

SERVICE AGREEMENT



TERMS AND CONDITIONS

I. DEFINITIONS

I.1 The definitions and rules of interpretation in this Condition apply in these terms and conditions ("**Conditions**"):

"Additional Services" means the additional services to be provided by the Supplier to the Customer in accordance with Condition 7.2;

"Agreed Minimum Volume" means the agreed minimum volume of SBE to be stored at any one time by the Supplier as set out in this Service Agreement;

"Bar-Coded Items" means Items which are given individual bar-codes by the Supplier and which are handled, managed and/or stored under the Service Agreement;

"Cartons" means cardboard boxes, cartons or other containers supplied by Supplier, or supplied by Customer to the specifications approved by Supplier;

"Charges" means the charges payable by Customer to Supplier as set out in the Service Schedule in consideration of the Services (such Charges may be varied from time to time in accordance with Condition 8.2) and any other charges payable by the Customer in accordance with these Conditions;

"Customer" means the person, firm or company who purchases the Services from the Supplier;

"Goods" means all and any information storage media including but not limited to documents, files, paper records, magnetic tapes, rigid and floppy disks, film reels, audio/video cassettes, microfiche and microfilm and all other materials and things provided by Customer to Supplier including all related lists, catalogues and indexes, Cartons and packaging materials which are Customer's property;

"Initial Term" means the minimum contracted term as set out in this Service Agreement;

"Insolvency Event" means the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the affected party:

(a) that party passes a resolution for its winding up or a court of competent jurisdiction makes an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;

(b) the appointment of an administrator of or, the making of an administration order in relation to the affected party or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the affected party's undertaking, assets, rights or revenue;

(c) the affected party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;

(d) the affected party being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) the affected party entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the affected party or a court order that the affected party be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

"Items" means each and every file, carton, tape and/or other items which comprise the Goods;

"Permanent Withdrawal Fees" means the fees payable by the Customer in respect of the Permanent Withdrawal Services as set out in the Service Schedule; and

"Permanent Withdrawal Services" means the services provided by the Supplier pursuant to Condition 12 and in accordance with the Service Schedule.

"RPI Increase" means the latest percentage increase figure for the preceding 12 month period or since the last revision to the Charges in accordance with Condition 8.2 (whichever is the longer) for the *all items index for retail prices* published by the Office for National Statistics ("RPI");

"SBE" means the standard box equivalents of Goods, , where a standard box is measured as 410mm x 310mm x 280mm to be stored, managed and/or handled by the Supplier;

"Service Agreement" means the agreement between the Supplier and the Customer for the provision of the Services comprising these Conditions together with any Schedules or Annexes thereto;

"Service Commencement Date" means the date specified in this Service Agreement as the 'service commencement date' or 'start date' or, where no such date is specified, the date the Goods are first collected by or delivered to the Supplier for storage;

"Service Schedule" means the service schedule annexed hereto or as may be varied from time to time in accordance with Condition 7;

"Services" means the services provided by the Supplier to the Customer as more particularly set out in the Service Schedule , together with any Additional Services provided by the Supplier to the Customer or any variation to the Services as may be agreed in accordance with Condition 7;

"Supplier" means Crown Records Management Limited;

"Web Portal" means the web portal nominated by the Supplier and accessed by the Customer for the purposes of requisition and management of Goods;

"Web Portal Terms of Use" means the terms and conditions in force from time to time which govern the Customer's access to and use of the Web Portal;

"Working Day" means Mondays to Fridays excluding public holidays in the country where the Services are provided;

"Working Hours" shall be 8.30am to 5.30pm on a Working Day, unless otherwise agreed in writing between the parties;

- 1.2 Headings in these Conditions shall not affect their interpretation.
- 1.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and vice versa.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Any obligation in the Service Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.6 References to Conditions, Schedules or Annexes are to the Conditions, Schedules or Annexes of the Service Agreement.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the Service Agreement.

- 2.2 Quotations may be given by the Supplier on the basis that no agreement shall come into existence until the parties have signed the Service Agreement. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn or amended it.
- 2.3 The Supplier shall be entitled to withdraw or amend quotations for any reason prior to a Service Agreement coming into existence in accordance with Condition 2.2.

3. TERM

- 3.1 The Service Agreement shall commence on the Service Commencement Date and shall continue in force for the Initial Term unless terminated earlier in accordance with Condition 10.
- 3.2 Subject to Condition 10, on expiry of the Initial Term, the Service Agreement shall automatically continue unless and until either party terminates the Service Agreement by giving at least 90 days prior written notice to the other party, such notice to expire on the date of expiry of the Initial Term or on the date of each anniversary thereafter.

4. PROVISION OF SERVICES

- 4.1 The Supplier shall:
 - 4.1.1 provide the Services with reasonable care and skill;
 - 4.1.2 use its reasonable endeavours to provide the Services in all material respects in accordance with the Services Description; and
 - 4.1.3 use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to the Supplier under Condition 5.1.7, provided that it shall not be liable under the Service Agreement if, as a result of such observation, it is in breach of any of its obligations under the Service Agreement.
- 4.2 The Supplier reserves the right to determine, at its sole discretion, the manner in which the Services are provided, including (without limitation) the route, location and area which Goods shall be carried and stored. The Supplier shall also be entitled to interchange Goods between vehicles and storage premises at any time.
- 4.3 If Goods are unsafe or unsuitable for carriage and/or storage for any reason (including being overweight or unable to fit within the Supplier's Cartons) the Supplier shall be entitled at its own discretion to:
 - 4.3.1 pack, re-pack or rearrange any of the Goods; or
 - 4.3.2 refuse and/or return Goods or any part of Goods to the Customer.
- 4.4 Such packing, re-packing, return or refusal shall be at the Customer's risk and expense and the Customer shall pay all reasonable incidental sums incurred by the Supplier. The Supplier shall be under no further liability to the Customer in respect of any Goods returned.
- 4.5 During the term of the Service Agreement and subject to Condition 4.7, the Customer may request access to a designated collection bay for it or its authorised agent to collect Goods. The Customer shall give no less than one Working Day notice and access shall be during Working Hours. The Customer's authorised representative or agent shall produce proof of their identity together with a requisition (the requisition to be in the form agreed between the parties) specifying the Goods to be collected and signed by the Customer's authorised representative or agent.
- 4.6 The Customer warrants and represents that all requisitions for the retrieval of Goods shall be correct and accurate in all respects (including that the goods are sufficiently and correctly described).
- 4.7 Access to and retrieval of Goods from the Supplier (whether delivered by the Supplier or collected by the Customer) shall not exceed the maximum daily volumes set out in the Services Description.

5. CUSTOMER OBLIGATIONS

5.1 The Customer shall:

- 5.1.1 co-operate with the Supplier (including carrying out any reasonable instructions and meeting any reasonable requests) in all matters relating to the provision of the Services;
- 5.1.2 provide the Supplier and/or its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, parking and/or drop-off or pick-up areas, data and other facilities as reasonably required by the Supplier to provide the Services;
- 5.1.3 provide to the Supplier, in a timely manner, the Goods and any other information as the Supplier may reasonably require and ensure that such information is accurate in all material respects;
- 5.1.4 be responsible for the preparation of any record, instruction document or other document reasonably requested by the Supplier for the purposes of or in relation to the provision of the Services;
- 5.1.5 be responsible for the information and data submitted to the Supplier via the Web Portal;
- 5.1.6 where relevant, ensure that it (and its employees, agents, consultants and subcontractors) complies at all times with the Web Portal Terms of Use;
- 5.1.7 where relevant, inform the Supplier of any health and safety rules and regulations and any other reasonable security requirements that apply at the relevant premises;
- 5.1.8 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Supplier's possession of the Goods pursuant to the provision of the Services;
- 5.1.9 not submit for removal or storage anything which is dangerous, damaging, polluting, harmful to human health or explosive, or anything, including food, likely to encourage vermin or pests;
- 5.1.10 ensure that the gross weight of any one item shall not compromise the Health and Safety at Work Act 1974 or related legislation;
- 5.1.11 be liable for any breach of HM Customs & Excise Regulations relating to the Goods;
- 5.1.12 provide the Supplier with the names and specimen signatures of employees or agents authorised by it to provide instructions regarding the Goods. Unless there is a written agreement between the parties providing other arrangements, the Supplier will only act upon an authorised person's written instructions. Any change of employees or agents authorised to give instructions on the Customer's behalf, should be notified in writing to the Supplier (with specimen signatures) in advance; and
- 5.1.13 ensure that all requests for access and/or retrieval of Goods comply with the terms at Condition 4.7.

5.2 The Customer shall reimburse to the Supplier all demonstrable costs, fines and fees incurred by the Supplier as a result of the Customer's failure or delay to comply with any of the provisions at Condition 5.1 above. For the avoidance of doubt, this shall include waiting time, parking fines and any other costs incurred by the Supplier if Goods requested for delivery or collection cannot be delivered or collected from the Customer at the appointed time.

5.3 The Customer warrants and represents:

- 5.3.1 the accuracy of any information given to the Supplier and upon which it relies when performing the Services and in preparing any quotation of the requirements and resources necessary for provision of the Services;
- 5.3.2 that it has provided all information, whether concerning the Goods, business operations or otherwise, both existing and anticipated, which may be relevant to the Services or any assessment of said requirements or resources;

- 5.3.3 it is the owner or an authorised agent of the owner of the Goods or property which are subject to this Service Agreement; and
- 5.3.4 it has the full power and authority to enter into this Service Agreement and to deliver and perform its obligations hereunder.
- 5.4 The Customer shall indemnify the Supplier against any claims, charges and demands including legal costs made against the Supplier arising from any claim on the Goods made by any third party. If any third party has or obtains an interest in the Goods, the Customer must immediately notify the Supplier in writing.
- 5.5 The Customer shall indemnify the Supplier, on demand, in respect of all costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, breach, failure to perform or delay in the performance of any of its obligations under the Service Agreement, subject to the Supplier notifying the Customer of any such costs, charges and losses in writing.

6. INVENTORIES AND REPORTS

- 6.1 Any information (including inventories or Goods condition reports) provided by the Supplier to the Customer pursuant to the Services shall be deemed correct and complete unless the Customer notifies the Supplier of any discrepancy, error or omission within 1 Working Day of receipt of the Goods by the Customer.
- 6.2 In the event of any discrepancy, error or omission being notified to the Supplier pursuant to Condition 6.1, the Supplier shall use its reasonable endeavours to rectify the same as soon as reasonably practicable after receipt of notice from the Customer.
- 6.3 The Supplier shall not be liable for any loss or damage arising directly or indirectly in respect of any discrepancy, error or omission from any requisition or inventory or as a result of any error, negligence or fraud on the part of the Customer's authorised person collecting the Goods or selecting the Goods to be collected or delivered.
- 6.4 Any condition report prepared by the Supplier as to the nature or the quality of the Goods at the time of delivery or collection of the Goods shall be deemed accurate if the Customer is not present at the time of delivery or collection.
- 6.5 The Supplier shall be deemed to have delivered or collected Goods in fulfilment of the Services by production of appropriate signed receipts, inventories or delivery dockets. If the Customer is not present at delivery or collection, a copy of the inventory will be sent to the Customer.

7. VARIATION

- 7.1 The Supplier may, from time to time change the Services provided that such changes do not materially affect the nature or quality of the Services. Where reasonably practicable, the Supplier will give the Customer prior notice of any such change.
- 7.2 The Customer may request a change to the Services or request Additional Services by submitting a written request to the Supplier (together with all information required to properly consider the request). Where applicable, the Supplier will provide details of additional charges payable by the Customer to implement that change or to provide the Additional Services as requested by the Customer. Any change to the Services or the provision of Additional Services shall only be effective once expressly agreed by the Supplier. For the avoidance of doubt, the Supplier is not obliged to agree to any changes or requests for Additional Services.
- 7.3 Subject to the terms at this Condition 7, any variation to the Service Agreement (including any variation to the Schedules) shall have no effect unless expressly agreed in writing and signed by an authorised Director of the Supplier.

8. CHARGES AND PAYMENTS

- 8.1 In consideration of the Services provided by the Supplier, the Customer shall pay the Charges. The Charges are exclusive of VAT.

- 8.2 On each annual anniversary of the Service Commencement Date, the Supplier may vary the Charges in line with any RPI Increase by giving the Customer at least 30 days prior notice of the revised Charges.
- 8.3 Notwithstanding Condition 8.2, the Supplier may increase the Charges at any time by the amount of any increase in its transportation costs (including fuel) and/or costs of raw materials for Cartons. In the event of such increase, the Supplier shall notify the Customer at least 30 days prior to the increase taking effect.
- 8.4 The Customer agrees to pay:
- 8.4.1 any additional charges properly incurred by the Supplier in connection with the Services in the event that: (i) any information provided by the Customer is incorrect or insufficient; or (ii) any additional services are reasonably required to properly and safely perform the Services; and
- 8.4.2 all duties, taxes, levies, charges and impositions of whatever nature which may at any time be enacted or otherwise imposed or levied by any authority in relation to the Goods, Services or the Service Agreement.
- 8.5 In the event that the volume of Goods being handled, managed and/or stored falls below the Agreed Minimum Volumes, the Supplier reserves the right to invoice the Customer for any shortfall. The shortfall is calculated as the difference between Charges payable for Agreed Minimum Volume of Goods versus Charges payable or paid for actual volume of Goods stored, managed and/or handled by the Supplier.
- 8.6 The Customer shall pay each invoice submitted to it in full and in cleared funds, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 8.7 All Charges in connection with storage of Goods shall be invoiced monthly in advance and all other Services shall be invoiced monthly in arrears.
- 8.8 Notwithstanding the terms at this clause 8, Charges invoiced to the Customer shall be subject to the minimum invoice value per account/department/division (as appropriate) as set out in the Service Schedule.
- 8.9 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay any sums on the due date, the Supplier shall be entitled to:
- 8.9.1 charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of HSBC Bank PLC, accruing on a daily basis, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and/or
- 8.9.2 suspend all Services until payment has been made in full; and/or
- 8.9.3 exercise a lien (general or particular as the case may be) over any of the Goods, subject to the terms at Condition 8.10.
- 8.10 The Supplier shall have a general or particular lien upon all Goods in its possession for all monies and expenses due from the Customer. If some of the Goods have been delivered, removed, dispatched or sold, the general lien shall apply to any Goods that remain in the Supplier's possession. The Supplier shall be entitled to raise storage charges and/or other expenses whilst it maintains the lien on the Goods and these Conditions shall continue to apply.
- 8.11 Time for payment of Charges shall be of the essence of the Service Agreement.
- 8.12 All sums (including any Charges and the Permanent Withdrawal Fee) payable under the Service Agreement shall become due immediately on its termination or expiry for any reason, despite any other provision. This Condition 8.12 is without prejudice to any right to claim for interest under the law, or any such right under the Service Agreement.
- 8.13 The Supplier may, without prejudice to any other rights, set off any liability incurred by the Customer to the Supplier against any liability incurred by the Supplier to the Customer.
- 8.14 The Customer agrees not to withhold payment on the grounds that it has an alleged claim against the Supplier.

9. LIABILITY

- 9.1 The Customer acknowledges that the Supplier does not insure the Goods. The Customer shall be responsible for making its own arrangements to insure the Goods whilst they are in the Supplier's possession or control or otherwise against all risks to the full insurable value thereof (including all duties and taxes).
- 9.2 This Condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of :
- 9.2.1 any breach of the Service Agreement including any deliberate breach of the Service Agreement by the Supplier, or its employees, agents or subcontractors;
 - 9.2.2 any use made by the Customer of the Services provided by the Supplier; and
 - 9.2.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Service Agreement.
- 9.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Service Agreement. In particular, the Supplier excludes any representation, condition or warranty that the operation of the Services will be uninterrupted.
- 9.4 Notwithstanding any provision to the contrary, nothing in these Conditions limits or excludes the liability of either party for death or personal injury resulting from negligence or any damage or liability incurred by either party as the result of fraud or fraudulent misrepresentation by the other party.
- 9.5 Subject to Condition 9.4, the Supplier shall not be liable for:
- 9.5.1 loss of profits;
 - 9.5.2 loss of business;
 - 9.5.3 depletion of goodwill and/or similar losses;
 - 9.5.4 loss of anticipated savings;
 - 9.5.5 loss of or corruption to data or information;
 - 9.5.6 loss of contract;
 - 9.5.7 loss of use; or
 - 9.5.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses of any kind;
- even if the Supplier has been advised of the possibility of such losses or damages.
- 9.6 Subject to Conditions 9.4 and 9.5, the Supplier's total 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 obligations under the Service Agreement shall not exceed the following:
- 9.6.1 in respect of any loss or damage to documents, files, paper records and other Goods provided by the Customer to the Supplier (but excluding any tapes, disks, reels, cassettes, microfiche and microfilm), the salvage value of the Goods up to a maximum value of £20 per tonne (equivalent to £0.25 per Container) or proportionate part thereof;
 - 9.6.2 in respect of any loss or damage to tapes, disks, reels, cassettes, microfiche and microfilm, up to the actual direct cost to replace such blank items; for the avoidance of doubt, the cost of replacement shall not include restoration of any media or data whatsoever;
 - 9.6.3 in respect to any damage to sites or premises, up to the sum of £1,000 per incident;

- 9.6.4 in respect of any other claims not anticipated at Conditions 9.6.1 to 9.6.3 above, up to the total Charges paid by the Customer to the Supplier in the twelve-month period immediately prior to the date on which the cause of action first arose (or if the Service Agreement had been in force for less than twelve months at that date, the annualised amount of the Charges payable by that date).
- 9.7 The Customer acknowledges that the limitations of liability set out at Conditions 9.6.1, 9.6.2 and/or 9.6.3 may be increased by written agreement between the Customer and the Supplier (at the Supplier's sole discretion) subject to revised or additional Charges as determined by the Supplier. Such variations to these terms will not be effective unless and until agreed by an authorised Director of the Supplier.
- 9.8 In no event will the Supplier have any liability for non-provision or delay in the provision of the Services which:
- 9.8.1 can be reasonably attributed to the acts or omissions of the Customer, its employees, agents or subcontractors including but not limited to provision of complete, accurate information in a timely manner to the Supplier;
- 9.8.2 arises from or as a consequence of use of the Services other than in accordance with the express terms of the Service Agreement; and/or
- 9.8.3 occurs during any period of force majeure pursuant to Condition 13.
- 9.9 The Supplier shall not be liable for:
- 9.9.1 any loss or damages arising out of any failure to collect, deliver or make available for collection the Goods within any particular timeframe; or
- 9.9.2 any loss or damage caused to Goods by any of the following:
- 9.9.2.1 vermin, moth or other infestation (providing reasonable steps have been taken by the Supplier to prevent any such loss or damage);
- 9.9.2.2 terrorism, war, invasion, acts of foreign enemies, hostilities or any force majeure event pursuant to Condition 13;
- 9.9.2.3 wear or tear, gradual deterioration, leakage or deficiency of any articles;
- 9.9.2.4 where such loss or damage is caused where Goods have been packed or unpacked by the Customer or its employees or agents;
- 9.9.2.5 if Goods are delivered (at the Customer's instruction) to any premises which are unattended or unoccupied or where third parties are present.
- 9.10 The Customer acknowledges that the Supplier would not enter into the Service Agreement at the prices herein without the foregoing limitations of liability. Each party acknowledges that the allocation of risk in these Conditions (including the exclusions and limitations of liability set out in this Condition 9) has been freely negotiated at arm's length and is regarded by it as reasonable.
- 9.11 The Supplier shall not be liable for any claim arising under the Service Agreement unless the Customer gives the Supplier written notice of such claim within 30 days of becoming aware of the circumstances giving rise to the claim or, if earlier, 30 days from the time the Customer ought reasonably to have become aware of such circumstances.

10. TERMINATION

- 10.1 Without prejudice to any other rights or remedies which it may have, the Supplier may terminate the Service Agreement, without liability to the Customer, immediately on giving notice to the Customer if:
- 10.1.1 the Customer fails to pay any amount due under the Service Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing of the breach;

10.1.2 the Customer commits a material breach of any of the terms and conditions of the Service Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified of the breach; or

10.1.3 the Customer suspends or ceases or threatens to cease to carry on all or a substantial part of its business.

10.2 Either party may terminate the Service Agreement if an Insolvency Event occurs in respect of the other party.

11. CONSEQUENCES OF TERMINATION OR EXPIRY

11.1 The termination or expiry of the Service Agreement, however arising, shall be without prejudice to any accrued rights and obligations under the Service Agreement as at the date of termination or expiry.

11.2 The Conditions which expressly or impliedly have effect after termination or expiry shall continue to be enforceable notwithstanding termination or expiry.

11.3 On termination or expiry of the Service Agreement, howsoever caused the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt.

11.4 The terms at clause 12 shall apply upon termination or expiry of the Service Agreement.

12. PERMANENT WITHDRAWAL SERVICES

12.1 Upon termination or expiry of the Service Agreement and subject to payment of the Permanent Withdrawal Fees by the Customer, the Supplier shall provide the Permanent Withdrawal Services.

12.2 The Permanent Withdrawal Services shall include the preparation, handling and management of the Goods, and production of final inventories, for the transfer of services to the Customer or its nominated contractor. The timetable and further details for the Permanent Withdrawal Services will be agreed between the parties at that time, acting reasonably.

12.3 As part of the Permanent Withdrawal Services, the Supplier shall:

12.3.1 make the Goods available to the Customer (or its nominated contractor) for collection at a designated collection point within the Supplier's premises in a method, at a time and at a daily volume specified by the Supplier; or

12.3.2 where agreed in writing between the parties, arrange for delivery of the Goods to the Customer or its nominated contractor subject to an additional charge to be agreed and payable in advance.

12.4 The Supplier shall notify the Customer of the maximum volumes of Goods to be handled by the Supplier per location and per Working Day.

12.5 The Supplier will consider any additional requirements requested by the Customer in respect of the Permanent Withdrawal Services and will notify the Customer of any additional charges payable to meet such requirements. The Supplier is under no obligation to agree to any such additional requirements.

12.6 For such time as the Permanent Withdrawal Services are being performed, the Customer shall continue to pay the Charges in respect of those Goods which remain in the Supplier's custody or control, until such time as they are transferred to the Customer or the nominated contractor (as the case may be). The Supplier will continue to invoice the Customer in respect of such Charges and these Conditions shall continue to apply.

12.7 The Supplier reserves the right to raise an invoice for the Permanent Withdrawal Fees once notice to terminate the Service Agreement has been served pursuant to Conditions 3.2 or 10, as the case may be. Any further additional fees will be invoiced as necessary.

12.8 If the Customer fails to pay the Permanent Withdrawal Fees and remains in default not less than 14 days after being notified in writing of the breach:

- 12.8.1 the terms at Conditions 8.9.1 and 8.9.2 shall apply in respect of the Permanent Withdrawal Services and Permanent Withdrawal Fees; and/or
- 12.8.2 the Supplier reserves the right to sell or otherwise dispose of or destroy all or part of the Goods at the Customer's risk and expense, by giving 7 days notice to the Customer. Where applicable, the proceeds of sale shall be credited to the Customer's account or against any other payments due to the Supplier. The Customer agrees to indemnify the Supplier in respect of all charges, losses or costs, including any legal costs, incurred by the Supplier in connection with selling, disposing or destroying the Goods. Any surplus proceeds will be paid without interest. Where relevant, the Supplier will use (in its sole opinion) a reasonably appropriate method of sale but shall not be liable for any inadequacy in the price achieved.
- 12.9 If the Supplier elects to sell or dispose of part of the Goods pursuant to Condition 12.8.2, it reserves the right to continue to charge storage on any Goods remaining in store and these Conditions shall continue to apply.
- 12.10 **For the avoidance of doubt, Permanent Withdrawal Fees will be payable by the Customer on expiry or termination of the Service Agreement howsoever caused and the Customer is not entitled to opt out of the Permanent Withdrawal Services.**

13. FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Service Agreement if it is prevented from, or delayed in performing, its obligations under the Service Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14. ENTIRE AGREEMENT

- 14.1 The Service Agreement constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 14.2 Each party acknowledges that, in entering into the Service Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than for breach of contract where expressly provided in the Service Agreement.
- 14.3 Nothing in this Condition shall limit or exclude any liability for fraud.

15. ASSIGNMENT

- 15.1 The Customer shall not, without the Supplier's prior written consent, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Service Agreement.
- 15.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Service Agreement and may subcontract or delegate in any manner any or all of its obligations under the Service Agreement to any third party or agent.
- 15.3 Each party that has rights under the Service Agreement is acting on its own behalf and not for the benefit of another person.

16. NOTICES

- 16.1 Subject to Condition 16.3, any notice or other communication required to be given under the Service Agreement shall be in writing and shall be sent to the relevant party at the address (or email address) specified on the front page of the Service Agreement. Notices shall be delivered personally, sent by pre-paid first class post, recorded delivery or by commercial courier or sent by email to the other party and for the attention of the person specified on the front page of this Service Agreement ("**Contact**") or as otherwise specified by the relevant party, by notice in writing to the other party.

- 16.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the relevant Contact or, if sent by pre-paid first class post or recorded delivery, at 9.00am on the second business day after posting or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 16.3 A notice or other communication required to be given under or in connection with the Service Agreement may be validly served if sent by e-mail and shall be deemed to have been duly received when acknowledged in person by the recipient. An automated message from the recipient's systems will not be deemed an acknowledgement for such purposes.

17. GENERAL

- 17.1 If any provision of the Service Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Service Agreement and the remainder of such provision shall continue in full force and effect.
- 17.2 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Service Agreement shall not be construed as a waiver of any rights under the Service Agreement.
- 17.3 Any waiver by the Supplier of any breach of, or any default under, any provision of the Service Agreement by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Service Agreement.
- 17.4 Nothing in the Service Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.5 The parties to the Service Agreement do not intend that any term of the Service Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.6 The Service Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

Version date: 21 October 2010