



1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

"**Ad Hoc Services**" has the meaning given to it in Condition 2.10;

"**Affiliate**" means each undertaking that is, at the time in question and from time to time, a subsidiary undertaking, a parent undertaking, or subsidiary undertaking of a parent undertaking, of the relevant company (the terms *parent undertaking* and *subsidiary undertaking* being interpreted in accordance with section 1162 of the Companies Act 2006);

"**Agreed Temperature Range**" has the meaning given to it in Condition 7.1;

"**Business Continuity Plan**" means Gist's business continuity plan for the time being and from time to time;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in London, England;

"**Change**" has the meaning given to it in Schedule 1 (*Change Control Procedure*);

"**Change Control Procedure**" means the change control procedure set out in Schedule 1 (*Change Control Procedure*);

"**Change Proposal**" has the meaning given to it in Schedule 1 (*Change Control Procedure*);

"**Charges**" means the amount(s) set out in the SLA in respect of each Service (or as agreed between Gist and the Customer from time to time in respect of any Services not included within the scope of the SLA, including the Ad Hoc Services (if applicable)), which shall be payable by the Customer to Gist in accordance with Condition 15;

"**Charging Assumptions**" means the charging assumptions set out in the SLA, if any (as applicable in respect of the relevant Services);

"**Confidential Information**" means the contents of the Contract and all information in whatever form received or obtained by a Party ("**receiving Party**") from, or on behalf of, another Party ("**disclosing Party**") as a result of or in connection with the negotiation or performance of the Contract (including any reports, summaries or analyses to the extent prepared from such information) other than: (a) any information which was rightfully in the possession of the receiving Party prior to the disclosure by the disclosing Party and acquired on a non-confidential basis from sources other than the disclosing Party; and (b) any information which is in the public domain otherwise than as a result of any unlawful act or omission or breach of the Contract by the relevant receiving Party;

"**Consignee**" means the person or company to whom the Goods are delivered, which may be the Customer from time to time;

"**Consignor**" means the person or company from whom the Goods are collected, which may be the Customer from time to time;

"**Contract**" means the contract between Gist and the Customer for the supply of the Services in accordance with these Conditions, which consists of the SLA and these Conditions;

"**Contract Manager**" means in respect of each Party, the contract manager identified in the SLA who shall be appointed by each Party to oversee the provision or receipt of the Services (as applicable);

"Contract Year" means the 12 month period commencing on the Effective Date and each anniversary thereof during the Term, and the shorter period commencing on a day following the end of a Contract Year and ending on the termination of the Contract;

"Control" has the meaning given to it in section 1124 of the Corporation Tax Act 2010, and the expression **"change of Control"** shall be construed accordingly;

"Customer" means the person who purchases the Services from Gist in accordance with the terms of the Contract;

"Customer Group" means the Customer and any Affiliate of the Customer;

"Customer Information" means all documentation, information, statements and materials, including data, logos, reports, specifications, inventories, delivery paperwork, order quantities and order confirmations, and any special handling requirements, to be provided by the Customer (or others on its behalf, including: shippers, carriers, suppliers of Customer, customers of the Customer, freight forwarders, third party logistics providers and fourth party logistic providers) and relating to and required (in Gist's opinion) to enable Gist to perform the relevant Services under the Contract;

"Disbursements" means any costs, fees and/or expenses paid by Gist on behalf of the Customer to a third party in connection with the provision of the Services, which shall be notified to the Customer by Gist from time to time (or, where applicable, a fair and reasonable proportion of those costs, fees and/or expenses where they relate both to the Services and other parts of Gist's business);

"Dispute" means any dispute or claim arising out of, or in connection with, the Contract or in respect of the legal relationships established by the Contract (including a dispute regarding the existence, validity or termination of the Contract and a dispute regarding a non-contractual obligation);

"Effective Date" has the meaning given to it in Condition 2.7;

"Force Majeure Event" has the meaning given to it in Condition 27.1;

"Gist" means GIST LIMITED, a company incorporated and registered in England and Wales with company number 00502669 whose registered office is at Waterside House, 35 North Wharf Road, London, W2 1NW;

"Gist Fuel Mechanism" has the meaning given to it in Condition 16.2;

"Gist Group" means Gist and any Affiliate of Gist;

"Gist Policies" means such of Gist's policies from time to time which relate to or affect the Services and which have been notified to the Customer or any Personnel of the Customer;

"Goods" means any property, products or goods (which may include controlled goods and licensed goods), as well as containers, pallets or similar articles of transport or packaging not supplied by Gist, to which the relevant Services relate, and which are not expressly excluded in the SLA (if any);

"Goods Claims" has the meaning given to it in Condition 22.1.5(b);

"Initial Term" means the initial term of the Contract as set out in the SLA;

"Intellectual Property Rights" means trade marks, service marks, trade and business names, domain names, design rights, copyright, moral rights, know-how, rights in databases, rights in inventions, patents, logos, rights to sue for passing off, trade secrets, rights in Confidential Information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

"Loss" or **"Losses"** means any damages, losses, costs, claims, expenses or liabilities of any kind;

"Personnel" means any directors, officers, employees, agents, contractors, sub-contractors, sub-licensees, delegates or professional advisers of a Party or of any of its Affiliates (as applicable);

"POD" has the meaning given to it in Condition 6.1.7;

"**Response**" has the meaning given to it in Condition 2.3;

"**Renewal Term**" has the meaning given to it in Condition 10.1;

"**Senior Manager**" means in respect of each Party, the senior manager who shall be appointed by each Party to discuss any Dispute (as applicable);

"**Service Agent**" means the Customer's service agent identified in the SLA (if any);

"**Services**" means: (i) the Transport Services; and/or (ii) the Warehousing Services; and/or (iii) any Ad Hoc Services (as applicable);

"**SLA**" means the agreed service level agreement (and any documents attached to it) under which the relevant Services shall be undertaken for a limited period and with a defined outcome and shall be performed in whole or in part by Gist pursuant to the Contract;

"**Statement of Requirements**" has the meaning given to it in Condition 2.2;

"**Term**" means the Initial Term and the Renewal Term(s);

"**Third Party Providers**" means the relevant third party providers of any Third Party Systems;

"**Third Party Systems**" means any third party networks or systems and any other information technology systems on which any of the Services are reliant (in whole or in part);

"**Transport Services**" means the transport services, the details and scope of which are set out in the SLA;

"**VAT**" means value added tax charged in accordance with the Value Added Tax Act 1994 together with any related interest, penalties, fines and charges or any equivalent sales tax or duty in any other relevant jurisdiction;

"**Vehicle**" means lorries and trailers used by Gist or its Personnel to perform any of the Services (as applicable); and

"**Warehousing Services**" means the warehousing services, the details and scope of which are set out in the SLA.

1.2 Unless the context otherwise requires, references in these Conditions to:

1.2.1 the singular shall include the plural and vice versa;

1.2.2 a "**person**" shall be construed as a reference to any individual, firm, company (including, without limitation, a limited liability company), corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

1.2.3 a "**company**" shall include a reference to any body corporate;

1.2.4 a "**Group**" shall, in relation to any company, be construed as a reference to that company and its Affiliates;

1.2.5 the words "**include(s)**", "**including**" or "**in particular**" are deemed to have the meaning of the words without limitation following them. Where the context permits, the words "**other**" and "**otherwise**" are illustrative and shall not limit the sense of the words preceding them;

1.2.6 any time or date shall be construed as a reference to the time or date prevailing in the United Kingdom; and

1.2.7 any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision (including all instruments, orders or regulations made thereunder or deriving validity therefrom) as in force in England on the Effective Date and as subsequently amended, consolidated, modified, extended, re-enacted or replaced.

- 1.3 The headings in these Conditions are for convenience only and shall not affect their meaning.
- 1.4 A reference to a Condition is (unless otherwise stated) to a condition in these Conditions.
- 1.5 In the event of an addition to or a conflict between any term or condition of the SLA and these Conditions, the SLA will prevail. The SLA and these Conditions shall apply to the exclusion of any terms or conditions contained or referred to in any other documentation submitted by the Customer or in correspondence or implied by trade, custom or course of dealing (whether or not in conflict with or additional to the Contract).
- 1.6 The Customer shall be deemed to accept these Conditions unless it notifies Gist to the contrary in writing before any of the Services begin.

2. PROCEDURE FOR REQUESTING SERVICES

- 2.1 The Parties agree that the Customer may order from Gist, in the manner set out in the Contract, any of the Services.
- 2.2 Whenever the Customer wants Gist to provide any of the Services, the Customer shall send a statement of its requirements ("**Statement of Requesting Services**") to Gist (via Gist's portal or any other agreed method of communication)
- 2.3 Gist shall send the Customer a response to the Statement of Requesting Services ("**Response**"), confirming:
- 2.3.1 it is capable of meeting the requirements and giving details of the resources, charging basis and (where practicable) estimated Charges;
- 2.3.2 it is unable to meet any of them either at all or in the manner proposed in the Statement of Requesting Services, giving reasonable details of the reasons for its inability to do so and proposing an alternative means of meeting the same or a substantially similar requirement (where reasonably practicable in the circumstances); or
- 2.3.3 it does not accept the request (at Gist's reasonable discretion).
- 2.4 Any quotation given by Gist in its Response shall not constitute an offer and is only valid for a period of fourteen (14) Business Days from its date of issue.
- 2.5 On receipt of the Response from Gist, the Customer shall, where it wishes to proceed with the proposal, request Gist to prepare an SLA.
- 2.6 Gist shall provide a copy of the SLA to the Customer and the Customer shall sign the SLA and return a copy to Gist. This will constitute an offer by the Customer to purchase the relevant Services in accordance with these Conditions.
- 2.7 The SLA shall only be deemed to be accepted when Gist issues a copy of the SLA to the Customer in return, signed by Gist, or provides written notice of acceptance, at which point and on which date the Contract shall come into full force and effect ("**Effective Date**").
- 2.8 The SLA shall set out the particular scope of the Services to be supplied by Gist to the Customer and any specific terms and conditions relating to those Services, if any (such as provisions to deal with local laws, including tax or employment requirements and any Customer obligations specific to that SLA).
- 2.9 The Customer acknowledges that there are lead times between requesting the Services, agreement of, and the commencement of performance of the Services.
- 2.10 From time to time, the Customer may request the provision of Services that are outside the scope of an executed SLA ("**Ad Hoc Services**"). In respect of any Ad Hoc Services which Gist agrees (in writing) to supply to the Customer, the Parties shall agree any specific terms relating to such Ad Hoc Services (including with respect to charging and timing for supply) in writing (which may include via Gist's portal). Conditions 2.4 to 2.9 shall not apply to such Ad Hoc Services.

3. SERVICES

- 3.1 In consideration of the Customer agreeing to pay the Charges to Gist (in accordance with Condition 15), Gist shall provide the Services to the Customer subject to, and in accordance with, the Contract.

- 3.2 Gist undertakes that it shall deliver the Services using reasonable skill, care and diligence, and in a timely and professional manner.
- 3.3 The Customer acknowledges and agrees that Gist's provision of the Services and performance of its obligations under the Contract, is subject to and dependent upon:
- 3.3.1 the Customer complying with all of its obligations under the Contract, including the provision of the Customer Information, and Gist shall not be liable for any failure to perform any of the Services or comply with any of its obligations under the Contract to the extent caused or contributed to by the Customer's failure to comply with such obligations; and
- 3.3.2 Gist's use of, and the availability of, the relevant Third Party Systems (if any), and:
- (a) Gist shall not be liable for any failure to perform any of the Services or comply with any of its obligations under the Contract to the extent caused or contributed to by any of the Third Party Systems; and
- (b) no Third Party Provider, nor any third party licensor of any of the Third Party Systems (or components thereof) shall be liable to the Customer for any Loss arising from the use of the Third Party Systems by (or on behalf of) the Customer.

4. TITLE AND RISK

- 4.1 Gist shall not acquire title to or any rights into or over the Goods, except as provided in Condition 4.4 and Condition 5.
- 4.2 Any carriage of Goods by rail, sea, inland waterway or air shall be arranged by Gist (or any member of the Gist Group) (as required) as agent of the Customer, subject to the conditions of the third party carrier. Accordingly, Gist (and any member of the Gist Group) shall have no liability in respect of such carriage, except to the extent that the Goods are carried by road.
- 4.3 Risk in the Goods shall remain with the Customer at all times other than as stated in the following Conditions:
- 4.3.1 Subject to Condition 4.3.2, if Gist is providing the Transport Services, the Goods shall only be at the risk of Gist while the Goods are in transit. Unless otherwise agreed expressly between the Parties and subject to Condition 4.3.2, transit shall commence on completion of loading and securing the Goods onto the Vehicle. Subject to Condition 5.1.1 or unless it has been terminated earlier, transit shall end when the Goods are delivered to a Consignee in accordance with the instructions of the Customer or its agent. A signature on behalf of the Consignee shall be proof of unloading.
- 4.3.2 Risk shall not pass to Gist in accordance with Condition 4.3.1 if:
- (a) Gist is able to show that the Customer has explicitly agreed that the Goods shall be transported at the risk of the Customer or the owner of the Goods (as applicable); or
- (b) the Vehicle is pre-loaded by the Consignor, or if Gist's driver does not have access to the Consignor's loading facilities and is, therefore, unable to confirm that the Goods have been properly secured in the Vehicle,
- and, in any such case, Gist shall not be liable for any loss, delay or damage to the Goods (of whatever nature and howsoever or by whomsoever caused, including negligence or as a consequence of the Goods being in Gist's possession) and the Customer agrees to indemnify Gist against any claims for such loss, delay or damage.
- 4.3.3 If Gist is providing the Warehousing Services, risk in the Goods shall pass to Gist on completion of unloading the Goods into Gist's warehouse until the Goods are loaded onto the Customer's or a third party carrier's vehicle in accordance with the instructions of the Customer or its agent. A signature on behalf of the Customer or such third party carrier shall be proof of loading.
- 4.4 Subject to Condition 4.5, Gist shall have a general lien over the Goods against the Customer (a "**general lien**") and the Customer shall, where necessary, procure a general lien from the owner of the Goods, for any monies due to Gist from the Customer. If a general lien is not satisfied by payment to Gist of all amounts due

within a reasonable time, Gist may, at its absolute discretion, sell all or any of the Goods as agent for the Customer and/or owner of the Goods. The provisions of Conditions 5.1.5 and 5.1.6 shall apply.

- 4.5 Gist may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place in its sole discretion, whether or not the Services have been completed, and the Contract shall continue to apply during the period of exercise of such lien.
- 4.6 If the Goods are not solely the property of the Customer, the Customer warrants that it has the authority of all those having a proprietary or possessory interest in the Goods to grant to Gist a lien as set out in Condition 4.4, and the Customer shall indemnify Gist for any Loss it may suffer or incur in relation to any claims and/or demands that Gist may receive asserting that the Customer did not have that authority.
- 4.7 The Customer shall pay to Gist any storage charges incurred as a result of it exercising a general lien in accordance with Condition 5.
- 4.8 If the general lien is unenforceable or not applicable, Gist shall have a particular lien against the owner of the Goods allowing Gist to retain possession (but not dispose of) the Goods against monies due to Gist in respect of the Goods.
- 4.9 The property in, and ownership of, any pallets or other equipment provided by Gist to undertake the Services shall not pass to the Customer or owner of the Goods.

5. UNDELIVERED OR UNCLAIMED GOODS

5.1 If Gist is providing Transport Services, the following conditions shall apply:

- 5.1.1 If it has been agreed that the Consignee will collect the Goods from Gist's premises or delivery of Goods cannot be properly effected in a timely manner due to any failure of the Customer or the Consignee to comply with Condition 6.1.1 or any other obligations, transit (as described in Condition 4.3) shall be deemed to end at the expiry of twenty-four (24) hours after notice from Gist to the Customer (by letter, telephone or email or other agreed method of communication). If Gist is unable to deliver any Goods for any other reason, the transit shall be deemed to end at the expiry of a reasonable time (not greater than forty-eight (48) hours) after notice from Gist to the Customer.
- 5.1.2 If transit has been deemed to end by virtue of Condition 5.1.1, Gist shall not be liable for any Losses arising from the delay in delivering, or for non-delivery of, the Goods and the Customer shall:
- (a) be liable for and indemnify Gist against all consequences (including all Losses) arising from such circumstances described in Condition 5.1.1;
 - (b) pay for the Services as if those Goods had been delivered; and
 - (c) pay for re-delivery, return to the Consignor (or to another location) or destruction, as instructed by the Customer, or failing instructions within a reasonable time, as reasonably determined by Gist.
- 5.1.3 Subject to these Conditions (including Conditions 4.3, 5.1.2 and 22), Gist shall only be liable in respect of any delay in delivering the Goods, where such delay arises directly from Gist's negligence.
- 5.1.4 If Gist is unable for any reason to deliver any Goods, or if any Goods are stored by Gist after an agreed term for storage, or payment for storage of any Goods is overdue by thirty (30) days or more, Gist may sell such Goods as agent for the Customer and/or owner of the Goods subject to Conditions 5.1.5 and 5.1.6.
- 5.1.5 Before exercising the power of sale in Condition 5.1.4, Gist shall provide reasonable notice to the Customer or the owner of the Goods (if known) that the Goods will be sold unless payment is received within a specified time period (being a reasonable time in the circumstances), the Goods are taken away or instructions are given for their disposal.
- 5.1.6 The proceeds of sale of such Goods shall, after deduction of all outstanding amounts due to Gist from the Customer for the Services and any expenses for the retention, storage, insurance and

sale of the Goods, be paid to the Customer, and this shall (without prejudice to any other claim or right which the Customer may have against Gist) discharge Gist from all liability in respect of such Goods, their carriage and storage.

- 5.1.7 Gist acknowledges that the Consignee may reject the Goods. If the Goods are rejected, Gist shall notify the Customer as soon as is reasonably practicable, and in any case within twenty-four (24) hours, and confirm the same in writing. Gist shall make such rejected Goods available for collection by the Customer, or shall follow the Customer's instructions to return the Goods to the Customer or to dispose of the Goods. Unless the reason for the rejection of the Goods by the Consignee relates to loss or damage to the Goods caused solely by Gist (in which case the terms of Condition 29 may apply), Gist shall be entitled to charge for the costs incurred in complying with the Customer's instructions and the return of the Goods.

6. LOADING AND UNLOADING

6.1 If Gist is providing Transport Services, the following terms shall apply:

- 6.1.1 The Customer shall ensure that there is suitable and adequate access to the loading and the unloading points, that the roadways to and from the public highway are of suitable material and condition, that unloading will take place on good sound hardstanding, where there will be sufficient space to load or unload the Vehicle safely, and suitable and adequate facilities are provided free of charge for Gist and its Personnel and Vehicles to enable Gist to collect and deliver the Goods.
- 6.1.2 Gist shall not be liable for any Loss, howsoever caused, if Gist's Personnel are instructed by the Consignee or any of their Personnel to provide Transport Services to an area which does not comply with Condition 6.1.1, whether or not against the recommendation of Gist or Gist's Personnel.
- 6.1.3 Unless otherwise agreed in the SLA, the Customer shall be responsible for loading the Goods onto the Vehicle or it shall procure that the Consignor is responsible for loading the Goods onto the Vehicle where the Customer is not the Consignor. The Customer shall be responsible for unloading and accepting any Goods correctly and properly delivered by Gist, or it shall procure that the Consignee shall be responsible for unloading and accepting any Goods correctly and properly delivered by Gist where the Customer is not the Consignee. Gist may, at its sole discretion, through its Personnel, provide assistance in loading or unloading the Goods if requested to do so by the Customer or the Consignee or the Personnel of either. Gist will not be responsible for any Loss to the Goods arising from loading the Goods onto or unloading them off the Vehicle, or from the overloading of the Vehicle or from the unsafe loading of the Vehicle (whether or not such loading or unloading is carried out with assistance by Gist through its Personnel). The Customer shall indemnify Gist from and against all and any Loss that may arise whilst the loading or unloading operations are taking place whether or not such Loss is attributable to the negligence of Gist or its Personnel.
- 6.1.4 If any special appliances are required to load and/or unload the Goods, the Customer shall ensure that such special appliances are promptly made available at the point of collection and/or delivery, and the Customer is liable for and shall indemnify Gist against any Loss arising from any breach of this obligation. The Customer shall ensure that any cranes, mechanical handling equipment, slings, chains or other equipment used in loading or unloading the Vehicle are suitable for that purpose and will indemnify Gist against any Loss arising out of or in connection with any failure of or unsuitability of, or failure to provide, such special appliances.
- 6.1.5 When Gist is, without prior arrangement in writing with the Customer, called upon to load or unload Goods requiring special appliances for loading or unloading, Gist shall be under no liability to the Customer for any damage however caused (to the extent permitted by law), arising out of such loading or unloading. The Customer shall indemnify Gist against any Loss suffered or incurred (including but not limited to damage to the Vehicle) as a result of Gist's Personnel complying with the instructions of the Customer or the Consignee or any of their Personnel.
- 6.1.6 If requested, Gist shall sign a document acknowledging receipt of the Goods. Any document evidencing or acknowledging the receipt of the Goods by Gist shall not be evidence of the condition of the Goods or of the correctness of the declared nature, quantity, temperature or weight of the Goods at the time they are received by Gist. Gist shall have no liability to the Customer in the event that any items of Goods contained in any handling unit (eg a pallet) do not

match the designated description and/or number of items of Goods stated to be contained in such handling unit.

- 6.1.7 Unless otherwise agreed in the SLA, Gist shall use its reasonable endeavours to request a signed proof of delivery document ("**POD**") in respect of delivered Goods from the Customer or the Consignee (where the Consignee is not the Customer). Provided that any request is received within ninety (90) days of the scheduled delivery date of the relevant Goods, Gist shall make the POD available to view by the Customer or the Consignor. No payment shall be withheld by the Customer where Gist is unable to provide a POD unless notification of non-delivery was received by Gist within forty-eight (48) hours after the expected time of delivery of the Goods and Gist is subsequently unable to evidence the relevant POD.
- 6.1.8 The Customer shall make available to Gist upon request details of any risk assessments which may have been carried out at the collection and/or delivery addresses. The responsibility for carrying out such risk assessments shall be that of the Customer and not of Gist. Gist may also carry out risk assessments at the collection and/or delivery addresses periodically.

7. TEMPERATURE CONTROL

7.1 If Gist is providing the Services within an agreed temperature range as specified in the SLA ("**Agreed Temperature Range**"), the following terms shall apply:

- (a) The Customer shall ensure that the Goods are within the Agreed Temperature Range at the time of (i) delivery to Gist's warehouse by the Customer or (ii) collection by Gist from the Customer or the Consignor (as applicable). The Customer acknowledges that Gist may refuse to collect or unload the Goods if they are not within the Agreed Temperature Range or in an acceptable condition at the time of collection/delivery and that, as a consequence, the Goods have suffered irreversible deterioration. The Customer also acknowledges that Gist does not always have the opportunity to examine the condition or quality of the Goods at the time of delivery of such Goods by the Customer to Gist's warehouse.
- (b) Gist may check the temperature of any Goods before or immediately after the Goods are loaded onto the Vehicle or into Gist's warehouse (as applicable), using a probe or other suitable mechanism. If, following such check, or for any other reason, Gist believes the Goods are not within the Agreed Temperature Range, Gist may refuse to provide the Warehousing Services and/or the Transport Services in respect of such Goods. Any check made under this Condition 7.1(b) does not release the Customer from its obligations under Condition 7.1(a).
- (c) If any Goods are rejected by the Consignee at the point of delivery or collection because such Goods are not within the Agreed Temperature Range, Gist will investigate the occurrence and send a report of its findings to the Customer, unless Gist accepts responsibility.
- (d) Gist will not be liable for the rejection of any Goods that are not within the Agreed Temperature Range unless it is established that the Vehicle or the warehouse was not maintained within the Agreed Temperature Range when the Goods were in the control or custody of Gist.

8. EXCLUSIVITY AND OTHER COMMITMENTS

8.1 If agreed between the Parties pursuant to the SLA, the following terms shall apply:

- (a) "Exclusive", the Parties agree that the Customer shall not (and shall procure that none of the Customer's Affiliates shall) order any services which:
- (i) are the same or substantially similar to the Services; and
- (ii) relate to the delivery or storage of Goods for the same third party (which is a customer of the Customer) and/or such other conditions as the Parties may agree in the SLA,

from any third party provider and shall only request the provision of such services from Gist (except where Gist is unable to provide the relevant Services, whether due to a Force Majeure Event or otherwise); and

- (b) "Non-Exclusive", there shall be no restriction on the Customer's ability to order any services which are the same as or similar to the Services, from third party providers, subject to the other terms of the Contract.

9. GOVERNANCE AND CONTRACT MANAGEMENT

9.1 Upon request by either Party, the Contract Managers (and any other appropriate Personnel of each Party (as agreed between the Parties)) shall meet at such time and in such location as is reasonably convenient for each Party (including for the avoidance of doubt, via conference call or video conference) to discuss any issues arising in connection with the Contract.

9.2 Unless otherwise agreed between the Parties, a Contract Manager shall have authority to bind the Party appointing it in respect of matters arising in connection with the Contract (including the Services) and any variation to it.

10. DURATION

10.1 The Contract shall commence on the Effective Date and shall continue in full force and effect for the Initial Term and, thereafter, shall continue in full force and effect unless and until terminated in accordance with the Contract (the "**Renewal Term**").

10.2 Without prejudice to Condition 25, either Party may terminate the Contract by serving not less than three (3) months' notice in writing on the other, provided that such notice shall expire on or after the last day of the Initial Term.

11. CUSTOMER OBLIGATIONS

11.1 The Customer shall:

11.1.1 co-operate with Gist in all matters relating to the Services, including by providing timely responses to Gist's enquiries and requests for information, approvals and authorisations;

11.1.2 ensure that the Goods are properly labelled and addressed (as appropriate), and securely and properly packed in compliance with any applicable laws, regulations, recognised standards and best practice, and are and will remain in a condition to be handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, equipment or to any other items in any way;

11.1.3 provide, in a timely manner and at no charge to Gist, all Customer Information and any further assistance that Gist may require to accurately, lawfully and legitimately provide the Services, and ensure that the Customer Information is (and remains) accurate, up-to-date and complete. The Customer shall review all Customer Information in advance of providing any of it to Gist and shall immediately advise Gist of any errors, discrepancies, and/or other inaccuracies (in classifications or otherwise). For the avoidance of doubt, Gist shall be under no obligation to test, check or confirm the accuracy of the Customer Information prior to performing the Services;

11.1.4 comply with all laws that apply to the Customer and generally to all persons living and carrying on work in the United Kingdom or such other jurisdiction as the Customer operates; or apply specifically to persons receiving services of the nature of the Services or carrying on business in the industry to which the Customer belongs; or apply to the manner in which the Services are received; or with which the Customer is expressly required to comply by any provision of the Contract;

11.1.5 comply with appropriate anti-bribery and anti-corruption policies, and provide such assistance and cooperation as Gist may require in connection with any investigation by a relevant regulator in connection with the Contract and/or any events or activities referred to herein;

11.1.6 obtain and maintain: (i) all necessary licenses, permissions and consents applicable to the Customer or its Affiliates (as appropriate), in relation to the Services; (ii) the right or license for Gist, its Affiliates, and its and their sub-contractors to access, use and modify all data and third

party products, to use any Customer Information and to use any equipment, systems or facilities provided by the Customer and used by Gist directly or indirectly in the supply of the Services;

11.1.7 provide all such support, documents and materials and do all such other acts and things as are notified by Gist to the Customer from time to time, to enable Gist to exercise its rights and/or perform its obligations under the Contract and any agreements entered into with any Third Party Provider; and

11.1.8 comply with any other obligations set out in the Contract.

12. CUSTOMER WARRANTIES

12.1 The Customer warrants that:

12.1.1 the SLA shall be executed by a duly authorised representative, or by duly authorised representatives, of the Customer;

12.1.2 the Goods are as described to Gist with regard to their nature, quality, weight, quantity, condition and dimensions;

12.1.3 the Goods do not and shall not cause harm to human health or pollute the environment, or require any official consent or licence to handle, possess, deal with or carry (save where this has been disclosed to Gist and the necessary consents and licences have been obtained and maintained in compliance with Condition 11.1.6);

12.1.4 the Customer has full capacity, authority and has obtained all consents and approvals needed to enable it to enter into and to perform each of its obligations under the Contract; and

12.1.5 once the SLA is duly executed, the Contract will constitute its legal, valid and binding obligations.

13. DISCLAIMED WARRANTIES

13.1 Except as set forth herein, and subject to any applicable laws, Gist makes no, and expressly disclaims all, representations, warranties, conditions and covenants, either express or implied (including without limitation, any express or implied warranties or conditions of fitness for a particular purpose, merchantability, satisfactory quality, durability, accuracy or non-infringement) arising out of, or relating to, the Services (or any of them) or their performance or non-performance.

13.2 The Customer further acknowledges and agrees that Gist makes no representations, warranties or assurances that the Services will be provided without interruption or that they will be free from defects or errors, including in respect of any Third Party Systems.

14. GIST'S RIGHTS

14.1 Without prejudice to Gist's other rights and remedies set out in the Contract or otherwise afforded to it under any applicable laws, Gist reserves the right to suspend performance of all or any part of the Services for such period as it deems appropriate in the event that the Customer commits a material breach of the Contract, provided that Gist shall use its reasonable endeavours to resume the performance of the Services as soon as reasonably practicable following the resolution of the same to the satisfaction of Gist.

15. CHARGES AND PAYMENT TERMS

15.1 The Charges payable by the Customer to Gist for the Services shall be as set out in the SLA, unless Gist is providing any Ad Hoc Services (in which case such relevant Charges shall be agreed by the Parties in writing).

15.2 Subject to Condition 15.7, Gist shall render an invoice to the Customer for the Charges in accordance with the payment dates referred to in the SLA or, if no specific dates have been referred to or agreed in the SLA or otherwise, weekly in arrears.

15.3 The Customer shall pay to Gist within the period specified in the SLA or otherwise within thirty (30) days of receipt of an invoice (or shall procure such payment to Gist of) the Charges due in respect of each week.

15.4 Payment of all Charges and Disbursements shall be made by BACS to the nominated bank account of Gist, to be provided in writing to the Customer from time to time.

- 15.5 All Charges and Disbursements are exclusive of any VAT, which shall be payable by the Customer at the applicable rate.
- 15.6 Subject to Condition 15.7, Gist shall render an invoice to the Customer for any Disbursements as and when required to be paid by Gist. All Disbursements shall be charged by Gist to the Customer. The Customer shall pay to Gist all relevant Disbursements set out in an invoice in accordance with the SLA or, if not specified, within [seven (7) Business Days] of receipt of such invoice.
- 15.7 Invoices issued by Gist shall:
- 15.7.1 be valid tax invoices for the purposes of VAT legislation and, unless otherwise agreed, be invoiced in Great Britain pounds sterling ("**£GBP**"); and
- 15.7.2 identify Gist; and include the SLA number or other reference number that may have been provided by the Customer to Gist in connection with the SLA.
- 15.8 If any sum payable under the Contract is not paid by the due date for payment, then Gist shall, upon written notice to the Customer, have the right (at its sole discretion) to:
- 15.8.1 suspend the performance of the applicable Services (to the extent such Services have not been completed by the date such default arises) until the date of actual payment (both before and after any judgment) or terminate the Contract in accordance with Condition 25; and/or
- 15.8.2 charge interest (calculated on a daily basis) on such amount from the last due date for payment until the date of actual payment (both before and after any judgment) at four per cent (4%) per annum over the base rate of the Bank of England from time to time, with such interest accruing on a daily basis. In the event of a default in the payment of an invoice, the Customer shall be responsible for all of Gist's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees.

16. VARIATION OF RATES

- 16.1 Notwithstanding Gist's right to request a Change pursuant to Condition 17, Gist reserves the right to increase the Charges payable in respect of any SLA on the occurrence of:
- 16.1.1 a material change in the nature or scope of the Services;
- 16.1.2 a material change in the volume (+/- 20%) over a three (3) month period (allowing for fluctuations due to seasonality and comparing the same three (3) months in the previous Contract Year);
- 16.1.3 any change in law or regulation which affects the cost to Gist of the provision of the relevant Services; or
- 16.1.4 any change to the applicable Charging Assumptions (if any),
- such increase to take effect from the first day of the calendar month immediately following the relevant change giving rise to the increase (such increase to be notified by Gist to the Customer in writing).
- 16.2 Without prejudice to Condition 16.1, the Transport Services will be subject to a derv fuel mechanism, calculated on a base derv price pence per litre and a percentage of operating costs (the "**Gist Fuel Mechanism**"). The fuel calculation shall be set out in the SLA. The charges for the Transport Services will be reviewed weekly to reflect the prevailing price of diesel fuel and the base derv price in the SLA, and a rebate or surcharge will be applied.
- 16.3 [Without prejudice to Condition 16.1, the elements of the Charges shall be reviewed by the Contract Managers (or other authorised representative) of each Party [at least thirty (30) days before the first anniversary] from the Effective Date and [at least thirty (30) days before each anniversary] after that. During the review:
- 16.3.1 the Parties shall discuss the adjustment of the Charges by the annual percentage increase in the Retail Price Index ("**RPI**") (as issued by the Office of National Statistics) in respect of the immediately preceding 12-month period;
- 16.3.2 Gist shall present the Customer with detail of inflationary pressure(s) within the logistics sector and the Parties shall discuss opportunities to mitigate such pressure(s).

- 16.4 Subject to Condition 16.5, if the Parties agree to adjust the Charges, the adjusted Charges shall be implemented at the start of each Contract Year.
- 16.5 If the RPI is negative, the Parties shall deem that the RPI is zero (0) and no adjustment to the Charges shall be made.
- 16.6 If the Parties cannot reach agreement on an adjustment to the Charges, the Parties shall comply with the dispute resolution procedure set out in Condition 30.]

17. AMENDMENTS

- 17.1 Without prejudice to Condition 16, once the SLA has been executed, the SLA and/or these Conditions may be varied as follows (and such variation may include a variation in the manner in which the terms of these Conditions apply to the SLA):
- 17.1.1 by an amendment to these Conditions and/or the SLA (as applicable) which is effected pursuant to the Change Control Procedure; or
- 17.1.2 by a variation signed in accordance with Condition 31.2(a) which expressly states that it amends the SLA.
- 17.2 An amendment under Condition 17.1.1 with respect to the SLA will amend the SLA but will not amend these Conditions as they apply to the SLA.

18. SET-OFF

- 18.1.1 Gist may at any time[, without notice to the Customer,] set off any liability of the Customer to Gist against any liability of any member of Gist's Group to the Customer, whether such liability is present or future, liquidated or unliquidated, and whether or not such liability arises under the Contract. [If the liabilities to be set off are expressed in different currencies, Gist may convert the relevant liability at a market rate of exchange for the purpose of set-off. Any exercise by Gist of its rights under this Condition 18.1.1 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.]

19. INTELLECTUAL PROPERTY

- 19.1 Unless otherwise agreed between the Parties:
- 19.1.1 any and all Intellectual Property Rights that: (i) are owned by, or licensed to, Gist prior to the Effective Date; or (ii) which are or have been developed independently of the Contract by Gist or on behalf of Gist (whether prior to the Effective Date or otherwise), shall, in each case, as between the Parties, remain the property of and/or vest in Gist and/or its licensors ("**Gist Background IPR**");
- 19.1.2 any and all Intellectual Property Rights that: (i) are owned by, or licensed to, the Customer prior to the Effective Date; or (ii) which are or have been developed independently of the Contract by the Customer (whether prior to the Effective Date or otherwise), shall, in each case, as between the Parties, remain the property of and/or vest in the Customer and/or its licensors ("**Customer Background IPR**");
- 19.1.3 any derivations of, or modifications or enhancements to, any of the Intellectual Property Rights in Gist Background IPR shall, in each case, as between the Parties, remain the property of and/or vest in Gist and/or its licensors, whether or not such modifications or enhancements are developed as part of the Services ("**Gist Foreground IPR**"); and
- 19.1.4 any derivations of, or modifications or enhancements made to, any of the Intellectual Property Rights in Customer Background IPR by the Customer, shall, in each case, as between the Parties, remain the property of and/or vest in the Customer and/or its licensors ("**Customer Foreground IPR**").
- 19.2 The Customer grants to Gist a non-exclusive, non-transferable, irrevocable, royalty-free licence to use the Customer Background IPR and the Customer Foreground IPR (including to the extent such Intellectual Property Rights subsist in any materials provided by the Customer to Gist), for the purpose and to the extent required to perform the Services.

19.3 All Intellectual Property Rights created as part of and arising from the provision of the Services (whether deliverables or outputs arising out of the Services or otherwise) shall be the property of Gist and title in and to such Intellectual Property Rights shall automatically vest in Gist upon their creation (without the need to execute any further deeds or documents) ("**Developed IPR**"). To the extent such Developed IPR vests in the Customer for any reason, the Customer hereby assigns all such Developed IPR to Gist, by way of assignment of future Intellectual Property Rights, with full title guarantee and without charge to Gist. The Customer agrees to do or procure the doing of all such acts and things and to execute or procure the execution of all such documents as may be required to vest ownership of all such Developed IPR in Gist.

19.4 Gist grants to the Customer a non-exclusive, non-transferable, irrevocable, royalty-free licence to use Gist Background IPR, Gist Foreground IPR and any Developed IPR, solely for the purpose and to the extent required to receive the benefit of the Services.

20. DATA PROTECTION

20.1 In this Condition, the following definitions apply:

20.1.1 "**appropriate technical and organisational measures**", "**Data Subject**", "**Processing and Process**", "**Personal Data Breach**" and "**Supervisory Authority**" have the same meaning as in the Data Protection Legislation;

20.1.2 "**Data Protection Legislation**" means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, or the EU GDPR (as defined below) as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of Section 3 of the European Union (Withdrawal) Act 2018 ("**UK GDPR**"), as well as (ii) the General Data Protection Regulation ((EU) 2016/679) ("**EU GDPR**") and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK);

20.1.3 "**Non-Equivalent Country**" means a country, territory or international organisation, other than a country, territory or international organisation which: (i) in respect of personal data subject to the UK GDPR, is not the UK and has not at the relevant time been decided by the UK Secretary of State to ensure an adequate level of protection for personal data; or (ii) in respect of personal data subject to the EU GDPR, is not an EEA member state and has not at the relevant time been decided by the European Commission to ensure an adequate level of protection for personal data; and

20.1.4 "**Personal Data**" means personal data (as defined in the Data Protection Legislation) which either Party is provided with, obtains, generates or creates in connection with the performance of its obligations under the Contract.

20.2 Each Party shall comply with the following provisions in respect of its Processing of Personal Data in connection with the Contract:

20.2.1 comply with all applicable Data Protection Legislation (including by, but not limited to, taking appropriate technical and organisational measures against the unauthorised or unlawful Processing of the Personal Data);

20.2.2 only transfer Personal Data to, download or access such Personal Data from or in, a Non-Equivalent Country, to the extent such transfer or access is made in accordance with the Data Protection Legislation;

20.2.3 promptly and without undue delay, notify the other Party in writing, with all reasonable details, if: (i) any such Personal Data is subject to a Personal Data Breach; or (ii) if any request, complaint, notice or other communication is received from a Data Subject or Supervisory Authority in respect of that Personal Data; and

20.2.4 securely delete all of the Personal Data once such Personal Data is no longer required for the purpose of performing the obligations or receiving the rights and benefits under the Contract.

20.3 Back-Up and Disaster Recovery

- 20.3.1 The Customer shall be solely responsible for daily back-up and other protection of any Customer Information stored on, or accessible from any systems owned or licensed by the Customer, to the extent provided or used by the Customer in connection with the Services, against any loss, damage or corruption during the performance of the Services and for any necessary reconstruction thereof.
- 20.3.2 Gist shall maintain a Business Continuity Plan and shall implement the Business Continuity Plan upon an event occurring which the Business Continuity Plan is expressed to cover, and shall use its reasonable endeavours to resume full performance of the Services following such an event, as soon as reasonably practicable.

21. GIST POLICIES

- 21.1 The Customer shall, and shall procure that its Personnel shall, at all times during the Term, comply with all Gist Policies.

22. LIABILITY, STOCK LOSS AND INDEMNITIES

22.1 Limitation of Liability

- 22.1.1 Nothing in the Contract shall operate so as to exclude or limit the liability of either Party to the other:
- (a) for death or personal injury caused as a result of its negligence;
 - (b) arising out of fraud or fraudulent misrepresentation;
 - (c) for any breach of Condition 28 (Confidentiality); or
 - (d) for any other liability which cannot be excluded or limited by law.
- 22.1.2 Subject to Condition 22.1.6, the Customer's liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract shall not be limited in any way.
- 22.1.3 Nothing in the Contract shall operate so as to exclude or limit the liability of the Customer to Gist:
- (a) in relation to its obligations to pay the Charges, Disbursements and any other costs (including interest) in accordance with the Contract; or
 - (b) arising out of or in connection with the indemnities given by the Customer in Condition 22.3.
- 22.1.4 Gist's liability in respect of any loss of, damage to, or delay in delivery of Goods, shall, subject to this Condition 22, be in accordance with Conditions 4, 5 and 6, provided that the Customer has complied with all its obligations under the Contract (including Conditions 3.3, 6.1.4, 7.1(a) and 11.1).
- 22.1.5 Unless otherwise stated in the SLA, the total liability of Gist to the Customer:
- (a) in respect of the mis-delivery or delayed delivery of any Goods, shall be limited to collection of the Goods (if required) and re-delivery to the correct address, return to the Consignor or the Customer, as instructed by the Customer (having regard to the nature and volume of the Goods, the delivery location and Gist's commitments to other customers), or failing such instructions within a reasonable time, as reasonably determined by Gist;
 - (b) in respect of loss or non-delivery of, or damage to, Goods ("**Goods Claim**"), shall be limited to £1.30 per kilogram of Goods, save that:
 - (i) Gist shall have no liability in respect of a Goods Claim where such loss or non-delivery of, or damage to, the Goods occurs when Gist's responsibility for the Goods has ended in accordance with Condition 5.1.1; or

- (ii) Gist shall only have liability in respect of a Goods Claim where such loss or non-delivery of, or damage to, the Goods occurs when Gist's responsibility for such Goods has not ended in accordance with Condition 5.1.1, provided that (to the extent relevant):
 - A. the value of the Goods in the Goods Claim exceeds £100 (one hundred pounds sterling);
 - B. in respect of damaged Goods, the Consignee has signed and returned a POD to Gist in respect of the Goods that are the subject of the Goods Claim;
 - C. the Goods Claim relates to a whole dolly or pallet (or multiples thereof), and all items, packs, cases, boxes or trays transported on such dolly or pallet, it being acknowledged and agreed that Gist shall not be liable for any Goods Claims relating to loss of part of the total items, packs, cases, boxes or trays transported on a dolly or pallet; and
 - D. the Goods Claim has been notified in writing to Gist in accordance with the claims procedure referred to in Condition 29; and
- (c) subject to Conditions 22.1.1, 22.1.3, 22.1.5(a) and 22.1.5(b), whether for negligence, breach of contract or otherwise, shall:
 - (i) not exceed £100,000 (one hundred thousand) per event or series of connected events in any Contract Year in respect of physical loss or damage to tangible property (excluding the Goods) arising from Gist's negligence; and
 - (ii) in respect of all other Losses suffered by the Customer in any Contract Year shall not exceed an amount equal to the Charges (excluding VAT) paid to Gist in respect of that Contract Year under the Contract.

22.1.6 Subject to Conditions 22.1.1 and 22.1.3, but otherwise notwithstanding any other provision of the Contract, neither Party shall be liable to the other Party, whether in contract (including under any indemnity), in tort (including negligence), under statute or otherwise, for any of the following types of Loss (whether arising in the normal course of business or otherwise):

- (a) loss or corruption of, damage to, or loss of use of, data or computer malfunction;
- (b) loss of profit;
- (c) loss or depletion of, or damage to:
 - (i) reputation and/or goodwill;
 - (ii) business opportunity; and/or
 - (iii) anticipated earnings, savings or interest

even if such Losses are foreseeable and/or which either Party has been advised of or is aware of the possibility of the other Party incurring or suffering such Losses; or
- (d) special, indirect or consequential Loss of any nature whatsoever.

22.1.7 Neither Gist nor any persons acting on behalf of Gist, shall be liable to the Customer (whether such liability arises in contract, tort (including negligence) or otherwise) for any Loss suffered by the Customer (or any of the Customer's Affiliates) arising from:

- (a) a failure or delay in Gist performing its obligations under the Contract to the extent that such failure or delay was caused or contributed to by an act, error or omission of the

Customer or a Consignor or a Consignee (or their Personnel or any third party that they employ or engage);

- (b) any failure to provide the Services in accordance with the Contract as a result of Gist's compliance with any instruction or direction given by the Customer if Gist has informed the Customer before it complies therewith that, in its opinion, that instruction or direction will inhibit performance of the Services;
- (c) an inherent liability due to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods; and/or
- (d) without prejudice to Condition 27, any Loss caused or contributed to by any act or omission of any Third Party Provider or any failure in the performance, any outage, loss of access, computer malfunction, or other failure of any aspect of any Third Party Systems.

22.1.8 Where Gist is providing Transport Services and picking the Goods, for any delivery discrepancies, if Gist can demonstrate through use of its warehouse management system (WMS) that the Goods have been picked and despatched, then it will not be liable for any claim relating to the particular discrepancy raised. For the avoidance of doubt, Gist shall not be liable for any claim in relation to any delivery discrepancies if Gist does not pick the Goods.

22.1.9 Gist shall be discharged from all liability whatsoever arising in respect of any Goods Claim or any other claim by the Customer arising under the Contract, unless legal proceedings are commenced within six (6) months of the event (or the first event in a series of connected events) giving rise to any liability or claim.

22.2 **Stock Loss**

22.2.1 Where Gist is providing Warehousing Services, Gist shall be entitled to the benefit of a stock loss tolerance of 2% by number of the total cases / trays of throughput at Gist's warehouse (the "**Stock Loss Tolerance**"). The Stock Loss Tolerance will be applied by the Parties against any losses of the Goods (identified in Condition 22.1.5(b)) before calculating the liability of Gist to the Customer (Annually)

22.3 **Customer Indemnity**

22.3.1 The Customer agrees to indemnify and keep indemnified Gist and each member of its Group in full and on demand from and against any Loss suffered or incurred by Gist (or its Affiliates or Personnel) in respect of the Losses described in Condition 4.3.2, Condition 4.6, Condition 5.1.2(a), Condition 6.1.3, Condition 6.1.4 and Condition 6.1.5.

22.3.2 The Customer agrees to indemnify and keep indemnified Gist and each member of its Group in full and on demand from and against any Loss suffered or incurred by Gist (or its Affiliates or Personnel) arising out of or in connection with:

- (a) the Customer's failure to comply with any of the obligations at Condition 11.1;
- (b) any loss of or damage to the Vehicle or to other goods carried on the Vehicle as a result of any breach of the Contract by the Customer or any party on whose behalf it has contracted, or by reason of any error, omission, mis-statement or misrepresentation by the Customer, Consignee, Consignor or owner of the Goods (or any Personnel of any of them);
- (c) any error, omission, mis-statement or misrepresentation by the Customer, Consignee, Consignor or owner of the Goods (or any Personnel of any of them);
- (d) any fraud on the part of the Customer, Consignee, Consignor or owner of the Goods (or any Personnel of any of them); and
- (e) all claims brought against Gist by H M Revenue and Customs in respect of the Goods.

23. **UNREASONABLE DETENTION**

23.1 The Customer shall be liable for, and indemnify Gist, against all Loss suffered or incurred by Gist (or its Affiliates or Personnel) arising out of or in connection with the unreasonable detention (whether in breach of the Contract or not) of any Vehicle, trailer or container by the Customer or the Consignee or the Consignor of the Goods at the point of delivery.

24. INSURANCE

24.1 Both Parties shall, from the Effective Date and for the term of the Contract, take out and maintain appropriate insurance policies with a reputable insurer to cover, and to be commensurate with, their respective liability and obligations under the Contract.

25. TERMINATION

25.1 Without prejudice to its other rights, either Party (the "**notifying party**") shall be entitled to terminate the Contract with immediate effect (by giving notice to the other Party) if any of the following occurs:

25.1.1 without prejudice to Condition 14.1, the other Party has committed a material breach of the Contract and (where such breach is remediable) does not remedy such breach within thirty (30) days after receipt of a notice from the notifying party specifying the breach and requiring it to be remedied;

25.1.2 the other Party is affected by a Force Majeure Event which continues for a period of more than ninety (90) consecutive days, or if reasonable remedial efforts have not commenced within thirty (30) days of the Force Majeure Event, and which prevents the other Party from performing all, or a material part of, its obligations under the Contract; or

25.1.3 the other Party:

- (a) suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due (within the meaning of sections 123, 267 or 268, as applicable, of the Insolvency Act 1986);
- (b) proposes or becomes subject to a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal or, being a company has a proposal for a compromise or arrangement sanctioned by the court pursuant to section 899 Companies Act 2006 (save for the sole purpose of a solvent reconstruction or amalgamation);
- (c) has a receiver or manager appointed over any of its assets, undertaking or income;
- (d) takes any step towards its winding-up or bankruptcy as applicable (save, in the case of a company, a solvent liquidation for the sole purpose of effecting a reconstruction or amalgamation) or is subject to a petition issued by any court for its winding-up or bankruptcy (as applicable) that is not withdrawn upon such Party's application;
- (e) being a company, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person;
- (f) being a company, is the subject of a notice to strike off the register at Companies House (or any equivalent thereof in another jurisdiction); and/or
- (g) has any distraint, execution or other process levied or enforced on any of its property.

25.2 Gist shall be entitled to terminate the Contract:

25.2.1 by giving no less than thirty (30) days prior written notice to the Customer if the Customer undergoes a change of Control which, in Gist's reasonable opinion, will have or is likely to have, a material adverse effect on Gist's ability to perform any of the Services, or otherwise on Gist's business in connection with any of the Services. In the event that the Customer undergoes a change of Control, the Customer shall notify Gist of such change of Control promptly following the same (and in any event within ten (10) Business Days) and Gist shall be required to serve notice to terminate within six (6) months of such notification;

- 25.2.2 with immediate effect by giving written notice to the Customer if the Customer repeatedly breaches the Contract 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 the Contract;
- 25.2.3 on thirty (30) days written notice to the Customer if:
- (a) any sum payable under the Contract is not paid by the due date for payment;
 - (b) Gist has given the Customer ten (10) Business Days' notice specifying the breach and requiring its remedy; and
 - (c) the Customer has failed to pay such sums before the expiry of such ten (10) Business Days' period.

26. CONSEQUENCES OF TERMINATION

- 26.1 On termination of the Contract, the Customer shall immediately pay to Gist all of Gist's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Gist may submit an invoice, which shall be payable immediately on receipt.
- 26.2 On termination of the Contract, the Customer shall pay Gist for all Services performed and Disbursements incurred and any other non-recoverable costs incurred by Gist, up to and including the date of such termination.
- 26.3 On termination of the Contract, the following Conditions shall continue in force: Condition 1 (Definitions and Interpretation), Condition 1.5 (Conflict), Condition 19 (Intellectual Property), Condition 22 (Liability, Stock Loss and Indemnities), Condition 26 (Consequences of termination), Condition 28 (Confidentiality), Condition 31.2 (Variations and Waivers), Condition 31.6 (Severability), Condition 31.9 (Governing law) and Condition 31.10 (Jurisdiction).
- 26.4 The termination of the Contract (howsoever caused) shall be without prejudice to:
- 26.4.1 any other rights which either Party may have under the Contract;
 - 26.4.2 any liabilities accrued prior to the date on which the termination takes effect; and
 - 26.4.3 any rights or obligations of a person which are expressly stated to survive, or by their nature survive, termination of the Contract.

27. FORCE MAJEURE

- 27.1 In this Condition 26.4.327, "**affected party**" shall mean the Party seeking to invoke Condition 27.2, and a "**Force Majeure Event**" shall mean any event, occurrence, act, matter, thing or circumstance (or any continuation or series of any events, occurrences, acts, matters, things or circumstances) which is beyond the reasonable control of the affected party, including, but not limited to, flood, lightning, earthquake, land slip, subsidence, terrorist act, explosion, fire, war (whether declared or undeclared), civil disobedience, riot, rebellion, insurrection, industrial sabotage, epidemic or pandemic, failure or shortage of power supplies, acts of foreign power, acts of government and industrial action of any kind (not involving the employees of the affected party), seizure or forfeiture under legal process, general or partial stoppage or restraint of labour for whatever cause or fuel shortage and severe road and weather conditions (where (i) it is deemed that such fuel shortage and / or severe road and/or weather conditions would impact any other haulier undertaking such activity in the same manner and to no less an extent than the affected party; and (ii) the affected party has undertaken reasonable precautions to mitigate the effects of such fuel shortage and/or severe road and/or weather conditions).
- 27.2 The affected party shall not be under any liability to the other Party for any failure or delay in performing the Contract or any part of it to the extent that such failure or delay is caused by a Force Majeure Event and shall be entitled to a reasonable extension of time for performing its relevant obligations.
- 27.3 The affected party shall:
- 27.3.1 as soon as reasonably possible, and in any event within ten (10) Business Days of a Force Majeure Event occurring, provide the other Party with written details of the nature and extent of the Force Majeure Event, including the affected party's best estimate of the likely extent and duration of its inability to perform its obligations under the Contract as a result of such Force Majeure Event;

- 27.3.2 use its reasonable endeavours to avoid or minimize the consequences of the Force Majeure Event in question and carry out its obligations and duties in such other ways as may be reasonably practicable; and
- 27.3.3 use its reasonable endeavours to bring the Force Majeure Event in question to a close as soon as reasonably practicable.

28. CONFIDENTIALITY

- 28.1 Subject to Condition 28.2, each Party shall, and shall procure that each other member of its Group shall, treat in confidence all Confidential Information and shall not, and shall procure that each other member of its Group shall not, without the prior written consent of the other Party:
 - 28.1.1 disclose in whole or in part Confidential Information to any person not a Party to this Contract; or
 - 28.1.2 use Confidential Information for a purpose other than for the exercise of its rights, or the performance of its obligations, under the Contract.
- 28.2 Notwithstanding the provisions of Condition 28.1, each Party may disclose Confidential Information:
 - 28.2.1 to its own Personnel to the extent required for the proper performance of the Contract (conditional upon any such Personnel being informed of the confidential nature of the Confidential Information and each Party procuring that such Personnel comply with the provisions of Condition 28.1 as if they were parties to the Contract); and
 - 28.2.2 to the extent that such Confidential Information is required to be disclosed by applicable laws, provided that the other Party (if it is lawful to do so) is notified in advance that such disclosure is to be made (such advance notice to be given as soon as reasonably practicable).
- 28.3 The provisions of this Condition 28 shall survive the termination of the Contract and the return, deletion or destruction of the Confidential Information.

29. GOODS CLAIMS PROCEDURE

- 29.1 For the avoidance of doubt, if the Customer wishes to submit a Goods Claim to Gist, it shall comply with the claims procedure set out in Schedule 2 (or as otherwise notified to the Customer from time to time) before the Parties engage in the dispute resolution procedure set out in Condition 30.
- 29.2 If Gist does not approve (or otherwise agree the outcome of, or alternative procedure for handling) a Goods Claim within three (3) months after such Goods Claim was notified by the Customer to Gist in accordance with the claims procedure, the Goods Claim shall thereafter be deemed to be a Dispute.

30. DISPUTE RESOLUTION PROCEDURE

- 30.1 Subject to Condition 29, the Parties shall in good faith use all reasonable endeavours to resolve any Dispute which may arise under or in connection with the Contract.
- 30.2 If any Dispute cannot be resolved through discussion, either Party may, on serving notice to the other Party, require a meeting of the Parties' Contract Managers to attempt to resolve any Dispute. The Contract Managers shall meet within fifteen (15) Business Days of service of the notice to the other Party calling the same. The notice shall set out details of the Dispute, together with the place, time and date on which the meeting is to take place. The Contract Managers shall attempt in good faith and use all reasonable endeavours to resolve the Dispute.
- 30.3 If the Dispute is not resolved by the Contract Managers within fifteen (15) Business Days of their meeting, the Contract Managers shall refer the Dispute to the Senior Managers. The Senior Managers shall attempt in good faith and use all reasonable endeavours to resolve the Dispute.
- 30.4 If the Dispute is not resolved by the Senior Managers within fifteen (15) Business Days of their meeting, then either Party may require that the Dispute shall be referred to non-binding mediation under the rules of the Centre for Effective Dispute Resolution ("**CEDR**") to be carried out by a mediator agreed between the Parties or in default of agreement between the Parties within ten (10) Business Days appointed, on the application of either Party, by CEDR.

30.5 If the Parties have not agreed the Dispute within thirty (30) days of the appointment of the mediator referred to in Condition 30.4, each Party is free to refer the Dispute to the courts, but prior to that point neither Party can refer the Dispute to the courts unless the reason for the referral is an application to protect the Confidential Information or Intellectual Property Rights of the applicant, or otherwise to seek injunctive relief in respect of a breach of the Contract.

31. GENERAL

31.1 Assignment and Sub-Contracting.

- (a) Subject to Condition 31.1(b), neither Party shall be entitled to assign, mortgage, charge, dispose, sub-contract or otherwise transfer its rights and/or obligations or any of them under the Contract in whole or in part except with the prior written consent (not to be unreasonably withheld, delayed or conditioned) of the other Party.
- (b) Notwithstanding Condition 31.1(a), Gist may (without the Customer's consent) appoint any sub-contractors and/or agents to perform, or assist with the performance of, any of its obligations under the Contract from time to time.

31.2 Variations and Waivers.

- (a) Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives) and expressed to be such a variation. For the avoidance of doubt, Gist's drivers and warehouse personnel are not authorised representatives of Gist.
- (b) No failure or delay by either Party, or time or indulgence given in exercising any remedy, right, power or privilege under or in relation to the Contract shall operate as a waiver of the same nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- (c) No waiver by any Party of any requirement of the Contract, or of any remedy or right under the Contract, shall have effect unless given in writing and signed by such Party. No waiver of any particular breach of the provisions of the Contract shall operate as a waiver of any repetition of such breach.

31.3 Notices.

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case), unless otherwise stated in the SLA; or sent by email to the address specified in the SLA.
- (b) Any notice shall be deemed to have been received:
 - i. if delivered by hand, upon delivery if delivered during a Business Day, or at 9.00 a.m. on the next Business Day if delivered at any other time;
 - ii. if sent by prepaid first-class post or recorded delivery, 9.00 a.m. on the second Business Day following the day on which it was posted; or
 - iii. if sent by email, one (1) Business Day after transmission, provided that a copy of the notice is also despatched to the recipient using a method described in Conditions 31.3(b)i or 31.3(b)ii no later than 5.00 p.m. on the next Business Day.
- (c) Where the Customer does not have an establishment or other address in England or Wales, the Customer shall irrevocably appoint the Service Agent as its agent to receive on its behalf in England or Wales service of any proceedings under the Contract. Such service shall be deemed completed on delivery to such Service Agent (whether or not it is forwarded to and received by the Customer) and shall be valid until such time as Gist has received prior written notice that such Service Agent has ceased to act as agent for the Customer. If for any reason such Service Agent ceases to be able to act as agent for the Customer or no longer has an address in England or Wales, the Customer shall forthwith appoint a substitute acceptable to Gist and deliver to Gist the new agent's name, address and email address within England and Wales.

- 31.4 **Entire Agreement.**
- (a) The Contract contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to its subject matter.
 - (b) The Parties acknowledge that they are entering into the Contract without reliance on any undertaking, warranty or representation given by or on behalf of the other Party other than as expressly contained in the Contract, provided that nothing in this Condition shall limit or exclude the liability of either Party to the other for fraud or fraudulent misrepresentation.
- 31.5 **No Partnership or Agency.** The Contract shall not create, nor shall it be construed as creating, any partnership or agency relationship between the Parties.
- 31.6 **Severability.** If any term or provision or any part thereof (in this Condition, the "**offending provision**") contained in the Contract is, or shall be declared or become, unenforceable, invalid or illegal for any reason whatsoever, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. In such circumstances, the Parties shall negotiate in good faith to agree a replacement provision or part in place of such offending provision, such provision or part to have an equivalent economic and commercial effect to the offending provision or part.
- 31.7 **Further Assurance.** Each Party shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the Contract.
- 31.8 **Rights of Third Parties.**
- (a) Except as expressly set out otherwise, nothing in the Contract is intended to, and does not, give to any person who is not a Party to the Contract any rights to enforce any provisions contained in the Contract (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) except for any person to whom the benefit of the Contract is assigned or transferred in accordance with Condition 31.1.
 - (b) Where specified in the Contract, any member of Gist's Group is intended to and shall the right to enforce any provisions contained in the Contract.
- 31.9 **Governing Law.** The Contract and the rights and obligations of the Parties shall be exclusively governed by, and construed in accordance with, the laws of England and Wales.
- 31.10 **Jurisdiction.** Each Party irrevocably agrees that the courts of England have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

SCHEDULE 1

CHANGE CONTROL PROCEDURE

1. DEFINITIONS

1.1 In this Schedule, the following terms have the following meanings:

1.1.1 "**Agreed Change**" has the meaning set out in paragraph 2.4 below;

1.1.2 "**Change**" means any change to the Conditions and/or the SLA (including the Services);

1.1.3 "**Change Proposal**" means a proposal for a Voluntary Change setting out the information set out in paragraph 2.2 below and signed by Gist;

1.1.4 "**Mandatory Change**" means any Change requested by Gist which is required, as it relates to the relevant Services, pursuant to, or in anticipation of, any change in law, or to address any prevention of, or restriction on, Gist being able to perform the Services in accordance with the Contract; and

1.1.5 "**Voluntary Change**" means any Change requested by Gist which is not a Mandatory Change.

2. CHANGE CONTROL PROCEDURE

2.1 Gist may make any Mandatory Changes to the Conditions and/or the SLA at any time. Gist shall, where practicable, provide reasonable advanced written notice of such Mandatory Change to the Customer, prior to it taking effect.

2.2 If Gist wishes to implement a Voluntary Change, Gist's Contract Manager shall issue a formal written request for such Voluntary Change through a Change Proposal, detailing as far as reasonably possible the effect of the intended Voluntary Change, the reasons therefor, any required timescales for implementation and details of the potential impact on the Charges to the Customer's Contract Manager. If the Customer does not accept the terms of the Change Proposal, the Customer's Contract Manager shall respond to Gist's Contract Manager within ten (10) Business Days of receipt of the Change Proposal, providing reasonable and substantiated grounds for the Customer's objection. In the event of such an objection, the Parties shall meet within five (5) Business Days of such objection being provided to Gist, to seek to agree (each acting reasonably) upon the Voluntary Change (as deemed appropriate by, and acceptable to, Gist). If, after such meeting, the Parties cannot agree upon the Voluntary Change, either of the Contract Managers may submit the unresolved issues to their respective Senior Managers. In the event that the respective Senior Managers are unable to resolve such issues, the Parties shall continue to perform the Contract as if the Voluntary Change had not been requested or implemented.

2.3 Upon the Customer's Contract Manager approving a Change Proposal, with such amendments (if any) as the Parties shall agree, the Parties shall (except in respect of any Mandatory Change) evidence their approval by recording in writing the detail of such agreement and each signing such document.

2.4 A document signed by both Parties in accordance with paragraph 2.3, or a document signed by Gist in respect of any Mandatory Change, shall constitute an "**Agreed Change**" and shall constitute an amendment to the Contract to be acted upon and implemented by the Parties in accordance with the Agreed Change.

3. PENDING CHANGES

Until such time as a Change has become an Agreed Change, the Parties shall, unless otherwise agreed in writing, continue to perform the Contract as if the Change had not been requested or implemented.

SCHEDULE 2

CLAIMS PROCEDURE

It is Gist policy to process customer claims as correctly and swiftly. In order that Gist is able to do this it is important that all relevant information accompanies claims forwarded to the Claims Department. Unless previously agreed within the signed Service Level Agreement, Gist's liability will be as stated in the Gist Terms & Conditions.

All claims to be forwarded to the Claims Department at the following address:

Gist Limited
Wardentree Lane
Pinchbeck
Spalding
Lincs PE11 3UG
Email gist.product.claims@gistworld.com

All claims must be notified in writing to Gist within 5 working days of delivery or 5 working days of being made aware of the incident. All claim values and supporting documents must be submitted to Gist within 2 months of the claim date. As per the terms & conditions, no consequential loss to be charged on the invoice.

Gist's Minimum claim value is £100 per each claim.

Each incident must be claimed on a separate invoice.

All claims relating to non-delivery of product (inclusive of temperature rejections, damages, missing pods etc.) must be accompanied by the following:

- Invoice addressed to Gist (unless M&S Primary, Waitrose Primary or Tesco Primary). Invoices for claims are outside of the scope of VAT, and therefore invoices must not include VAT
- The M&S One platform escalation (Gist will be unable to process a claim if query has not been escalated with M&S)
- A breakdown of the claim to include the SSCC and UPC number's / product code's, product descriptions, quantities, weights per case/tray & total weight, manufacture cost price per case/tray & total cost
- Collection / delivery note signed by our driver / warehouse operative
- Copy of the ASN pallet / product breakdown
- Copy of the pick order (for picking stock)
- Either the POD or the EPOD of the delivery
- Recent Sales invoice(s) - to include all claimed item's
- Proof of loss – debit note or credit note
- Salvage value (if any) to be declared and deducted from the claim value
- 3rd Party Destruction certificate for items returned but unsalvageable
- Any email contact with depots / Gist during the time of the incident