

## LIFTING GEAR UK LIMITED STORAGE AGREEMENT

### CONDITIONS

#### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

##### 1.1 Definitions:

**Additional Fees:** the Fees payable in respect of additional items to be stored at the Facility.

**ADR Notice:** has the meaning given in clause 18.1.3.

**Affected Party:** has the meaning given in clause 20.1.

**Agreement:** means this agreement, comprised of the Agreement Form and these Conditions.

**Agreement Form:** the agreement form titled 'Lifting Gear UK Limited: Agreement Form'.

**Applicable Laws:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the Stored Items or the provision of the Storage Services.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Collection Site:** has the meaning given in clause 6.3.1.

**Commencement Date:** the date specified in paragraph 1.3 of the Agreement Form.

**Conditions:** these terms and conditions.

**Confidential Information:** any and all confidential information (whether in oral, written or electronic form) imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property rights, assets, strategy, services, software, products, solutions and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party.

**control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be interpreted accordingly.

**CPIH:** the Consumer Prices Index including owner-occupier's housing costs.

**Customer:** the party identified as such in the Agreement Form.

**Customer Default:** has the meaning given in clause 5.3.

**Customer Materials:** any documents, information and materials (for the avoidance of doubt, excluding Stored Items) provided by the Customer to LGUK which are used directly or indirectly in the supply of the Storage Services, whether provided in accordance with clause 5.1.2 or otherwise.

**Dangerous Items:** has the meaning given in clause 5.2.4.

**Delivery Location:** has the meaning given in clause 9.4.

**Dispute:** has the meaning given in clause 18.1.

**Dispute Notice:** has the meaning given in clause 18.1.1.

**Extended Period:** has the meaning given in paragraph 1.3 of the Agreement Form.

**Facility:** LGUK's storage facility (or facilities, as may be the case) at which the Storage Services are to be provided, as set out in the Agreement Form.

**Fees:** the sums payable for the Storage Services, as set out in paragraph 1.5 of the Agreement Form.

**Force Majeure Event:** any circumstance not within a party's reasonable control, including (but not limited to) acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts, non-performance by suppliers or subcontractors, and interruption or failure of utility service.

**Initial Period:** has the meaning given in paragraph 1.3 of the Agreement Form.

**Loss:** means all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and professional costs and expenses, and **Losses** shall be construed accordingly.

**Privacy Policy:** LGUK's privacy policy, available at <https://www.lifting-equipment.co.uk/our-group/about/privacy-notice>.

**Rejected Items:** has the meaning given in clause 6.6.

**Stored Items:** the items to be stored at the Facility, as specified in paragraph 1.4 of the Agreement Form.

**Storage Request:** the Customer's written request for additional items to be stored at the Facility, issued in accordance with clause 10.1.

**Storage Services:** the storage services to be provided by LGUK at the Facility in respect of the Stored Items, the scope of which is more particularly defined in the Agreement Form.

**Term:** the term during which this Agreement remains in force as determined in accordance with clause 2.

**VAT:** value added tax chargeable in the UK.

**Waste:** has the meaning given in section 75 of the Environmental Protection Act 1990.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 A reference to legislation or a legislative provision:
  - 1.7.1 is a reference to it as amended, extended or re-enacted from time to time; and
  - 1.7.2 includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.8 A reference to **writing** or **written** includes email but not fax.

- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 References to clauses are to the clauses of the Terms and references to paragraphs are to paragraphs of the Agreement Form.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## **2. COMMENCEMENT AND DURATION**

This Agreement commences on the Commencement Date. Unless terminated earlier in accordance with clause 16 or this clause 2, this Agreement continues for the Initial Period and automatically extends for an Extended Period at the end of the Initial Period and at the end of each Extended Period. Either party may give written notice to the other party, not later than one month before the end of the Initial Period or the relevant Extended Period, to terminate this Agreement at the end of the Initial Period or the relevant Extended Period (as may be the case).

## **3. APPOINTMENT OF LGUK**

- 3.1 The Customer appoints LGUK to provide the Storage Services to the Customer on the terms and conditions of this Agreement.
- 3.2 The Customer acknowledges and agrees that LGUK:
  - 3.2.1 is not a common carrier; and
  - 3.2.2 may use the Facility to store other customer's items at the same time as the Stored Items, and is entitled to provide services to any third party that are the same as, or comparable to, the Storage Services.

## **4. LGUK'S GENERAL OBLIGATIONS**

- 4.1 In providing the Storage Services, LGUK shall:
  - 4.1.1 provide the Storage Services:
    - 4.1.1.1 at the Facility in accordance with this Agreement; and
    - 4.1.1.2 with reasonable care and skill;
  - 4.1.2 subject to clause 9.9, clause 11.6 and clause 17.2, do nothing to prejudice the Customer's or owner's, if the Customer is not the owner of the Stored Items, title or rights to the Stored Items;
  - 4.1.3 allocate sufficient resources to enable it to provide the Storage Services in accordance with the terms of this Agreement; and
  - 4.1.4 ensure that the personnel engaged in the provision of the Storage Services are competent and appropriately trained and supervised.
- 4.2 LGUK warrants on an ongoing basis that it has the right to use the Facility for the purpose of storing the Stored Items.
- 4.3 In light of the assurances that LGUK has provided to the Customer in this Agreement as to the quality of the Storage Services, all conditions, warranties, representations or other terms that might otherwise be implied into this Agreement by statute, common law, course of dealing, trade usage or otherwise are excluded from this Agreement.

## **5. THE CUSTOMER'S GENERAL OBLIGATIONS**

- 5.1 The Customer shall:
  - 5.1.1 co-operate with LGUK in all matters relating to the Storage Services and, to the extent applicable, ensure that its other suppliers co-operate with LGUK where necessary;

- 5.1.2 provide LGUK, in a timely manner and with no charge, with all documents, data, information and materials reasonably required by LGUK to provide the Storage Services, and ensure that they are accurate in all respects;
  - 5.1.3 comply with all Applicable Laws in the performance of its obligations under this Agreement; and
  - 5.1.4 notify LGUK in writing immediately upon the occurrence of a change of control of the Customer.
- 5.2 The Customer warrants and represents on an ongoing basis that:
- 5.2.1 it has supplied to the LGUK all material information relating to its requirements for the Storage Services;
  - 5.2.2 it is either the owner of the Stored Items, or is authorised by the owner to store the Stored Items at the Facility on the terms of this Agreement, and there are no restrictions on its right to store the Stored Items at the Facility on the terms of this Agreement;
  - 5.2.3 the Stored Items will be of the type listed in paragraph 1.4 of the Agreement Form, subject to any additions items to be subject to the Storage Services, agreed in accordance with clause 7; and
  - 5.2.4 none of the Stored Items will constitute Waste or will be of a type that are or may become poisonous, corrosive, flammable, volatile, explosive or radioactive (**Dangerous Items**).
- 5.3 If LGUK's performance of any of its obligations under this Agreement is prevented, hindered or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or by a failure of the Customer to perform any relevant obligations (a **Customer Default**):
- 5.3.1 without limiting or affecting any other right or remedy available to it, LGUK shall have the right to suspend performance of the Storage Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any obligations in each case to the extent that the Customer Default prevents or delays the Customer's performance of any of its obligations;
  - 5.3.2 LGUK shall not be liable for any Losses suffered or incurred by the Customer arising directly or indirectly from LGUK's failure or delay to perform any of its obligations under this Agreement; and
  - 5.3.3 the Customer shall indemnify LGUK, keep LGUK indemnified and hold LGUK harmless for any Losses suffered or incurred by LGUK arising directly or indirectly from the Customer Default.
- 6. CARRIAGE TO THE FACILITY**
- 6.1 Before delivery of the Stored Items to the Facility, or collection of the Stored Items for carriage by LGUK to the Facility (as may be the case), the Customer shall:
- 6.1.1 inform LGUK in writing of any special precautions required by the nature, weight or condition of the Stored Items to be subject to the Storage Services and provide LGUK with all other information concerning the Stored Items necessary to enable LGUK to comply with all Applicable Laws in respect of the storage and handling of the Stored Items; and
  - 6.1.2 ensure that the Stored Items are securely and properly packed ready for safe carriage to the Facility in compliance with all Applicable Laws and in such condition as not to cause damage or injury or the likelihood of damage or injury to any personnel engaged by LGUK (whether as employee, contractor, agent, or otherwise) or to the Facility or any other property of LGUK or to any other goods stored at the Facility.

- 6.2 Unless otherwise stated in the Agreement Form or agreed between the parties in writing, the Customer shall be responsible for arranging transportation and safe carriage of the Stored Items to the Facility. The Customer shall deliver the Stored Items to the Facility during Business Hours and on the delivery date agreed with LGUK in writing. The Customer shall comply with LGUK's instructions when delivering the Stored Items, at its own risk, at the Facility. LGUK shall unload the Stored Items following delivery of the Stored Items to the Facility in accordance with this clause.
- 6.3 If the Agreement Form states that LGUK will be responsible for collecting the Stored Items and transporting them to the Facility:
- 6.3.1 The Customer shall ensure that the location from which the parties have agreed that LGUK shall collect the Stored Items (**Collection Site**) is suitably prepared in order for the collection of the Stored Items to take place. The Customer shall provide LGUK, and LGUK's personnel, with safe and unobstructed access to, movement around and egress from the Collection Site.
- 6.3.2 LGUK shall use reasonable endeavours to collect the Stored Items from the Collection Site on the date for collection agreed between the parties and provided that the Customer has complied with clause 6.1 and clause 6.3.1, LGUK will take responsibility for loading them onto the carrier from the Collection Site. Any dates quoted for collection of the Stored Items are approximate only, and the time for collection is not of the essence. LGUK shall not be liable for any delay in the collection of the Stored Items that is caused or contributed to by a Force Majeure Event or the Customer's failure to provide LGUK with adequate collection instructions or comply with its obligations under this Agreement.
- 6.4 The Customer warrants that the Stored Items delivered to the Facility or made available to be collected by LGUK (as may be the case):
- 6.4.1 shall match the description or specification set out in the Agreement Form or Storage Request, as may be the case;
- 6.4.2 are accompanied by all relevant documentation, including but not limited to:
- 6.4.2.1 documentation regarding any storage instructions relevant to the Stored Items; and/or
- 6.4.2.2 any other documentation which LGUK deems appropriate to request in connection with the potential risks associated with the Stored Items;
- 6.4.3 are securely and properly packed in accordance with clause 6.1.
- 6.5 LGUK shall inspect the Stored Items as soon as practicable following delivery of them to the Facility (whether by the Customer or LGUK) to check they comply with clause 6.4 and shall confirm to the Customer in writing whether it accepts or rejects the Stored Items (or any part of them) for storage at the Facility.
- 6.6 If LGUK determines that the Stored Items (or any part of them) do not comply with clause 6.5 (the **Rejected Items**), LGUK shall inform the Customer that the Rejected Items:
- 6.6.1 will not be stored at the Facility, and the reason(s) why; and
- 6.6.2 must be removed from the Facility by the Customer at the Customer's own cost and within 24 hours of LGUK informing the Customer in accordance with this clause.
- 6.7 The Customer shall indemnify LGUK, keep LGUK indemnified and hold LGUK harmless from and against any and all Losses suffered or incurred by LGUK (directly or indirectly) in connection with the Customer's failure to comply with the requirements of this clause 6.

## 7. THE FACILITY

- 7.1 LGUK shall:

- 7.1.1 provide the Facility; and
- 7.1.2 not store the Stored Items anywhere other than the Facility without the prior written consent of the Customer.
- 7.2 From time to time, the Customer may attend the Facility (with LGUK's express authorisation pursuant to this clause 7.2) in order to inspect the Stored Items. Where the Customer intends to attend the Facility for this purpose, the Customer shall:
  - 7.2.1 submit a written request to LGUK requesting a visit of the Facility (which LGUK may accept or deny at its absolute discretion);
  - 7.2.2 agree a suitable time and date with LGUK for the visit to take place; and
  - 7.2.3 ensure that its employees, agents and representatives shall, whilst attending the Facility:
    - 7.2.3.1 co-operate with LGUK's employees, agents, officers, subcontractors and representatives;
    - 7.2.3.2 act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of LGUK;
    - 7.2.3.3 comply with all health, safety and security requirements in force; and
    - 7.2.3.4 comply with all rules and instructions issued from time to time by LGUK relating to the use of and access to the Facility.
- 7.3 LGUK shall promptly, on request, provide such information as the Customer reasonably requires regarding the security systems in place at the Facility.
- 7.4 LGUK shall not be under any obligation to allow the Customer access to the Facility in order to inspect the Stored Items in accordance with clause 7.2.
- 7.5 LGUK shall be under no obligation to carry out any inspections of the Stored Items once they are placed in storage at the Facility, and any such requirement or obligation shall be the sole responsibility of the Customer in accordance with clause 7.2.
- 7.6 Without prejudice to clause 7.5, in the event that LGUK reasonably determine (at its absolute discretion) that any of the Stored Items are or may become capable of causing harm to LGUK's personnel and/or the Facility, and/or LGUK deems the Stored Items to be Dangerous Items, LGUK reserves the right to (at its absolute discretion and at the Customer's expense) remove those Stored Items and/or Dangerous Items (as may be the case) from the Facility and require the Customer to collect them as soon as practicable.

## **8. HANDLING OF STORED ITEMS**

- 8.1 LGUK shall:
  - 8.1.1 not remove, deface or obscure any identifying mark or packaging on or relating to the Stored Items; and
  - 8.1.2 keep and maintain the Stored Items in the condition in which they were delivered to the Facility, and, subject to clause 9.9, clause 11.6 and clause 17.2, shall not dispose of or use the Stored Items other than in accordance with the Customer's instructions or authorisation.
- 8.2 Subject to clause 8.1:
  - 8.2.1 LGUK may use such method for the storage and handling of the Stored Items as it in its absolute discretion considers appropriate; and
  - 8.2.2 LGUK shall have a discretion as to where in the Facility it shall store the Stored Items and it may, without notice to the Customer but at LGUK's expense, move the Stored Items from one part of the Facility to another part of the Facility.

## **9. REMOVAL OF STORED ITEMS FROM THE FACILITY**

- 9.1 Subject to clause 11.7 and unless otherwise stated in the Agreement Form or agreed between the parties in writing, the Customer shall be responsible for arranging the collection and removal of the Stored Items from the Facility and clauses 9.2 and 9.3 shall apply.
- 9.2 The Customer shall arrange for the collection and removal of the Stored Items from the Facility during Business Hours and on the date for collection agreed with LGUK in writing. Where the Customer is to arrange its own transportation for the removal of the Stored Items from the Facility, LGUK shall be responsible for loading the Stored Items onto the Customer's transportation for onward carriage.
- 9.3 In the event that the Customer does not collect the Stored Items on the agreed date for collection, then, except where such failure or delay is caused by a Force Majeure Event or LGUK's failure to comply with its obligations under this Agreement:
- 9.3.1 where clause 12.2 applies, collection shall be deemed to have taken place at 09:00am on the day after the agreed collection date and risk in the Stored Items shall transfer back to the Customer; and
- 9.3.2 LGUK may, where necessary, remove the Stored Items from the Facility and charge the Customer for all related costs and expenses (including the costs of alternative storage facilities) until actual collection takes place.
- 9.4 If the Agreement Form states that LGUK will be responsible for delivering the Stored Items to the Customer, clauses 9.5 to 9.8 (inclusive) shall apply.
- 9.5 The Customer warrants that the Stored Items shall be properly packed and ready for safe loading and onward carriage, in accordance with clause 6.1, for LGUK's delivery of the Stored Items to the location that the parties have agreed LGUK shall deliver them to (**Delivery Location**).
- 9.6 The Customer shall ensure that the Delivery Location is suitably prepared in order for the delivery of the Stored Items to take place. The Customer shall provide LGUK, and LGUK's personnel, with safe and unobstructed access to, movement around and egress from the Delivery Location.
- 9.7 LGUK shall use reasonable endeavours to deliver the Stored Items to the Delivery Location (which may occur, at LGUK's discretion, in instalments) on the date (or dates) for delivery agreed between the parties. Any dates quoted for delivery of the Stored Items are approximate only, and the time for delivery is not of the essence. LGUK shall not be liable for any delay in the delivery of the Stored Items that is caused or contributed to by a Force Majeure Event or the Customer's failure to provide LGUK with adequate delivery instructions or to comply with its obligations under this Agreement.
- 9.8 LGUK shall be responsible for unloading the Stored Items, at its own risk, upon delivery of them to the Delivery Location.
- 9.9 LGUK may at the Customer's expense, remove or, if it thinks fit, destroy any Stored Items which in its reasonable opinion are or have become Dangerous Items. Save in cases of emergency (which shall be determined at LGUK's sole discretion), LGUK shall not exercise this right without first giving the Customer a reasonable opportunity to inspect the Stored Goods in question and, if the Customer so elects, to remove them itself.
- ## **10. ADDITIONAL STORAGE REQUESTS**
- 10.1 If the Customer wishes to store any items in addition to the Stored Items at the Facility, the Customer shall provide LGUK with a request in writing setting out those additional items (a **Storage Request**).

- 10.2 LGUK may, at its sole discretion, accept or reject a Storage Request. In the event that LGUK accepts a Storage Request, it shall provide the Customer with a quote and payment terms for the Additional Fees that shall be payable in connection with that Storage Request.
- 10.3 If the Customer accepts the position in the quote provided in accordance with clause 10.2, it shall confirm its acceptance to LGUK in writing, following which those additional items referred to in the Storage Request shall form part of the Stored Items, and the Customer shall deliver them to the Facility in accordance with clause 6 at which point the Storage Services shall commence in respect of those items.

## **11. FEES AND PAYMENT**

- 11.1 In consideration of the provision of the Storage Services by LGUK, the Customer shall pay the Fees.
- 11.2 All Fees are stated exclusive of VAT which shall be paid by the Customer at the rate and from time to time in the manner prescribed by law.
- 11.3 The Fees are calculated and charged on the basis of the rates set out in the Agreement Form.
- 11.4 LGUK shall invoice the Customer at the end of each month for Storage Services provided during that month.
- 11.5 The Customer shall pay invoices:
- 11.5.1 within 30 days of receipt of the invoice; and
  - 11.5.2 in full and in cleared funds to the bank account nominated in writing by LGUK.
- 11.6 LGUK may increase the Fees on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in the CPIH in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the CPIH.
- 11.7 LGUK shall have a general and particular lien on the Stored Items in its possession as security for payment of all sums claimed by LGUK from the Customer. The Fees shall continue to accrue on any Stored Items detained under lien. Subject to clause 11.8, if an invoice for the Fees is not paid in full on its due date for payment, LGUK may, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Stored Items in its possession if the amount outstanding is not paid in full within 28 days. If the amount due is not paid by the expiry of such period, LGUK may sell or otherwise dispose of some or all of the Stored Items in its possession, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Stored Items to the Customer after deduction of all amounts due to LGUK and the expenses incurred by LGUK for the sale or disposal of the Stored Items. LGUK shall not be liable for the price obtained for the sale or disposal of the Stored Items.
- 11.8 If the Customer disputes any invoice:
- 11.8.1 the Customer shall notify LGUK in writing immediately, specifying the reasons for disputing the invoice;
  - 11.8.2 LGUK shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
  - 11.8.3 the Customer shall pay to LGUK all amounts not disputed by the Customer on the due date as set out in clause 11.5;
  - 11.8.4 the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
  - 11.8.5 if the parties have not resolved the dispute within 30 days of the Customer giving notice to LGUK, the dispute shall be resolved in accordance with clause 18.

- 11.9 If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then, without limiting the other party's remedies under clause 16 the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0% Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 11.10 The Customer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by Applicable Law). LGUK may at any time, without limiting any other rights or remedies that may be available to it, set off any amount payable by it to the Customer against any of the Customer's liabilities to it.

## **12. RISK AND INSURANCE**

- 12.1 Where the Agreement Form states in paragraph 1.7 that the Customer shall be responsible for insuring the Stored Items:
- 12.1.1 the risk of loss, theft, damage or destruction of or to the Stored Items shall remain solely with the Customer at all times, notwithstanding whether the Stored Items are in the possession, custody or control of LGUK or not (whether at the Facility or otherwise), where the Customer is required to insure the Stored Items in accordance with clause 12.1;
  - 12.1.2 the Customer shall, during the Term and for any additional period during which the Stored Items are in LGUK's possession, custody or control, maintain in force, at its own cost and with reputable insurance companies, insurance against all risks that would normally be insured by a prudent businessperson in connection with this Agreement. The Customer shall, on request by LGUK, make available for inspection by LGUK or its advisors copies of all such insurance policies.
- 12.2 Where the Agreement Form states in paragraph 1.7 that LGUK shall be responsible for insuring the Stored Items:
- 12.2.1 subject to clauses 6.3, 9.2, 9.3.1 and 9.8, risk in the Stored Items:
    - 12.2.1.1 shall pass to LGUK on the completion of unloading of the Stored Items at the Facility; and
    - 12.2.1.2 returns to the Customer upon the:
      - 12.2.1.2.1 commencement of collection of the Stored Items by the Customer (or any agent, representative, or subcontractor of the Customer) in accordance with clauses 9.1 to 9.3 (inclusive); or
      - 12.2.1.2.2 delivery of the Stored Items at the Delivery Location in accordance with clauses 9.5 to 9.8 (inclusive);
  - 12.2.2 LGUK shall, at its own expense, obtain and maintain insurance of the Stored Items to the value specified in the Agreement Form for the Term, provided that such insurance is available at commercially reasonable rates and terms;
  - 12.2.3 LGUK makes no representation, warranty or guarantee, and neither does LGUK provide any advice or guidance, that any such insurance policies will be adequate, sufficient or suitable for the Stored Items or the Facility, or that the insurance policies will allow the Customer to recover the full value of the Stored Items or to make any recovery at all;
  - 12.2.4 the Customer acknowledges and agrees that it has satisfied itself that the insurance policies obtained and maintained by LGUK pursuant to clause 12.2.2 are adequate,

sufficient and suitable, given the nature of the Stored Items, the Facility and the risk associated with either or both of them; and

- 12.2.5 LGUK shall, on the Customer's reasonable request, provide a copy of the insurance policy certificates (or other form of confirmation that LGUK reasonably deems appropriate) for the relevant insurance policies to the Customer.

### 13. LIMITATION OF LIABILITY

- 13.1 Nothing in this Agreement limits or excludes:

- 13.1.1 liability for death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;
- 13.1.2 liability for fraud or fraudulent misrepresentation; and
- 13.1.3 any liability that cannot legally be limited.

- 13.2 Subject always to clause 13.1:

- 13.2.1 LGUK shall under no circumstances whatsoever have be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise for any:

- 13.2.1.1 loss of profits;
- 13.2.1.2 loss of sales or business;
- 13.2.1.3 loss of agreements, contracts or business opportunity;
- 13.2.1.4 loss of anticipated saving;
- 13.2.1.5 loss of use or corruption of software, data or information;
- 13.2.1.6 loss of or damage to goodwill; or
- 13.2.1.7 any indirect, special or consequential Loss.

- 13.3 Subject always to clauses 13.1 and 13.2, LGUK's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise:

- 13.3.1 for damage to or loss of (howsoever arising) any Customer property (including but not limited to the Stored Items) shall not under any circumstances exceed:

- 13.3.1.1 the sum actually recovered in connection with such damage or loss under any insurance policy obtained or maintained by LGUK in accordance with clause 12.2; or

- 13.3.1.2 the figure specified in clause 13.3.2, where:

- 13.3.1.2.1 the Agreement Form does not specify that LGUK shall be obtaining and/or maintaining insurance of the Stored Items; or

- 13.3.1.2.2 the sum actually recovered under any such insurance policy in connection with loss of or damage to any Customer property (including but not limited to the Stored Items) is nil (for any reason whatsoever) or less than the figure specified in clause 13.3.2; and

- 13.3.2 for all other Losses arising under or in connection with this Agreement not excluded under clause 13.3.1 shall not under any circumstances exceed the total Fees actually paid by the Customer to LGUK in the preceding 12-month period.

- 13.4 Unless a party notifies the other party that it intends to make a claim within the notice period, the other party shall have no liability for that claim. The **notice period** shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware

of its having grounds to make a claim and shall expire six months from that date. The notice must be in writing and must identify the grounds for the claim in reasonable detail.

#### **14. CUSTOMER'S INDEMNITIES**

- 14.1 The Customer shall indemnify LGUK, keep LGUK indemnified and hold LGUK harmless in full and on demand from and against any and all Losses (including, without limitation, loss of profit, loss of business, loss of contract, loss of business opportunity and special, indirect and consequential Losses) suffered or incurred by LGUK as a result of or in connection with any:
- 14.1.1 damage to property, death or personal injury arising out of or in connection with the storage or handling of any Stored items which are Waste or Dangerous Items;
  - 14.1.2 any breach of this Agreement, and/or any act or omission of the Customer under or in connection with this Agreement;
  - 14.1.3 claim made against LGUK:
    - 14.1.3.1 arising out of the Customer's failure to comply with any statutory or HM Revenue & Customs requirements, including administrative requirements, concerning the payment of tax, customs or duties in respect of any of the Stored Items;
    - 14.1.3.2 for conversion arising out of or in connection with the storage or handling of any of the Stored Items in accordance with the Customer's instructions; and
    - 14.1.3.3 arising out of or in connection with any Stored Items that are or become dangerous, verminous, infested, contaminated or condemned.
  - 14.1.4 any breach by the Customer of this Agreement.
- 14.2 If a payment due from the Customer under this clause 14 is subject to tax (whether by way of direct assessment or withholding at its source), the amount of the payment shall be increased to ensure that the net receipt, after tax, to LGUK is the same as it would have been were the payment not subject to tax.

#### **15. DATA PROTECTION**

LGUK shall process the Customer's personal data in accordance with the Privacy Policy.

#### **16. TERMINATION**

- 16.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 16.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 16.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - 16.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
  - 16.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 16.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
  - 16.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 16.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
  - 16.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 16.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - 16.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 16.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1.3 to clause 16.1.10 (inclusive);
  - 16.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - 16.1.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
  - 16.1.14 there is a change of control of the other party.
- 16.2 Without affecting any other right or remedy available to it, LGUK may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 16.3 Without affecting any other right or remedy available to it, the LGUK may terminate this Agreement on giving not less than one month's written notice to the Customer.
- 17. CONSEQUENCES OF TERMINATION AND SURVIVAL**
- 17.1 On termination or expiry of the Agreement:
- 17.1.1 the Customer shall remove or procure the removal of the Stored Items still in storage at the Facility, following which the Customer's right to request access to the Facility pursuant to clause 7.2 shall terminate; and
  - 17.1.2 the Customer shall immediately pay all of LGUK's outstanding unpaid invoices and interest and, in respect of the Storage Services supplied but for which no invoice has been submitted, LGUK may submit an invoice, which the Customer shall pay immediately on receipt.
- 17.2 If the Customer fails to remove any of the Stored Items as required by clause 17.1 LGUK may, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of such Stored Items if the Stored Items are not removed within 14 days. On the expiry of such period, LGUK shall be entitled to sell or otherwise dispose of all or some of the Stored Items which have not been removed, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Stored Items to the Customer after deduction of all amounts due to LGUK from the Customer

and the expenses incurred by LGUK for the sale or disposal of the Stored Items. LGUK shall not be liable for the price obtained for the sale or disposal of the LGUK.

- 17.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 17.4 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

## 18. DISPUTE RESOLUTION PROCEDURE

- 18.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- 18.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the managers of each of the parties appointed to have conduct of the Dispute shall attempt in good faith to resolve the Dispute;
- 18.1.2 if the managers of each of the parties are for any reason unable to resolve the Dispute within 30 Business Days of service of the Dispute Notice, the Dispute shall be referred to senior management-level employees of the Customer and LGUK, who shall attempt in good faith to resolve it;
- 18.1.3 if the senior management-level employees of the Customer and LGUK are for any reason unable to resolve the Dispute within 30 Business Days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR Notice should be sent to CEDR; and
- 18.1.4 unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR Notice.
- 18.2 No party may commence any court proceedings in relation to the whole or part of the Dispute until seven days after service of the ADR Notice, provided that the right to issue those proceedings is not prejudiced by such delay.
- 18.3 If for any reason the Dispute is not resolved within 30 days of commencement of the mediation, the Dispute shall be referred to and finally resolved by courts of England and Wales in accordance with clause 21.12.

## 19. CONFIDENTIALITY

- 19.1 Subject to clause 21.2, each party undertakes that it shall not at any time disclose to any person any Confidential Information.
- 19.2 Each party may disclose the other party's Confidential Information:
- 19.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 19; and
- 19.2.2 as may be required by Applicable Law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3 Neither party may use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## **20. FORCE MAJEURE**

20.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement (which shall not include the Customer's payment obligations under this Agreement) by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

20.2 The Affected Party shall:

20.2.1 as soon as reasonably practicable after the start of a Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on the Affected Party's ability to perform any of its obligations under this Agreement; and

20.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

20.3 If a Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations under this Agreement for a continuous period of more than 60 days, the party not affected by the Force Majeure Event may terminate this Agreement by giving two weeks' written notice to the Affected Party.

## **21. GENERAL**

### **21.1 Entire agreement**

21.1.1 This Agreement constitutes the entire agreement between the parties.

21.1.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **21.2 Variation**

Subject to clause 10, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### **21.3 Assignment and other dealings**

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

### **21.4 Waiver**

21.4.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

### **21.5 Severance**

21.5.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.5.2 If any provision or part-provision of this Agreement is deemed deleted under clause 21.5.1 the parties shall negotiate in good faith to agree a replacement provision that,

to the greatest extent possible, achieves the intended commercial result of the original provision.

## 21.6 Notices

21.6.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

21.6.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place; or

21.6.1.2 sent by email to the email addresses set out in paragraph 1.1 (in the case of LGUK) and 1.2 (in the case of the Customer) of the Agreement Form.

21.6.2 Any notice shall be deemed to have been received:

21.6.2.1 if delivered by hand at the time the notice is left at the proper address;

21.6.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

21.6.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

21.6.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 21.7 Third party rights

21.7.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

21.7.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

## 21.8 No partnership or agency

21.8.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other.

21.8.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 21.9 Rights and remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 21.10 Further assurance

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

## 21.11 Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## 21.12 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of the Agreement Form.