on expiry 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.
- 6.4. 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.

7 Warranties and Undertakings

- 7.1. 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.
- 7.2. 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.
- 7.3. 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 Contract Period;
 - c) it will operate the Premises and the Services will be maintained and delivered using policies and procedures compatible with ISO27001;
 - 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.
- 7.4. 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.

8 Confidentiality

- 8.1. The Recipient shall 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.
- 8.2. All rights, title and interest in the Confidential Information 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.
- 8.3. 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 8.3, it shall take into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.
- 8.4. Subject to the provisions of this Agreement, the Recipient may disclose the Confidential Information of the Disclosing Party to those of its Personnel, permitted sub-contractors, consultants, auditors and professional advisers that have a need to know such Confidential Information for the purposes of 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 8 by any of its Personnel, permitted sub-contractors, consultants, auditors and professional advisers as if it were a breach by the Recipient.
- 8.5. In the event that the Recipient learns of any unauthorised use or disclosure, or threatened unauthorised use or disclosure, of any Confidential Information, the Recipient shall as soon as reasonably practicable notify the Disclosing Party of the particulars of such use or disclosure.
- 8.6. 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 8.
- 8.7. 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 Agreement.
- 8.8. 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 8.
- 8.9. A Recipient's obligation to maintain the confidentiality of Confidential Information and the restrictions on such Recipient's use of the Confidential Information, as provided in this Clause 8 shall survive the termination of this Agreement.

9 Intellectual Property Rights

- 9.1. 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.
- 9.2. 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.
- 9.3. The Customer acknowledges that any products, software, services or paperwork provided by the Service Provider in the course of 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 agents 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.
- 9.4. 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, 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.
- 9.5. 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 Data Protection

- 10.1. Both Parties shall comply with the Data Protection Legislation in so far as they are 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, Sensitive 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.

- 10.2. 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 remit 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.
- 10.3. The Parties further acknowledge that it may be necessary to exchange Personal Data relating to their respective employees, workers, agents, representatives, customers and/or the End User(s) in order to receive the benefit of or deliver (as applicable) the Services. Where a Party receives any such Personal Data from the other Party it shall ensure that it fully complies with the Data Protection Legislation.
- 10.4. The Customer represents and warrants to the Service Provider that it has, and where applicable the End User has, performed any required Data Protection Assessment, completed 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
- 10.5. 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 10 and, subject to the audit rights pursuant to Clause 11, 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 10; and
 - e) on termination of this Agreement or any part of it, and at any time on the written request of the Customer, either return or destroy the Articles promptly, subject to the Customer accepting the reasonable charges of the Supplier for any secure destruction.
- 10.6. 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 potentially force it to disclose the contents of any Articles, unless such notification is forbidden by applicable 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) shall, subject to sub-clause b) and if a Data Subject exercises any of its rights under the Data Protection Legislation (including rights of access, correction, blocking, suppression or deletion as are available to such individual) promptly provide reasonable assistance in the provision of such information related to the Services as the Customer requires; and
 - d) will promptly co-operate with all reasonable requests or directions arising directly from, or in connection with the exercise of powers by a Data Protection Authority.
- 10.7. The Service Provider shall not transfer any Articles to any country or territory outside of the European Economic Area and more specifically the United Kingdom without the prior written consent of the Customer. The Service Provider shall in addition not store any Articles outside the United Kingdom except with the prior written consent of the Customer. The Customer reserves the right, as a condition to the granting of such consent, to require the Service Provider to enter into and/or the Service Provider shall procure that its agent(s) and sub-contractor(s) enter into a separate agreement which complies with the requirements of the Data Protection Legislation for the transfer of Personal Data outside the European Economic Area and incorporating the applicable European Economic Area model clauses for such transfer.
- 10.8. 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 10.5 to enable the Customer to demonstrate compliance with its obligations under the Data Protection Legislation, to the extent that the Service Provider is able to provide such information, and such methods 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.

- 10.9. The Service Provider shall promptly (and in any event within twenty four (24) hours of Supplier becoming aware) inform the Customer if any Articles are known or suspected to be lost or destroyed or have become damaged, corrupted, or unusable and shall keep the Customer informed of any related developments.
- 10.10. 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 10 as if such End User was a party to this Agreement.
- 10.11. Failure to comply with this Clause 10 shall constitute a 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.

11 Regulated Activities and Audit

- 11.1. 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 and provide all Governmental Authorities with such information as they may reasonably require.
- 11.2. 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
- 11.3. 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 11.4 to 11.6 (inclusive) as applicable.
- 11.4. Subject to Clause 11.2 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.
- 11.5. 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.
- 11.6. 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 11.4 shall apply.
- 11.7. 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 11.7 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.
- 11.8. Upon reasonable notice and subject to a maximum of two (2) days per annum (including completion of preparatory documentation) the Service Provider shall provide any auditors and inspectors as the Customer, End User or any Government Authority may designate:
 - a) access during Normal Working Hours to the premises, Personnel and records of the Service Provider for the purpose of performing audits or inspections to monitor 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.
- 11.9. In the event the Customer requires more than two (2) days per annum for the purpose of monitoring the performance of the Service Provider against the terms of this Agreement in accordance with Clause 11.8 the Service Provider shall be entitled to charge

the Customer for any such additional assistance provided. 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 14.

- 11.10. 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.

12 Security

- 12.1. The Service Provider will ensure that at all times it has in place and is operating in accordance with a Security Policy as contained in the Service Provider's ISO 27001 manual. The Service Provider shall remain certified under ISO 27001 throughout the Contract Period and shall upon written request from the Customer from time to time provide the Customer with satisfactory evidence thereof.
- 12.2. 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.
- 12.3. 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.
- 12.4. The Service Provider shall be responsible for any and all Security Breaches caused by Personnel, sub-contractors 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 forty eight (48) 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 caused by any act or omission of the Customer or its Personnel.
- 12.5. In the event that the Service Provider is served with a warrant, or any other order or request from a competent 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.
- 12.6. 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.
- 12.7. In addition to the obligation in Clause 12.4, the Service Provider shall promptly inform the Customer of any potential breaches in security and all events and developments which may adversely affect the Service Provider's ability to provide the Services in accordance with the terms of the Agreement.

13 Customer Obligations

- 13.1. During the Contract Period, 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 necessary to provide the Services and make available the Customer Representative to liaise with the Service Provider.
- 13.2. 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 Contract Period.
- 13.3. The Articles owned by the Customer and End User shall be at the Customer's and End User's risk (as applicable) at all times. The Customer shall be responsible for ensuring that Articles are insured against all risks as required by Regulatory Requirements and otherwise deemed reasonable by the Customer or End User for protection of its business operations (regardless of the owner of title to such property).
- 13.4. The Customer shall also effect and maintain insurance policies for public liability and material damage from the Commencement Date until such date as is necessary to ensure that insurance is provided for all of the Customer's liabilities arising under this Agreement.

- 13.5. 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.
- 13.6. 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 13 as if such End User was a party to this Agreement.
- 13.7. 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.

14 Payment

- 14.1. 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 14.
- 14.2. Unless otherwise specified in the Schedule invoices for any One Time Charges will be issued on delivery and payment is due within thirty (30) days from date of invoice. Invoices for any incidental services authorised by the Customer will be issued upon satisfactory completion of said incidental services as applicable and payment is due within thirty (30) days from date of invoice.
- 14.3. The Service Provider reserves the right to review the Service Charges prior to each anniversary of the Commencement Date. For the avoidance of doubt and subject to no variations in the Services, any increases in Service Charges will not exceed the CPIH as at one (1) month prior to the relevant anniversary of the Commencement Date.
- 14.4. 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.
- 14.5. 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.
- 14.6. If at any time during duration 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
- 14.7. The Service Charges 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.
- 14.8. The first payment of the Service Charges (or part thereof) will become due on the Commencement Date. Invoices for subsequent payments of the Service Charges will be sent by the Service Provider at least forty five (45) days before commencement of the period for which the invoice applies. 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**").
- 14.9. 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.
- 14.10. 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.
- 14.11. In the event that the Customer fails to pay any undisputed amount payable by it to the Service Provider within:
- 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);
 - sixty (60) days of the Due Date for payment, the Customer shall be deemed in material breach of the Agreement in accordance with Clause 18.1 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 may terminate the Agreement under the provisions of Clause 18.

- 14.12. Any requests by the Customer which are in addition to the Services will be subject to a separate quotation. Where additions are made to the Agreement, the Customer shall pay Service Charges to the Service Provider for the additional items from the date such additions become eligible for the Services.

15 Changes to the Services

- 15.1. Either Party may at any time request a Change Request in accordance with the procedures set out in this Clause 15. A Change Request shall only apply if there is an amendment to the terms and conditions of this Agreement or a Schedule and where other procedures are not specified to apply.
- 15.2. Until such time as a Change Request is approved in accordance with this Clause 15, 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 Request.
- 15.3. The Party receiving the Change Request shall within five (5) Business Days evaluate the Change Request Form and, as it deems appropriate (i) request further information from the other Party, (ii) notify the Party submitting the Change Request of its rejection giving reasons for such rejection; or (iii) 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.
- 15.4. 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, 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.
- 15.5. Except as provided in this Clause 15 neither Party shall be obliged to agree a Change Request provided that neither Party shall withhold agreement to any Change Request for which implementation is required to comply with any Regulatory Requirement.
- 15.6. 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 Request shall be without prejudice to the rights of either Party.
- 15.7. Following confirmation of satisfactory implementation of a Change Request the Agreement shall be amended as appropriate so that it includes a description of the Change Request and the Service Provider shall be entitled to vary the Service Charges (where applicable), with effect from the date of implementation of the Change Request, by an amount equal to the amount notified to the Customer under this Clause 15.

16 Liability

- 16.1. 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.
- 16.2. Neither Party shall be liable for special, indirect or consequential loss which shall include loss of profits, business, revenue, goodwill or anticipated savings however arising from this Agreement, whether in tort (including negligence) or contract.
- 16.3. Save as provided in Clause 16.2, each Party accepts liability for the losses arising as a consequence of its breach of this Agreement or its negligent or fraudulent acts and omissions and those of its Personnel in performance of this Agreement.
- 16.4. 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.
- 16.5. Subject to Clause 16.4 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).
- 16.6. Except for the liabilities which are not limited or excluded by the Parties under Clause 16.1 and the liabilities with respect to tangible property under Clause 16.5, 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.
- 16.7. Except in the case of any a loss arising under Clause 16.1 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.
- 16.8. 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

16.9. The provisions of this Clause 16 shall survive the termination of this Agreement howsoever caused.

17 Subcontracting & Offshoring

- 17.1. After the Commencement Date the Service Provider shall not sub-contract any of its obligations under this Agreement without the prior written consent of the Customer which will not be unreasonably withheld. In the event that the Customer consents to the Service Provider sub-contracting 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, and enforceable by, each Party; and
 - b) 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
- 17.2. 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.
- 17.3. After the Commencement Date the Service Provider shall not relocate the provision of the Services or its obligations under this Agreement outside of England, Scotland, Wales and/or Northern Ireland without the prior written consent of the Customer which will not be unreasonably withheld.

18 Termination

- 18.1. If any Party materially breaches in its obligations under the Agreement and such breach continues for thirty (30) days after receipt of written notice from the other requiring the remedying of such default the non-defaulting Party may terminate the Agreement forthwith by written notice and in such event all outstanding invoices for Services shall become immediately due and payable. For the avoidance of doubt 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.
- 18.2. The Agreement may be terminated by a Party if the other Party be unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the Customer resulting from such reconstruction or amalgamation as a different legal entity shall agree to be bound by and assume the obligations under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the reasonable opinion of one Party means that the other Party may be unable to pay its debts.
- 18.3. 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 19.
- 18.4. 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.
- 18.5. In the event that the Customer terminates this Agreement in accordance with Clause 18.1 then the Customer may also request that the Service Provider continues to provide the Service 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.

19 Consequences of Termination

- 19.1. 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.
- 19.2. 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 19.2 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. Subject to prior approval in writing

the Customer shall pay, unless termination was as the result of breach by the Service Provider, the reasonable costs incurred by the Service Provider in permanently retrieving the Articles and in delivering the Articles to the Customer at the rates specified in Appendix 1.

- 19.3. The Customer shall provide details to the Service Provider of any Customer Property which the Customer requires to be destroyed by the Service Provider. Where the Customer requests the destruction of any Customer Property pursuant to this Clause 19.3, 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 to the Service Provider, and where requested in writing, within five (5) days of the completion of the destruction of such Customer Property, provide to the Customer a certificate (in a format approved by the Customer) providing proof that said destruction has taken place. .
- 19.4. All charges for the Service Provider complying with its obligations under this Clause 19 (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 as per Clause 14.
- 19.5. The provisions of this Clause 19 shall survive the termination of this Agreement.

20 Assignment

- 20.1. This Agreement shall be binding on and enure for the benefit of the successors in title of the Parties.
- 20.2. Subject to Clauses 20.3, 20.4 and 20.5 below, neither Party may assign or transfer all or any of its rights or obligations under this Agreement in whole or in part without the prior written consent of the other Party.
- 20.3. The Service Provider may assign this Agreement within the Service Provider Group and the rights under it providing the assignee assumes all responsibilities contained in the Agreement, and is capable of providing the Services.
- 20.4. Consent shall not be required for an assignment from the Customer to an Affiliate of Customer, provided the Customer shall notify the Service Provider in writing of such assignment. Where reasonably required, the Service Provider expressly declares its consent to such assignment and that it shall undertake any further confirmations and provide further assistance for a formal assignment.
- 20.5. In the event of a merger, acquisition, amalgamation, consolidation, or sale of substantially all the assets of a member of the Customer Group, or in the event of the divestiture of an existing wholly-owned division or subsidiary during the Contract Period (individually and collectively, the "**Divested Entity**"), the Divested Entity may, after written notice to the Service Provider, continue for a period of up to twelve (12) months to be beneficiary of the Services at no additional charge, provided that the Divested Entity agrees in writing to be bound by all of the terms and conditions of this Agreement. Following said twelve (12) month period neither Party shall be obligated to enter into a new Agreement for the Services and the Service Provider shall be under no obligation to continue provision of the Services.

21 Force Majeure

- 21.1. Subject to Clause 21.2 neither Party shall be in breach of this Agreement, or otherwise be liable to the other, by reason of 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**").
- 21.2. 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.
- 21.3. 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.

22 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 22 shall not restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign.

23 Suspension of the Services

- 23.1. Other than as a result of an Event of Force Majeure, in the event the Customer prevents or delays the Service Provider in carrying out any of its material obligations under this Agreement, and subject to the provision of reasonable prior written notice to the Customer, the Service Provider may at its sole discretion suspend measurement of performance of the Services against the Service Levels.
- 23.2. 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 18; and/or
 - b) in the event the Service Provider has reasonable grounds for suspecting the Customer of 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.
- 23.3. The Service Provider, upon giving 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 or regulator with jurisdiction over it and/or the Customer requires it to do so, provided that in such circumstances and where permitted to do so it provides written evidence requiring the Service Provider to suspend from the relevant court or Governmental Authority.
- 23.4. In the event that any of the Services are suspended pursuant to Clauses 23.2 or 23.3 (and where suspension of the Services in accordance with this Clause 23 is as a consequence of the act or omission of the Customer or Customer Personnel, or is due to a written order and/or notice 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 expenses incurred in the implementation of such suspension and any subsequent recommencement of the provision of any Services.

24 Dispute Resolution

- 24.1. 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's Representative who shall promptly use all reasonable endeavours to resolve such matter as reasonably practicable;
 - b) if the Service Provider Representative and the Customer's 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's 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.
- 24.2. Nothing in this Clause 24 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.

25 Insurance

The Service Provider will at its cost maintain in force throughout the Contract Period, and for claims made after the Contract Period in respect of events occurring during the Contract Period, insurance to cover the following:

- a) Product Liability Insurance of no less than £15.0 million per annum;
- b) Professional Indemnity insurance of value no less than £15.0 million per annum;
- c) Public Liability Insurance of no less than £15.0 million per occurrence; and
- d) Employers' Liability Insurance of no less than £10.0 million per occurrence,

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

26 Anti-Bribery

- 26.1. Both Parties agree to comply with Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Anti-Bribery Law**").

- 26.2. Furthermore, both Parties shall comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to the Modern Slavery Act 2015 (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.

27 Notices

- 27.1. Any notice to be given by a Party under this Agreement shall be in writing, signed by or on behalf of the Party giving it and addressed to the Customer's Representative or the Service Provider Representative (as the case may be). Each notice shall be delivered to the other Party personally or be left at or sent by prepaid first class post or prepaid recorded delivery to the address of the Party as set out on the Signature Page of this Agreement or as otherwise notified in writing from time to time.
- 27.2. Except as referred to in this Clause 27.2 a notice shall be deemed to have been served at the time of delivery if delivered personally; or two Business Days after posting in the case of an address in the United Kingdom and four (4) Business Days after posting for any other address. If the deemed time of service is not during Normal Working Hours in the country of receipt, the notice shall be deemed served at the opening of business on the next Business Day of the country of receipt.
- 27.3. A Party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

28 General

- 28.1. 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.
- 28.2. 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.
- 28.3. To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed severed and not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 28.4. No purported variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each of the Parties.
- 28.5. The rights, powers and remedies conferred on any Party by this Agreement and remedies available to any Party are cumulative and are additional to any right, power or remedy which it may have under applicable law or otherwise.
- 28.6. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any Party shall constitute a waiver by that Party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.
- 28.7. No release, compound, compromise, waiver, or postponement of any liability owed to a Party or right granted in this Agreement shall be effective unless it is in writing and signed by or on behalf of the Party granting such release, compound, compromise, waiver, or postponement.
- 28.8. Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it. 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 any loss or damage of whatever form and howsoever caused of any member of the Customer Group and which arise out of or in connection with the Services or this Agreement shall be deemed to be loss or damage of the Customer and the Service Provider shall raise no objection, defence or protest in respect thereof. Each member of the Customer Group shall be entitled to enforce the terms of this Agreement in its own right.
- 28.9. Each Party undertakes to promptly do all things and execute all further documents necessary to give full effect to this Agreement.
- 28.10. Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership and none of the Parties shall be, or be construed to be, the agent of the other Party for any purpose or to have any authority to bind or incur any liability on behalf of any of the other Party, save as otherwise expressly provided in this Agreement.
- 28.11. This Agreement shall be governed by and construed in accordance with the law of England and Wales. Each of the Parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

29 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 DEFINITION

1 General

The clauses herein describe the Services that shall be delivered by the Service Provider to the Customer under the terms of this Agreement and subject to the Service Charges detailed in the Schedule.

2 Collection and Delivery

- 2.1. The Service Provider will undertake regular (the “**Collection Frequency**”) collections and deliveries of Articles at the Site to coincide with Customer Article usage schedules.
- 2.2. All collections and deliveries shall be performed by Service Provider trained Personnel and Articles shall only be given to or received from Customer Authorised Personnel in accordance with Clause 5 of the Agreement.
- 2.3. 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.
- 2.4. The Customer shall pay the Service Provider the Handling Charges as specified in the Schedule in order to receive the collection and delivery component of the Services. Any variance in the number of regular collections and/or deliveries and required changes to the charges shall be handled in accordance with Clause 14 of the Agreement.

3 Transport

- 3.1. The transportation component of the Services comprises the movement of Articles between the Premises utilised as part of the Services and the Site.
- 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. The Customer shall pay the Service Provider the Transport Charges as specified in the Schedule in order to receive the transport component of the Services. Any variance in the number of transports and required changes to the charges shall be handled in accordance with Clause 14 of the Agreement.
- 3.4. 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. The Service Provider shall perform regular collections and deliveries to the Collections Frequency during Normal Working Hours on Normal Working Days during the Term and any extensions thereof (the “**Standing Request**”).
- 4.2. In addition to the Standing Request the Service Provider shall complete Emergency Requests received using one of the following contact methods and where 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

- 4.3. 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.
- 4.4. 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 at during the next Standing Request subject to twenty four (24) hours notice of delivery requirements;
 - b) Emergency Delivery Severity 2; a request received between 9am and 1pm during any Normal Working 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 any Normal Working 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