

## **PRISM INTERNATIONAL MEMBERSHIP SERVICES DESCRIPTION**

(Approved and Promulgated by the Board of Directors of PRISM International, December 2001)  
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### **Standard Terms and Conditions**

The *PRISM* International Regulatory Affairs Committee has developed “Standard Terms and Conditions” for off-site information management agreements and these contractual terms have been reviewed and promulgated by the *PRISM* International Board of Directors. This project was undertaken to revise and modernize guidelines to our industry. The “Standard Terms and Conditions” have been compiled from contracts in use by *PRISM* International members throughout the United States, and reviewed by legal counsel representing *PRISM* International. The Board **strongly** recommends that your legal counsel review them with an eye to your own circumstances and the laws of your jurisdiction.

*PRISM* International members are not required to use these contractual terms; however, we believe that using a version of these “Standard Terms and Conditions” will benefit both your company and the industry. If you have questions or comments, please do not hesitate to contact *PRISM* International Headquarters Office.

### **About the Standard Storage Agreement**

Your standard storage agreement is the basic contractual document that you will have with your customers. This contract must conform to the Uniform Commercial Code (UCC) plus specific state laws of the state in which you operate.

The *PRISM* International sample contract reflects a Bailee-Bailor relationship between the firm and its clients. The primary purpose of the contract is to define the Terms and Conditions of the Contract, identify the parties of the agreement, state the limit of liabilities, provide for an optional declaration of excess value and what the additional cost of insurance will be, as well as contain the signatures that bind both parties to the agreement.

Following is a sample agreement. We encourage you to consult with your legal counsel to insure that applicable state laws are taken into account and to make any adjustments for your specific operation. For example, if your firm only provides non-climate controlled storage or only climate-controlled storage, you may limit or expand the options under “Limitation of Liability.” In this section you would list what your limitation of liability value is for each type of media stored. All values generally are on a “per item basis.” It is possible not to offer excess valuation and additional charges; however, it is generally recommended that this option be provided in order to comply with the applicable provisions of the UCC. If you do so, the cost is entered into the additional charges area of the contract.

Prices are normally handled as an addendum or attachment to the contract; therefore, when each year's price schedule goes into effect, you are able to notify the customer and attach the new price schedule without it being necessary to draw up a new contract. The “Schedule A” has been provided in order to provide rudimentary guidance in structuring the pricing addendum. Styles and formatting (as well as service offerings) vary widely, and as such, have not been included in expressed detail.

The “Terms and Conditions” are the key elements that provide you with protection. We encourage you to use these terms and conditions as a method to protect you. One issue that is addressed in this version of the document is the concept of arbitration. Some lawyers favor this, while other lawyers do not. If you choose to add this to your contract we would recommend that you clarify the term to have arbitration held in your state. This way, a large client headquartered in another state cannot force you to come to their state for an arbitration hearing, saving you money should this situation arise.

### **About the Standard Storage Agreement – Continued**

Insert your company's name at any location where we have indicated “Your Company Name.” On the Terms and Conditions under “Miscellaneous” there is space for you to insert the state you would like to use for laws. This is normally that state in which you operate unless you operate in multiple states and want to use a different state for this purpose.

In order to receive a copy of the Standard Terms and Conditions, you should have already signed and returned an agreement outlining the conditions of use. Use of the “Standard Terms and Conditions” is not authorized unless an officer of your firm signs and returns this letter (or copy of this letter) to: *PRISM* International Headquarters Office, 605 Benson Road, Suite B, Garner, NC 27529. *PRISM* International can assume no legal liability with respect to these provisions. The “Standard Terms and Conditions” have been compiled from contracts in use by *PRISM* International members throughout the United States, but the Board **strongly** suggests that your legal counsel review them with an eye to your own circumstances and the laws of your jurisdiction.

The Board of Directors feels that use of the “Standard Terms and Conditions” by your firm be conditioned upon your agreement to indemnify and hold harmless *PRISM* International and its Directors for any all liability, claims, attorney's fees and cost which *PRISM* International or its Directors may incur as a result of your firm's use of the provisions. Although the Board feels that the Association's need to rely on this indemnity is extremely remote, it is a possibility in our increasingly litigious society.

## **Your Company Name**

### **STANDARD TERMS AND CONDITIONS**

**Your Company Name** (Company) hereby agrees to accept for storage and to service under its management system such materials (Stored Material) as \_\_\_\_\_ (Client) requests, subject to all terms and conditions herein, including those incorporated as attachments hereof. Client agrees to pay Company for its services according to Company's current rate schedule, or any revisions thereto. The attached schedule of rates (Schedule A) is incorporated herein and made a part hereof.

Unless modified by specific provisions set forth in Schedule A, the following terms and conditions shall apply to this Agreement.

**1. STORED MATERIAL** - From and after the effective date for a period of \_\_\_\_\_, the Company shall store and service the Stored Material identified on the attached Schedule. Client and company may modify or add to the record materials included in the Schedule of Stored Materials. Such additional Stored Material shall, unless otherwise agreed in writing, be deemed to be held under the same terms and conditions as the Stored Material.

**2. ACCEPTANCE** - In the absence of an executed contract, the act of tendering said material for storage and/or other services by company constitute acceptance by client to the terms, conditions and rates of this contract.

**3. RATES** - Client agrees to pay company for its services according to Company's then current schedule of Rates and any revisions thereto. Monthly storage/retention charges shall be due in advance. Rates may be changed upon thirty (30) days notice to the Client. For Stored Material received during a month or stored for a portion of a month, charges will be assessed according to the Schedule of Rates. Additional Service Charges and late payment fees, if any, shall be paid simultaneously with the monthly storage/retention charges. If the Client fails to pay the charges when due, Client shall be liable for late charges at the rate of 15% per annum (or such lesser rate as may be legally permissible under the laws of the jurisdiction governing this Agreement), and Client shall also be liable for all expenses incurred in collecting charges which are in arrears, including reasonable attorneys' fees.

#### **4. ACCESS TO STORED MATERIALS**

- a. Stored Material and information contained in said Stored Material shall be delivered only to Client's Authorized Representative. Client represents that the Authorized Representative has full authority to order any service for or removal of the Stored Material, and to deliver and receive such. Such order may be given via telephone, electronically, fax, in writing or in person.
- b. When any Stored Material is ordered out, a reasonable time shall be given to the Company to carry out said instructions; and if it is unable to do so (or to provide any other service herein contemplated) because of acts of God or public enemy, seizure or legal process, strikes, lockouts, riots and civil commotions, or other reason beyond the Company's control, or because of loss or destruction of goods for which the Company is not liable, or because of any other excuse provided by law, the Company shall not be liable for failure to carry out such instructions or services.
- c. The Company reserves the right to deny access to or delivery of Stored Material until such time as Client has cured any default under this Agreement.
- d. Authorized representatives of Client shall have the right at reasonable times and upon reasonable notice to examine the media and/or records and compilations of data of the Company which pertain to the performance of the provisions of the Agreement.
- e. ***The Company shall not be liable for damage to client materials in transit, or to items which may receive sudden and accidental damage, pursuant to conditions specified in Section 5, below.***  
***{NOTE: Due to the potentially contentious nature of this provision, the committee has identified 4.e. as optional language. Please consult with your attorney prior to its use.}***

#### **5. LIMITATIONS OF LIABILITY**

- 5.1 ***The Company shall not be liable for any loss or damage to Stored Material, however caused, unless such loss or damage resulted from the failure by the company to exercise such care in regard thereto as a reasonably careful person would exercise in like circumstances. The Company is not responsible for the repair, replacement or restoration of lost or damaged***

property, subject to the conditions and limitations imposed by this agreement. Company's liability, if any, for loss, damage, or destruction to part or all of the Stored Material stored hereunder shall be limited to \$ \_\_\_\_\_ (\*NOTE: the majority of PRISM members use \$1.00 or \$2.00 for hard copy records; NOTE: media vault operators may want to consider replacement cost of the media plus recopying fee as a liability limit. Please review this amount with your attorney and insurance agent before providing an amount in your final contract.) per carton, linear foot, container, tape or disk pack, which amount Client declares to be the value of Stored Materials, unless Client declares an excess valuation and pays an additional monthly charge for said excess valuation, as provided in section 6. In such case, *Your Company Name's* liability shall be limited to the amount of the excess valuation per carton, container, tape or disk pack. Such limitation of liability shall apply irrespective of the cause of loss, damage, or destruction of the stored material.

- 5.2 Company shall not be liable for any loss of profit or special, indirect, incidental or consequential damages of any kind.
- 5.3 Stored Materials are not insured by Company against loss or injury, however caused.
- 5.4 *The Company accepts no liability for the deterioration of media in storage. [NOTE: It was the opinion of some on the committee that the language in 5.4. is unnecessary due to provisions already established in 5.1. above. For this reason, this language has been identified as optional. Please consult with your attorney prior to its use.]*
- 5.5 Claims by the Client for loss, damage, or destruction must be presented in writing to the Company within a reasonable time and in no event longer than sixty (60) days after Client is notified by the Company or otherwise receives notice that loss, damage or destruction to part or all of the Stored Material has occurred, whichever time is shorter.
- 5.6 No action or suit may be maintained by the Client or others against the Company for loss, damage or destruction of the Stored Material, unless timely written claim has been given as provided in Section 5.5 of this Agreement, and unless such action or suit is commenced either within nine (9) months after date of delivery or return by the Company, or within nine (9) months after the Client is notified or otherwise receives notice that loss, damage or destruction to part or all of said Stored Material has occurred, whichever is shorter.

**6. DECLARATION OF EXCESS VALUATION** - Client declares that the valuation of deposits made hereunder is \$ \_\_\_\_\_ per carton, container, tape, or disk pack and agrees to pay an additional monthly rate of \$ \_\_\_\_\_ per \$1000.00 of declared Excess Valuation, of which payment shall be made simultaneously with the normal monthly rate specified herein. The Company may, at its discretion, elect to repair, replace or restore lost or damaged property up to the valuation declared by the Client, whether the property is lost in whole or in part.

\_\_\_\_\_  
(Client Signature)

\_\_\_\_\_  
(Date)

**7. TERM** - Unless sooner terminated as provided herein, the term of this Agreement shall continue until the Authorized Representative gives Company reasonable (at least \_\_\_\_\_ days) advance written notice of a termination date and an address for delivery of the Stored Material.

**8. DEFAULT**

**8.1** The occurrence of any one or more of the following events shall constitute a default ("Events of Default"):

- a. Failure to pay any sum due hereunder within fifteen (15) days of when due; or
- b. Breach of any provisions of this Agreement; or
- c. Client becomes insolvent or files, or has filed against it, any proceeding in federal or state court seeking debtor relief.

- 8.2** Upon the occurrence of any of the Events of Default, Company, at its sole option, may exercise any or all of the following remedies without terminating the Agreement:
- a. Demand payment in advance by certified check, cashier's check, money order, or wire transfer prior to the performance of any services on behalf of the client.
  - b. Demand in writing that Client pick up the Stored Material; or
  - c. Deliver the Stored Material to the Delivery Address, if none specified, to the Client Address.
  - d. Upon thirty (30) days advance written notice to Client, Company may dispose of Stored Material. (In this regard, the Client recognizes that, since the Stored Material has little or no market value, that sale of the material would be impossible, and disposal of client materials is the only way for the Company to mitigate its damage.) **{NOTE: Members should consult with legal counsel with respect to how records must be disposed of in order to satisfy privacy requirements.}**
  - e. If this Agreement shall not have been terminated, Client shall continue to pay all sums due under this Agreement up to and including the date of delivery of the Stored Material as provided in (b) above.
  - f. Terminate this Agreement, whereupon Company, shall recover all damages suffered by reason of such termination, including reasonable attorneys' fees.

- 8.3** In the event Company takes any action pursuant to this Section, it shall have no liability to Client or anyone claiming through Client. The exercise by Company of any one or more of the remedies provided in this Agreement shall not prevent the subsequent exercise by Company of any one or more of the other remedies herein provided. All remedies provided for in this Agreement are cumulative and may, at the election of Company, be exercised alternatively, successively or in any other manner and are in addition to any of the rights provided by law. Company shall be entitled to include all reasonable attorneys' fees and costs incurred in connection with the enforcement of this Agreement.

**9. DESTRUCTION OF RECORDS** - Upon written instruction from the Client or Authorized Representative, the Company may dispose of Stored Material. The Client releases the Company from all liability by reason of the destruction of such Stored Material pursuant to such authority.

**10. TITLE WARRANTY** - The Client warrants that it is the owner or legal custodian of the Stored Material and has full authority to store said record material in accordance with the terms of this Agreement.

**11. INDEMNIFICATION** - Unless caused by the negligence of the Company, the Client agrees to fully indemnify and hold harmless the Company, its officers, employees and agents for any liability, cost or expense, including reasonable attorneys' fees, that the Company may suffer or incur as a result of claims, demands, costs or judgments against it arising out of its relations with the Client or third parties pursuant to this Agreement.

## **12. RULES**

- a. The Client agrees to comply with the Standard Storage Operating Procedures of the Company.
- b. The Client shall not, at any time, store with the Company, any narcotics, materials considered to be highly flammable, explosive, toxic, radioactive, organic material which may attract vermin or insects, or any other materials which are otherwise illegal, dangerous and unsafe to store or handle in an enclosed area. The Company reserves the right to open and inspect any record materials tendered from storage and refuse acceptance of any record materials which fail to comply with the Company's storage restrictions and guidelines. Client shall not store negotiable instruments, jewelry, check stock, ticket stock or other items which have intrinsic market value.
- c. Unless the Company is contracted by the client to inventory the contents of all materials stored, the Company shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods; and the Company shall not be liable for such loss unless the Client establishes such loss occurred because of the Company's failure to exercise the care required under section 5, above.

**13. CONFIDENTIALITY** - The Company shall exercise the same degree of care in safeguarding deposits entrusted to it by Client which a reasonable and careful company would exercise with respect to similar records of its own provided;

however, that liability of the Company to Client shall be limited as set forth in Section 5 above. The Company may comply with any subpoena or similar order related to the stored records, provided that the Company notifies Client promptly upon receipt thereof, unless such notice is prohibited by law. Client shall pay Company's reasonable charges, including attorneys' fees, for such compliance.

**14. DISPUTE RESOLUTION** - Should the parties be unable to resolve any differences resulting from the interpretation or administration or alleged breach by either party of this Agreement, or relating in any way to Stored material, the same shall be finally resolved by binding arbitration in \_\_\_\_\_ (location of Company), conducted by the American Arbitration Association before a panel of [one/three] arbitrators pursuant to the Commercial Arbitration Rules then in effect. Each party shall bear ½ of the expense of the arbitrator. Each party shall bear its own expenses and attorneys' fees related to the arbitration. Any award or decision by the arbitrator(s) shall be final and binding between the parties and enforceable by any court of competent jurisdiction.

**15. MISCELLANEOUS** - This instrument (together with any Schedules attached and documents incorporated herein) constitutes the entire Agreement between the parties, and supersedes any and all prior agreements, arrangements, understandings, and representations, whether oral or written, between the parties. This Agreement may not be assigned by Client without the consent of Company. No modification of this Agreement shall be binding unless in writing, attached hereto, and signed by the party against which it is sought to be enforced. No waiver of any right or remedy shall be effective unless in writing and nevertheless, shall not operate as a waiver of any other right or remedy on a future occasion. Every provision of this Agreement is intended to be severable. If any term or provision is illegal, invalid or unenforceable, there shall be added automatically as part of this Agreement, a provision as similar in terms as necessary to render such provision legal, valid and enforceable. This Agreement shall be construed in accordance with the laws of YOUR STATE without giving affect to its conflict of laws or principles. In addition, the Company shall have, and may exercise, all rights granted to warehousemen by the Uniform Commercial Code as adopted in the state where the records are stored. All Schedules, if any, attached hereto are hereby incorporated by reference and made a part hereof. The term "Agreement" as used herein shall be deemed to include all such schedules. All notices under this Agreement shall be in writing. Unless delivered personally, all notices shall be addressed to the appropriate addresses noted herein, or as otherwise noted in writing in accordance with this provision. Notices shall be effective upon receipt unless mailed by certified or registered mail, in which event notices shall be deemed to have been received as of the third business day after the date of posting. All words and phrases in this Agreement shall be construed to include the singular or plural number, and the masculine, feminine or neuter gender, as the context requires. Nothing in this Agreement shall be deemed or construed to constitute or create a partnership, association, joint venture, agency or fiduciary relationship between the parties hereto.

Accepted by:

**CLIENT**

**YOUR COMPANY NAME**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Street Address

Date: \_\_\_\_\_

\_\_\_\_\_

City                      State              Zip

By: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

# Schedule "A"

*Company Name*

*Customer Name*

*Date*

Description of Item		Price
<b><i>Storage Charges</i></b>		
(Insert charges and descriptions related to storage in this section)		
<b><i>Services</i></b>		
(Insert charges and descriptions related to services in this section)		
<b><i>Other</i></b>		
(Insert other charges and descriptions not related to services or storage in this section.)		