



## **Standard Terms and Conditions**

*For*

**Provision of  
Records Management and Storage Services**

*Between*

**Secure Box Services Limited**

*And*

**Client**

**Date:**

## Contents

1. Definitions .....	3
2. Commencement and Duration .....	4
3. Provision of Services .....	4
4. Warranties.....	5
5. Prices and Payment.....	5
6. Data Protection and Confidentiality .....	6
7. Termination .....	7
8. Consequences of Termination .....	7
9. Force Majeure .....	8
10. Limitation of Liability .....	8
11. Assignment and Sub-Contracting .....	10
12. Service of Notice .....	10
13. General.....	10
14. Schedule 1 - The services .....	13
15. Schedule 2 - Client's Premises .....	13
16. Schedule 3 – Pricing .....	13

**THIS AGREEMENT** is made on the date of contract award.....  
**BETWEEN**

**(1) Secure Box Services Limited (SBS)**, a company incorporated in England and Wales under registration number 05798286, the registered office of which is Kingsley House, 22 – 24 Elm Road, Leigh-on-Sea, Essex SS9 1SN and

**(2) Client,**

**1. Definitions**

1.1 In this Agreement the following expressions have the following meanings:

“Agreement”	Means the agreement between the parties the terms of which are set out herein, including the schedules;
“Charges”	Means those charges as described in Schedule 3.
“Client’s Premises”	Means the premises of The Client as described in Schedule 2 or any other premises which The Client has notified to SBS, and SBS has agreed to service;
“Commencement Date”	Means
“Handling”	Means the physical handling of the Items by SBS necessary to perform the Services under this Agreement;
“Initial Period”	Means agreed contract term
“Month”	Means a calendar month;
“The Client’s Representative”	Means a person or persons nominated for the purpose by The Client from time to time and advised to SBS in writing;
“SBS”	Means Secure Box Services Limited;
“SBS’s Representative”	Means a person nominated for the purpose by SBS and advised in writing to The Client, from time to time;
“The Items”	Means any items, subject to Clause 4.2, which The Client stores under this Agreement or which SBS handles on behalf of The Client under this Agreement;
“The Premises”	Means the premises of SBS or Client’s from which the Services will be provided;
“The Services”	Means those services to be provided by SBS to The Client under the terms of this Agreement, as described in Schedule 1;

“Year” Means a twelve-month period commencing either on the Commencement Date or on any anniversary of the Commencement Date;

## **2. COMMENCEMENT AND DURATION**

2.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with the term of this Agreement, shall continue in force for the Initial Period and thereafter unless, and until, terminated by either party upon not less than three months' prior written notice to the other, expiring no earlier than the end of the Initial Period.

## **3. PROVISION OF SERVICES**

3.1 SBS shall provide the Services to The Client on and from the Commencement Date for the term of this Agreement. SBS shall endeavour to perform the Services within the time agreed, and if no time is agreed within a reasonable time. In no circumstances will SBS be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the performance of the Services. Time for performance of the Services shall not be of the essence.

3.2 SBS may, subject to having notified The Client promptly and following such notification having allowed The Client 30 days to rectify the matter, return or refuse to accept any Items if SBS in its absolute discretion decides that they are unsuitable for storage.

3.3 SBS shall not act upon the instructions of any person after receipt of written notice from The Client of withdrawal of that person's authority but may otherwise comply with requests whether in writing or otherwise, but not orally, made by actual or apparent representatives or agents of The Client.

3.4 The parties shall give to each other such reasonable assistance as shall be necessary for them to carry out their obligations hereunder.

3.5 The parties do not envisage or intend any staff transfers to SBS, whether by operation of law or otherwise, as a result of entering into this Agreement. The Client shall indemnify SBS from and against any liabilities, and obligations, which SBS may incur in relation to any employee or former employee of The Client, or of any of The Client agents or contractors, which arise out of or in connection with the application of the Transfer of Undertakings Protection of Employment Regulations 1981 as amended or replaced from time to time to the arrangements contained in this Agreement, including, for the avoidance of doubt, liabilities and obligations arising out of the termination of any contract with any such person.

3.6 The Client shall permit SBS, its employees, agents and authorised sub-contractors to enter The Client's Premises for the purpose of providing the Services, and shall be liable to SBS for all costs, claims, liabilities and expenses incurred by SBS arising from or in connection with any personal injury or death of any such person which is occasioned, whether directly or indirectly, by any act or omission, whether negligent or not, on the part of The Client or any of its sub-contractors, agents or employees.

3.7 SBS shall procure that at all times when its personnel are present on The Client's Premises they shall obey the reasonable instructions of The Client in respect of such presence and shall observe any reasonable conditions provided to SBS in advance, and in writing.

#### **4. WARRANTIES**

The Client warrants and undertakes that -

- 4.1 it is contracting as principal and not as agent, and has the authority to engage SBS to deal with the Items in accordance with this Agreement and to enter Agreement;
- 4.2 the Items are not dangerous to and will not contaminate persons or property and that SBS will not take any unusual precautions in handling and storing them, and that the Items will not contain any illegal, immoral, obscene or offensive material.
- 4.3 it will comply with all instructions and operating procedures issued by SBS from time to time relating to the handling and storage of the Items, and it will ensure that its employees, agents and sub-contractors will so comply and are properly and adequately trained in all relevant health and safety procedures in relation to handling of the Items.
- 4.4 it shall be liable to SBS for all costs, claims, liabilities and expenses incurred by SBS arising from, or in connection with, any breach of the warranties and undertakings in this Clause 4.

#### **5. PRICES AND PAYMENT**

- 5.1 The Client shall pay to SBS in the manner and in accordance with the times set out in this Clause and in Schedule 3.
- 5.2 The Charges as detailed in Schedule 3 shall be fixed for one year. Thereafter any price increases shall be annual and shall not exceed RPI. Any price increase shall be subject to SBS having provided The Client with sixty (60) days' prior written notice of such price increase,
- 5.3 Subject to the provisions of clause 5.4 below, all sums due to SBS under this Agreement shall be payable by The Client monthly in arrears within 30 days of the date of the invoice.
- 5.4 The Client shall have the right to withhold payment against any invoice which is not raised in accordance with this Agreement or which covers or purports to cover the Service or part thereof which has not been provided in accordance with this Agreement and shall forthwith notify SBS in writing that payment has been withheld. The parties shall seek to resolve the matter in good faith and any payment withheld under this clause 5.4 shall be promptly paid to SBS (or credited by SBS, as appropriate) upon the matter being rectified.
- 5.5 All sums due to SBS under this Agreement are exclusive of VAT (thereon), if any, which shall be charged in addition in accordance with the relevant regulations in force from time to time, and shall be paid by The Client against receipt from SBS of a valid VAT invoice.

Without prejudice to SBS's right to treat non-payment of undisputed Charges as a breach of this Agreement, SBS reserves the right to charge daily interest on any outstanding amounts at the rate equal to 2% above the Base lending Rate of Barclays International as amended from time to time Interest shall continue to accrue notwithstanding termination of this Agreement howsoever arising.

#### **5.6 Withdrawal fee –**

- 5.6.1 A permanent withdrawal fee is chargeable as specified in SBS's current schedule of charges which is available upon application to SBS, to cover the reasonable cost of operation time to retrieve Items from storage and place in the Despatch Bay ready for collection.

5.6.2 A permanent withdrawal fee would be chargeable should The Client withdraw Items for subsequent storage in its own or a third party's premises

5.7 SBS's obligations under this Agreement shall be conditional on The Client having paid all undisputed Charges due to SBS under the terms of this Agreement.

## **6. DATA PROTECTION AND CONFIDENTIALITY**

6.1 The parties acknowledge that SBS may have access to "Personal Data" as defined in the Data Protection Act 1998 or any modification or re-enactment or foreign equivalent thereof, in the provision of the Services.

6.2 The Client appoints SBS to process the Personal Data on its behalf.

6.3 The Client warrants that:-

6.3.1 it has all necessary consents and authorisations for SBS to process Personal Data in the manner and for the purposes which are solely determined by The Client in accordance with the terms of this Agreement; and

6.3.2 it will not act in any way which may result in SBS incurring any liability under the Act; and

6.3.3 it shall be liable to SBS against all costs, claims, liabilities and expenses incurred by SBS arising from or in connection with any breach of Clause 6.3.

6.4 SBS shall act only on instructions from The Client in respect of such Personal Data.

6.5 SBS shall use reasonable endeavours to implement the technical and organisational security measures intended to prevent the unauthorised and unlawful processing of the Personal Data, and to protect against accidental loss, destruction or damage to such data, but no warranty is given by SBS in this respect. The Client acknowledges and warrants that these measures are adequate and sufficient for The Client's purposes having regard to the type of data that SBS is processing on The Client's behalf.

6.6 Except as required for the performance of its obligations under this Agreement, or as required by law, SBS shall not retain any copy, abstract, précis or summary of any of the Personal Data.

6.7 Any agents, sub-contractors or employees to which SBS discloses the Personal Data for the purposes of carrying out this Agreement shall be required by SBS to enter into contractual obligations as to the confidentiality of such Personal Data.

6.8 SBS shall on demand deliver to The Client all documents which may be in its possession, including documents prepared by The Client, which include such Personal Data.

6.9 Each party undertakes to the other to treat as confidential and not to make use of any information relating to the business of the other which comes to its knowledge as a result of this Agreement, and its performance, and shall exercise proper commercial prudence in preserving such confidentiality.

6.10 Neither party shall use or disclose any information of the other which comes into its possession under or in respect of this Agreement and which is of a confidential nature save as may be necessary for the provision of the Services, provided that this obligation shall not apply to information which the recipient can prove was in its possession at the date it was received, or obtained, or which the recipient obtained from some other person with good legal title thereto, or which is in or comes into the public domain otherwise than through the default or negligence of the recipient, or which is independently developed by or for the recipient, or which the recipient is compelled to disclose by law.

6.11 The obligations set out in Clauses 6.9 and 6.10 shall survive termination of this Agreement and continue in force without limitation in time.

## **7. TERMINATION**

7.1 Either party may, without prejudice to its other rights, terminate this Agreement by notice in writing to the other if:

7.1.1 the other party being a company shall have a receiver, manager, administrator, administrative receiver or liquidator appointed or shall pass a resolution for winding up, otherwise than for the purpose of amalgamation or reconstruction, or a court shall make an order to that effect or shall enter into any composition or arrangement with its creditors; or

7.1.2 the other party is in material breach of this Agreement which, if capable of remedy, is not remedied or does not otherwise cease to be material within 30 days after receipt of a notice in writing from the party not in breach, identifying the breach and requiring it be remedied. A material breach, other than a failure to pay the Charges or other monies due, which is remedied save as regards the time for performance shall be deemed to be remedied for the purposes of this Clause 7.1.2.

7.2 Any such termination shall take effect either forthwith or at a date specified in such notice. Any termination of this Agreement howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## **8. CONSEQUENCES OF TERMINATION**

8.1 Upon termination of this Agreement for any reason whatsoever:

8.1.1 The Client shall cease to make use of the Services; and

8.1.2 The Client shall immediately pay to SBS all undisputed Charges and other monies due to SBS at the date of termination.

8.2 SBS and The Client will agree an exit plan within two weeks of termination. SBS will, in accordance with the exit plan, remove all Items in storage under this Agreement and deliver them to The Client or such other party as The Client shall advise in writing. The Client shall pay all the Charges in respect of such removal and delivery which SBS may require to be paid in advance.

8.3 If The Client fails to provide such information and assistance as SBS may reasonably require in connection with such removal or delivery, SBS shall be deemed to be an involuntary bailee of

the Items, the Items shall be at the sole risk of The Client and SBS may dispose of the Items in such manner as SBS in its absolute discretion may determine. Without prejudice to such discretion SBS may offer short-term storage services to The Client on terms to be agreed by the parties.

## 9. FORCE MAJEURE

- 9.1 Neither party shall be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is caused by any event or circumstances beyond that party's reasonable control ("force majeure") including without limitation any act of God, extreme weather conditions, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance (including strikes, lock-outs, trade disputes or labour disturbances directly involving employees of that party), the act or omission of Government, highways authorities, public telecommunications operators or other competent authority, war, acts of terrorism, military operations, riot or difficulty, delay or failure in manufacture, production or supply by third parties of goods or services. If either party seeks to rely on force majeure it shall as soon as is reasonably practicable give full particulars in writing to the other of the circumstances giving rise to force majeure.
- 9.2 If force majeure continues for a period of 60 days or more, either party may terminate this Agreement by notice in writing to the other at any time after the expiry of such period while such force majeure event continues to be operative without thereby incurring any liability to the other.

## 10. LIMITATION OF LIABILITY

SBS is unable accurately to assess the value to The Client of the items and accordingly SBS advises The Client to effect and maintain adequate insurance cover in respect of loss of or damage to the items. The Client's attention is in particular drawn to the provisions of this clause 10.

- 10.1 Nothing in this Agreement shall limit or exclude either party's liability for fraud; or for death or personal injury resulting from its negligence; or to the extent not permitted by law.
- 10.2 Save as expressly provided in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 10.3 SBS's total liability in the case of loss of or damage to an Item shall be limited to the lesser of:
- 10.3.1 £1 per box of documents or assets affected; or £45.00 per tonne for other items stored; or
  - 10.3.2 the amount of actual loss or damage sustained; or
  - 10.3.3 the direct cost of replacement or repair of the relevant Item, excluding the cost of acquisition or reinstatement of any data or other intangible property and any other value to The Client of such Item.



- 10.4 SBS's total liability in respect of loss of, or damage to, tangible property other than the Items whether belonging to The Client or any third party shall not in any circumstances exceed £1,000,000 in respect of each event, or series of connected events, or £1,000,000 in any one Year.
- 10.5 SBS's total liability in respect of any other loss or damage arising in any one Year shall not in any circumstances exceed the greater of: -
- 10.5.1 100% of the Charges payable by The Client under this Agreement in that Year; or
- 10.5.2 £1,000,000.
- 10.6 SBS will have no liability under or in connection with this Agreement in respect of:
- 10.6.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings whether direct, indirect or consequential; or
- 10.6.2 loss of use or value of any data or equipment including software, wasted management, operation or other time whether direct, indirect or consequential; or
- 10.6.3 any indirect or consequential loss howsoever arising.
- 10.7 SBS shall not be responsible for any failure to provide the Services in accordance with the provisions of this Agreement or for any delay in such provision arising out of or contributed to by any of the following:
- 10.7.1 Late arrival or non-arrival of Items from The Client or a third party;
- 10.7.2 Defects in work carried out by SBS which The Client has undertaken to check or which is submitted to The Client by SBS for checking;
- 10.7.3 Errors in specifications, test data or other material supplied by The Client.
- 10.8 SBS shall not be liable for: -
- 10.8.1 Any loss or damage to a "prohibited Item" being such Items as are specified by SBS from time to time as being prohibited, or any Item which is otherwise dangerous, capable of contaminating persons or property or which contains any illegal, immoral, obscene or offensive material;
- 10.8.2 Any loss or damage howsoever caused to The Client or any other person that arises while the Items are not in the possession, custody or control of SBS or its employees, agents or sub-contractors;
- 10.8.3 Any claim unless made with reasonable details in writing to SBS no later than 180 days, or such longer period as may be reasonable in the circumstances, after the date the claimable event first comes to the notice of The Client, its employees, agents or sub-contractors.
- 10.9 Each of SBS's employees, agents and sub-contractors may rely upon and may enforce the exclusions and restrictions of liability in this Clause 10 in that person's own name for that

person's own benefit, as if the words "its employees, agents and sub-contractors" followed the words "SBS" wherever they appear in those clauses.

- 10.10 The Charges have been set on the basis of the exclusions and restrictions of liability set out above and would be higher without these provisions. In the circumstances, The Client agrees that those provisions are reasonable in all the circumstances and will accept risk and/or insure accordingly.
- 10.11 The provisions of this Clause 10 shall continue to apply notwithstanding the termination of this Agreement howsoever arising.

## **11. ASSIGNMENT AND SUB-CONTRACTING**

- 11.1 SBS may assign all or any of the benefit of this Agreement.
- 11.2 SBS may sub-contract or delegate the performance of all or any of its obligations under this Agreement without The Client's consent provided that SBS shall remain liable for such performance.
- 11.3 The Client shall not assign all or any of its rights or obligations under this Agreement to any other person without the prior written consent of SBS, such consent not to be unreasonably withheld.

## **12. SERVICE OF NOTICE**

- 12.1 Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been duly given if left at or sent by pre-paid recorded delivery first class post to, in the case of The Client, its principal or registered office or any other address notified by The Client in writing in accordance with this Clause 12 as an address to which notices, invoices and other documents may be sent, or, in the case of SBS, SBS's Managing Director at SBS's registered office.
- 12.2 Any such communication sent by pre-paid recorded delivery first class post shall be deemed to have been made to the other party four days from the date of posting. If pursuant to this Clause 12 a notice would be deemed to have been served other than between 9.00 am and 5.00 pm on Monday to Friday inclusive, other than any statutory bank or public holiday, it shall instead be deemed to have been served at 9.00 am on the next following such day.

## **13. GENERAL**

- 13.1 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any other occasion.
- 13.2 If any term or provision of this Agreement is or becomes invalid, illegal or unenforceable the remainder of this Agreement shall survive unaffected.
- 13.3 This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party.

- 13.4 This Agreement sets out the entire agreement between the parties with respect to the subject matter of this Agreement and, subject to Clause 10.1, supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties. The terms and conditions contained or referred to in this Agreement relating to the provision of the Services shall be to the exclusion of any terms submitted at any time by either party whether printed on or sent with any order form or otherwise. In the event of any inconsistency between clauses 1 to 13 of this Agreement and the Schedules, clauses 1 to 13 of this Agreement shall prevail.
- 13.5 The parties shall, and shall use all reasonable endeavours respectively to procure that any necessary third party shall do, execute and perform all such further deeds, documents, assurances, acts and things as either of the parties hereto may reasonably require by notice in writing to the other party to carry the provisions of this Agreement into full force and effect.
- 13.6 Each of the parties is an independent contractor and nothing in this Agreement shall imply that there is any relationship between the parties of partnership or of principal / agent or of employer / employee nor are the parties engaging in a joint venture. Neither of the parties shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise, unless expressly permitted by the terms of this Agreement.
- 13.7 This Agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. No provision of this Agreement other than Clause 10.9 shall be enforceable by any person who is not a party to it pursuant to The Contracts Rights of Third Parties Act 1999 but this does not affect any right or remedy of a third party which exists or is available independently of that Act. The parties to this Agreement shall not be required to obtain the consent of any third party referred to in Clause 10.9 in order to rescind or vary this Agreement or any provision thereof.
- 13.8 This Agreement shall be governed by, construed and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

**SIGNED** and delivered by the parties acting by their duly authorised representatives:

For **SBS LIMITED**

Signed:.....

Name:

Title/Position:

Date:

For **THE CLIENT**

Signed: .....

Name: .....

Title/Position: .....

Date:

**14. SCHEDULE 1 - THE SERVICES**

**15. SCHEDULE 2 - CLIENT'S PREMISES**

**16. SCHEDULE 3 – PRICING**