

TERMS AND CONDITIONS

(these "Terms and Conditions")

1. Definitions

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Agreement"	these Terms and Conditions together with the relevant Order Form and any document referred to in these Terms and Conditions or the Order Form;
"Breach of Duty"	the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
"Business Day"	any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;
"Confidential Information"	any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;
"Customer", "you" or "your"	the recipient of Equipment and/or Services under this Agreement, as stipulated in the Order Form;
"Delivery"	the transfer of physical possession of the Equipment to you at the Delivery Address;
"Deposit"	the deposit amount set out in the Order Form;
"Delivery Address"	the location to which we are to deliver the Equipment, as stipulated in the Order Form;
"Estimated Delivery Date"	the estimated date on which we shall deliver the Equipment to the Delivery Address, as stipulated in the Order Form;
"Equipment"	the items of equipment, plant, machinery or appliances listed in the Order Form that are the subject of this Agreement, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

"Equipment Fees"	the fees payable by you to us under this Agreement for your hire from us of the Equipment, as stipulated in the Order Form;
"Event of Force Majeure"	has the meaning given to it in Clause 15.1;
"Fees"	the Equipment Fees, the Training Fees and the Services Fees;
"Installation Services"	the services that we provide to you to install the Equipment at your premises, if applicable and as set out in the Order Form;
"Intellectual Property Rights"	copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Liability"	liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract);
"Order Form"	the written document we provide to you containing specific information relating to the particular equipment and/or services supplied or to be arranged to be supplied by us to you;
"Party"	us or you, and "Parties" means both of us and you;



- "Personnel"** all persons employed or engaged by us to provide the Training;
- "Rates"** our time and materials rates from time to time for the provision of services by the Personnel, which, in respect of the Training and as at the date of this Agreement, shall be as set out in the Order Form and subject to change from time to time on our notification to you;
- "Rental Period"** the period of hire for the Equipment as set out in the Order Form;
- "Services"** the Installation Services and the Training Services and the Technician Services;
- "Service Fees"** the fees payable by you to us under this Agreement for our provision to you of the Services, as stipulated in the Order Form;
- "Sub-Hire Agreement"** any contract between you and a third party in which you agree to provide to that third party on a hire basis any of the Equipment or Services which are provided to you under this Agreement by us;
- "Sub-Hirer"** any person with whom you enter into a Sub-Hire Agreement including its servants or agents;
- "Technician"** if applicable, any individual provided by us to provide any technical services in relation to the Equipment hired to you by us under this Agreement;
- "Technician Services"** the services carried out by the Technician, if applicable, during the Rental Period;
- "Training"** the training as specified in the Order Form, to be provided by us to assist you in using the Equipment; and
- "Training Fees"** the fees payable by you to us under this Agreement for our provision to you of the Training, as stipulated in the Order Form.
- 1.2 references to **"Clauses"** are to clauses of these Terms and Conditions;
- 1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4 a **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);

- 1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8 any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words **"without limitation"** unless the context requires otherwise; and
- 1.9 a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 16).
- 2. Agreement**
- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to all Equipment and Services.
- 2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4 The Order Form must be in the form we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received and signed the Order Form that has been signed by an authorised signatory of you and submitted by you to us. Submission by you to us of the signed Order Form shall be deemed to be an offer by you to hire Equipment and/or purchase Services (as specified in the Order Form) from us, subject to the provisions of this Agreement, and our counter-signature on the Order Form shall be considered our acceptance of such offer, but the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any Deposit or advance payment of Fees as required under this Agreement. If we never receive the signed Order Form from you once we have sent it to you, we will take your continued instructions following our sending of the Order Form to you as evidence of your acceptance of the terms of the Order Form and therefore entry into this Agreement.
- 2.5 If you provide to us a purchase order for your receipt of Equipment and/or Services other than as set out in Clause 2.4, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6 In the event of a conflict between these Terms and Conditions and the Order Form, then the Order Form shall prevail over these Terms and Conditions.
- 3. Equipment Hire, Delivery and Installation**



- 3.1 We shall hire the Equipment to you subject to these Terms and Conditions.
- 3.2 We shall not, other than in the exercise of our rights under this Agreement or applicable law, interfere with your quiet possession of the Equipment.
- 3.3 Delivery of the Equipment shall be made by us to the Delivery Address. You may collect the Equipment from us if agreed between the Parties in advance. Title and risk shall transfer in accordance with Clause 6 of this Agreement.
- 3.4 You shall procure that your duly authorised representative shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that you have examined the Equipment and have found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by us, your duly authorised representative shall sign a receipt confirming such acceptance.
- 3.5 It is your responsibility to ensure that our delivery vehicle is able to access the Delivery Address to deliver the Equipment, including ensuring that the access routes are of a sufficient size for the delivery vehicle and that there is space for the delivery vehicle to stop at the kerb-side outside the Delivery Address or otherwise within the Delivery Address. If you have any concerns in this respect, you should contact us as soon as possible.
- 3.6 The Estimated Delivery Date is approximate only, and the time of delivery is not of the essence. Subject to Clause 13.2, we shall not have any Liability for any delay in delivery of the Equipment that is caused by an Event of Force Majeure or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 3.7 If delivery of the Equipment is delayed by your unreasonable refusal to accept delivery, if you are not at the Delivery Address on the delivery date that we agree with you, if you refuse to sign for the delivery of the Equipment on delivery or if you do not (within one week of our first attempt to deliver the Equipment to you) accept delivery, then we may (without prejudice to any other right or remedy available to us) charge you for our reasonable storage fee and other costs reasonably incurred by us, including redelivery costs.
- 3.8 We may deliver the Equipment by instalments, which we may invoice and require payment for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 3.9 Where the Equipment requires installation, we shall install the Equipment at the Delivery Address. You shall procure that your duly authorised representative shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that you have examined the Equipment and have found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by us, your duly authorised representative shall sign a receipt confirming such acceptance.
- 3.10 To facilitate installation where applicable, you shall at your sole expense provide all requisite materials, facilities, access and suitable working conditions to enable installation to be carried out safely and expeditiously.
- 3.11 At the end of the Rental Period, on receipt of the Equipment, we will assess the Equipment for any damage. We will inform you promptly of any damage and any additional charges that will become payable by you.

4. Sub-Hire

- 4.1 You shall not enter into a Sub-Hire Agreement without our prior written consent.
- 4.2 In order to help us make a decision on any proposed Sub-Hire Agreement, you shall provide us with a copy of the proposed Sub-Hire Agreement together with any other information that we may reasonably require about the proposed Sub-Hirer.
- 4.3 You shall (unless otherwise agreed by us in writing) ensure that each Sub-Hire Agreement includes:
 - 4.3.1 the right, under the Contracts (Rights of Third Parties) Act 1999, for us to enforce the terms of that Sub-Hire Agreement as if we were enforcing it against you; and
 - 4.3.2 a provision preventing the Sub-Hirer from entering into an agreement with any third party to sub-hire the Equipment or Services supplied to the Sub-Hirer under its Sub-Hire Agreement with you.
- 4.4 You shall not terminate or materially amend the terms of any Sub-Hire Agreement without our prior written consent, which shall not be unreasonably withheld or delayed.
- 4.5 We may require you to terminate a Sub-Hire Agreement where the acts or omissions of the relevant Sub-Hirer have given rise to our right of termination of this Agreement under Clause 14.2.2 or if there is a change of control of the Sub-Hirer within the meaning of section 1124 of the Corporation Tax Act 2010).
- 4.6 Despite your right to enter into a Sub-Hire Agreement pursuant to this Clause 4, you shall remain responsible:
 - 4.6.1 to us for all acts and omissions of any Sub-Hirers and the acts and omissions of those employed or engaged by the Sub-Hirers as if they were your own; and
 - 4.6.2 to any Sub-Hirers under each Sub-Hire Agreement for any act, omission or breach under it.

An obligation under this Agreement for you to do, or to refrain from doing, any act or thing shall include an obligation on you to procure that your employees, staff and agents and Sub-Hirers' employees, staff and agents also do, or refrain from doing, such act or thing.

5. Equipment warranty

- 5.1 We warrant that on delivery the Equipment shall:
 - 5.1.1 conform in all material respects with its description; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 If you:
 - 5.2.1 give notice in writing within five Business Days of the time of discovery that some or all of the Equipment does not comply with the warranty set out in Clause 5.1;
 - 5.2.2 give to us a reasonable opportunity to examine such Equipment; and
 - 5.2.3 (if we ask you to do so by) return such Equipment to us at our cost or allow us (or procure for us) access to collect the Equipment from you or from any other premises at which the Equipment is located;we shall, at our option, repair or replace the defective Equipment, or refund the Equipment Fee for the provision of the defective Equipment in full.
- 5.3 We shall not be responsible for the Equipment's failure to comply with the warranty in Clause 5.1 if:



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- 5.3.1 you make any further use of such Equipment after giving a notice in accordance with Clause 5.2;
- 5.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
- 5.3.3 you alter or repair such Equipment without our written consent;
- 5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions;
- 5.3.5 you have not paid invoices raised under this Agreement in full; or
- 5.3.6 the Equipment differs from its description as a result of changes made to ensure it complies with applicable statutory or regulatory standards.
- 5.4 Except as provided in this Clause 5, and subject to Clause 13.2, we shall have no Liability in respect of the Equipment's failure to comply with the warranty set out in Clause 5.1.
- 5.5 The warranty set out in this Clause 5 is restricted to you, and no warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.
- 5.6 If you make an invalid claim under the warranty set out in this Clause 4, we may charge you for our fees and costs of dealing with that claim, including examining (and travelling in order to examine), storing, repairing and/or replacing the Equipment.
- 6. Title, risk and insurance**
- 6.1 The Equipment shall at all times remain our property, and you shall have no right, title or interest in or to the Equipment (save for the right to possession and use of the Equipment subject to this Agreement).
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to you on Delivery. The Equipment shall remain at your sole risk during the Rental Period and any further term during which the Equipment is in the possession, custody or control of you or anyone who you have entered into a Sub-Hire Agreement with ("**Risk Period**") until such time as the Equipment is redelivered to us. During the Rental Period and the Risk Period, you shall, at your own expense, obtain and maintain the following insurances:
- 6.2.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as we may from time to time nominate in writing;
- 6.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as we may from time to time reasonably require, to cover any third Party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- 6.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as we may from time to time consider reasonably necessary and advise to you.
- 6.3 All insurance policies procured by you shall be endorsed to provide us with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in

- coverage or policy amount) and shall upon our request name us on the policies as a loss payee in relation to any claim relating to the Equipment. You shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 6.4 You shall give immediate notice to us (both by telephone and in writing) in the event of any loss, accident or damage to the Equipment arising out of or in connection with your or your Sub-Hirer's possession or use of the Equipment, including "near misses".
- 6.5 You shall give immediate notice to us (both by telephone and in writing) in the event of any accident resulting in injury to persons or damage to property which is linked in any way to the Equipment, including "near misses".
- 6.6 If you fail to effect or maintain any of the insurances required under this Agreement, we shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from you.
- 6.7 You shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to us and proof of premium payment to us to confirm the insurance arrangements.
- 6.8 On termination of this Agreement for any reason, our rights contained in this Clause 6 shall remain in full force and effect.
- 7. Services**
- 7.1 We warrant that:
- 7.1.1 we shall use our reasonable skill and care in providing the Services;
- 7.1.2 any Services will be provided in a professional, competent and workmanlike manner;
- 7.1.3 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement;
- 7.1.4 if we are to provide the Services at your premises, we shall comply with any regulations relating to your premises that you provide to us in advance;
- 7.1.5 we shall ensure that our employees, agents and subcontractors co-operate with, and make themselves available at all reasonable times for, discussion and meetings with, you and your employees, agents or subcontractors; and
- 7.1.6 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.
- 7.2 We do not warrant that the Services will meet your individual requirements. We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree in writing to advise or do, we shall not be responsible, or have any Liability (subject to Clause 13.2), for advising on, or failing to advise on, or doing, or failing to do, anything else.
- 7.3 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, subject to Clause 13.2, we shall not



have any Liability for any delays or failures to accurately perform our obligations:

- 7.3.1 if we have used those endeavours; or
- 7.3.2 if caused by any failure or delay on your part or on the part of your employees, agents or subcontractors or by any breach by you of this Agreement or any other agreement.

If there is any slippage in time, we shall use our reasonable endeavours to reschedule delayed tasks to a mutually convenient time.

7.4 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at our time and materials rates from time to time for:

- 7.4.1 any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and
- 7.4.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.

7.5 Except as expressly stipulated in this Agreement:

- 7.5.1 we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time; and
- 7.5.2 we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Equipment and the Services.

7.6 Where applicable, on completion of the Services, the relevant service technician will submit a timesheet to you outlining the number of hours worked and travel times. It is your responsibility to ensure that each timesheet is correct, and you shall have the right to either accept, reject, or make any amendments to a timesheet if in your reasonable opinion it is incorrect. If you fail to accept, reject or amend a timesheet within one Business Day of receiving such timesheet, that timesheet will be deemed accepted by you and an invoice will be generated for those Services which you will be Liable to pay.

7.7 You hereby acknowledge that we may perform credit checks on you via Experian and we may use and submit that information to credit agencies. If, in our absolute discretion, we believe that you are unable to make any payments under this Agreement, we shall require immediate payment of any Fees due from you to us.

8. Technician Services

8.1 As specified in the Order Form, we may provide a Technician to assist with certain types of Equipment. The Technician shall:

- 8.1.1 be competent and qualified to use the Equipment;
- 8.1.2 work on Business Days for ten hours per day or as specified in the Order Form for the duration of the Agreement. Any hours over and above ten hours per day shall be charged at an agreed overtime rate as set out in the Order Form;
- 8.1.3 follow your reasonable instructions; and
- 8.1.4 perform their duties with reasonable skill and care.

8.2 We shall, in our absolute discretion provide a more qualified Technician to plan, assess and complete the Technician Services if we so deem appropriate.

8.3 The Technician's responsibility is limited to completing the job that you have instructed the Technician to undertake. The Technician shall have the right to refuse to undertake activities which in the Technician's absolute opinion would expose the Technician or other individuals or property to an unreasonable level of risk. In the event that we consider there is such risk, we shall inform you of the nature of the risk, the Technician Services we are not able to provide as a result of the risk and any consequential effect on the Services Fees or other terms of this Agreement. We will also, where reasonably possible, specify what actions you should take in order for us to be able to reinstate the provision of the Technician Services. For the avoidance of doubt, we shall not have any Liability (subject to Clause 13.2) for any failure by us to provide Services pursuant to this Clause 8.2 and you shall not be entitled to terminate this Agreement pursuant to any such failure.

8.4 It is your responsibility to give the Technician clear instructions regarding the job you wish to be undertaken and to provide any additional information or instruction that the Technician requests.

8.5 You shall follow any safety instructions given by the Technician in addition to following any other safety instructions that we may provide to you from time to time as well as taking your own sensible safety precautions.

8.6 Unless you receive our written permission, you shall not allow any person other than the Technician to complete the Technician Services. If the Technician is not available to attend the Equipment for any reason, then you shall inform us as soon as possible. We shall make an alternative Technician available as soon as we are able to do so. You will still be Liable to pay the relevant Services Fee.

8.7 You shall be responsible for all claims arising in connection with the operation of the Equipment by the Technician provided that the Technician has not operated the Equipment negligently, unless such negligence occurred as a direct result of your instructions.

8.8 Where Equipment is provided on the condition that it will be used solely by the Technician, and it is operated by another person without our written permission, subject to Clause 13.2 we shall not have Liability for such use of the Equipment. You shall indemnify us, and keep us indemnified, against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any such use including in respect of damage to the Equipment or other property, personal injury or death caused by such use.

8.9 Any hours set out in the Order Form but not worked by the Technician, for any reason other than a breakdown of the Equipment for which we are responsible or in accordance with Clause 8.6, shall still be payable in full.

8.10 If the Equipment requires any repairs or tooling we will charge an additional fee. Tools are provided on a sale or return basis. If any tools cannot be reground or repaired, or are not returned to us, or broken or returned in an unusable condition, then we will charge you the full sales value.

9. Training

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- 9.1 In consideration of the Training Fees outlined in the Order Form, we will provide Training to you.
- 9.2 Any additional training required by you shall be provided by us at the Rates then in force.
- 9.3 Training shall be carried out at such premises and we and you may agree from time to time. Any special equipment necessary for the Training shall be provided by us.

10. Your obligations

10.1 You shall:

- 10.1.1 ensure that the Equipment is kept and operated in a suitable environment which complies with all Health and Safety legislation and does not cause obstruction or danger;
- 10.1.2 ensure that the Equipment is used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- 10.1.3 not allow any individuals other than trained competent staff to access the Equipment;
- 10.1.4 take such steps (including compliance with all safety and usage instructions provided by us) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- 10.1.5 unless specified in the Order Form maintain at your own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including such routine cleaning as is necessary and the replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment at your own expense;
- 10.1.6 provide free of charge all utilities and accommodation at the relevant premises (including necessary light, power, and hot water) as may be required by us and the Technician to provide the Equipment and Services;
- 10.1.7 not maintain and /or repair the Equipment yourself or using a third party without our express prior written consent;
- 10.1.8 make no alteration to the Equipment and not remove any existing component(s) from the Equipment without our prior written consent unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in us immediately upon installation;
- 10.1.9 keep us fully informed of all material matters relating to the Equipment;
- 10.1.10 continue to be fully responsible under this Agreement for the Equipment and all related liabilities if you Sub-Hire the Equipment or allow a third party to use it in accordance with this Agreement;
- 10.1.11 permit us or our duly authorised representative to inspect the Equipment at all reasonable times and for such

purpose to enter the Delivery Address or any premises at which the Equipment may be located, and grant reasonable access and facilities for such inspection;

- 10.1.12 maintain operating and maintenance records of the Equipment and make copies of such records readily available to us, together with such additional information as we may reasonably require;
- 10.1.13 not sell or offer for sale the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 10.1.14 not without our prior written consent, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and you shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify us against all losses, costs or expenses incurred as a result of such affixation or removal;
- 10.1.15 not do or permit to be done any act or thing which will or may jeopardise our right, title and/or interest in the Equipment and, where the Equipment has become affixed to any land or building, you must take all necessary steps to ensure that we may enter such land or building and recover the Equipment both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in our favour any rights such person may have or acquire in the Equipment and a right for us to enter onto such land or building to remove the Equipment;
- 10.1.16 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, you shall notify us and you shall at your sole expense use your best endeavours to procure an immediate release of the Equipment and shall indemnify us on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 10.1.17 not use the Equipment for any unlawful purpose;
- 10.1.18 not remove, deface or cover up our name or any identifying marks on the Equipment and ensure that at all times the Equipment remains identifiable as being our property and wherever possible ensure that a visible sign to that effect is attached to the Equipment;
- 10.1.19 deliver up the Equipment at the end of the Rental Period or on earlier termination of this Agreement at such address as we require, or if necessary allow us or our representatives access to the Delivery Address or any premises where the Equipment is located for the purpose of removing the Equipment;
- 10.1.20 be responsible for any additional cost or expense incurred in recovering Equipment from soft ground on termination of this Agreement for any reason;
- 10.1.21 not do or permit to be done anything which could invalidate the insurances referred to in Clause 6;



- 10.1.22 ensure that the terms of the Order Form, and any specification or instructions you provide to us for the Services and/or for the Equipment, are complete and accurate;
- 10.1.23 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if we undertake any work at your premises;
- 10.1.24 inform us in writing a reasonable time before the commencement of any Services of any regulations relevant to us when working at any premises under your control;
- 10.1.25 be present and available at your premises at the required times to enable us to perform our obligations at the times we reasonably require under this Agreement;
- 10.1.26 sign a confirmatory note upon any of the Services (in whole or in part) having taken place, or any of the Equipment having been delivered, if we reasonably require you to do so;
- 10.1.27 ensure that your employees, agents and subcontractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;
- 10.1.28 promptly provide to us such data, information and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability;
- 10.1.29 promptly comply with all of our reasonable requests in connection with this Agreement;
- 10.1.30 have all rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
- 10.1.31 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement including, where applicable, the cost of road fund licences.
- 10.2 You acknowledge that, subject to Clause 13.2, we shall not have any Liability for any loss, theft, misuse, damage or breakage of the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by you or your officers, employees, agents and contractors, and you undertake to indemnify us on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by you to comply with the terms of this Agreement.
- 10.3 It is your responsibility to ensure that the Services and the Equipment are sufficient and suitable for your purposes and meet your individual requirements.
- 11. Fees and expenses**
- 11.1 In consideration for obtaining the relevant Equipment and Services we provide pursuant to this Agreement, you shall pay to us the relevant Fees.
- 11.2 You shall pay the Fees to us at such times and in such instalments as we may direct from time to time in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Unless set out otherwise in this Agreement, we may issue invoices to you for the Fees at such intervals as we may, at our absolute discretion, consider appropriate. Time is of the essence for payment of both Fees and expenses.
- 11.3 Unless otherwise set out in the Order Form, all sums due under this Agreement are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.
- 11.4 We reserve the right to increase the Fees in respect of any Services or Equipment not included in the Order Form which we may agree, at our absolute discretion, to provide to you in addition to those Services and Equipment set out in the Order Form.
- 11.5 We reserve the right to increase the Fees in respect of any Equipment, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Equipment to us that is due to:
- 11.5.1 any increase in our cost of making the Equipment available to you, including our suppliers increasing their charges to us;
- 11.5.2 any factor beyond our control (include foreign exchange fluctuations, tax and duty increases and increase in supplier costs);
- 11.5.3 any request by you to change the delivery date(s), quantity or type or design of Equipment ordered; and/or
- 11.5.4 any delay caused by your instructions in respect of the Equipment or your failure to give us adequate or accurate information or instructions in respect of the Equipment.
- 11.6 We may charge you for any expenses or additional charges incurred in complying with this Agreement including reasonable travel time and travel costs to and from the premises where we are to provide the Services, and fuel, oil and grease costs at a grade or type specified by you but supplied by us. All expenses shall be invoiced on a monthly basis and payable in the same manner as Fees.
- 11.7 You shall pay us by any payment method that we may stipulate from time to time. No payment shall be considered paid until we have received it in cleared funds in full.
- 11.8 Payment shall be in the currency in force in England from time to time or such other currency as we may stipulate from time to time for the Fees.
- 11.9 The Deposit is a deposit against default by you of payment of any Fees or any loss of or damage caused to the Equipment. You shall, on the date of this Agreement, pay the Deposit as set out in the Order Form to us. If you fail to pay any Fees in accordance with the Order Form, or cause any loss or damage to the Equipment (in whole or in part), we shall be entitled to apply the Deposit against such default, loss or damage. You shall pay to us any sums deducted from the Deposit within 10 Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within 10 Business Days of the end of the Rental Period. Any sums owing by you under this Clause 11.9 in excess of the value of the Deposit shall be paid with 10 Business Days of a demand for the same.
- 11.10 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:



11.10.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;

11.10.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and

11.10.3 suspend performance of this Agreement, including entering your premises or the location where our Equipment is kept and removing it until payment in full has been made.

12. Confidentiality

12.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:

12.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

12.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.

12.2 Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

12.3 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

12.3.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

12.3.2 it does so subject to obligations equivalent to those set out in this Clause 12.

12.4 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 12.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

12.5 The obligations of confidentiality in this Clause 12 shall not extend to any matter which either Party can show:

12.5.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

12.5.2 was independently developed by it; or

12.5.3 was independently disclosed to it by a third party entitled to disclose the same; or

12.5.4 was in its written records prior to receipt.

12.6 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.

12.7 We may identify you as our client and the type of Equipment and Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

12.8 On termination of this Agreement, each Party shall:

12.8.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;

12.8.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and

12.8.3 certify in writing to the other Party that it has complied with the requirements of this Clause 12.8, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

12.9 The provisions of this Clause 12 shall continue to apply after termination of this Agreement.

13. Limitation of Liability

13.1 This Clause 13 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:

13.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any goods, services or deliverables in connection with this Agreement; or

13.1.2 otherwise in relation to this Agreement or entering into this Agreement.

13.2 Neither Party excludes or limits its Liability for:

13.2.1 its fraud; or

13.2.2 death or personal injury caused by its Breach of Duty; or

13.2.3 any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

13.2.4 any other Liability which cannot be excluded or limited by applicable law.

13.3 Subject to Clause 13.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.

13.4 Subject to Clause 13.2, we shall not have any Liability in respect of any:

13.4.1 indirect or consequential losses, damages, costs or expenses;

13.4.2 loss of actual or anticipated profits;

13.4.3 loss of contracts;

13.4.4 loss of use of money;

13.4.5 loss of anticipated savings;

13.4.6 loss of revenue;

13.4.7 loss of goodwill;

13.4.8 loss of reputation;

13.4.9 loss of business;

13.4.10 ex gratia payments;

13.4.11 loss of operation time;

13.4.12 loss of opportunity;



- 13.4.13 loss caused by the diminution in value of any asset; or
13.4.14 loss of, damage to, or corruption of, data;
whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 13.4.2 to 13.4.14 (inclusive) of this Clause 13.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 13.5 Subject to Clause 13.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the lower of:
- 13.5.1 110% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or
13.5.2 £100,000.00.
- 13.6 The limitation of Liability under Clause 13.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 13.7 You acknowledge and accept that we only provide the Equipment and Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 13.2) directly or indirectly for any act or omission of you, or your employees, agents or subcontractors, or any third party.

14. Termination

- 14.1 This Agreement shall commence on the date on which this Agreement is entered into and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect until the latest of:
- 14.1.1 completion of the provision of the Services (where applicable);
14.1.2 expiry of the Rental Period; and
14.1.3 payment in full by you to us of all sums due under this Agreement.
- 14.2 Without prejudice to any of our rights or remedies whether under this Agreement or at law, we may terminate this Agreement immediately by notice in writing to you if:
- 14.2.1 you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than seven days after being notified to make such payment;
14.2.2 you are in material breach of any of your obligations under this Agreement, and, where such material breach is capable of remedy, you fail to remedy such breach within a period of 10 Business Days of being notified of such breach by us; and/or
14.2.3 you give notice to any of your creditors that you have suspended or are about to suspend payment or if you shall be unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for your winding-up or an administration order is made or an administrator is appointed to manage your affairs, business and property or a receiver and/or manager or administrative receiver is appointed in respect of all or any of your assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle

the court to make a winding-up or bankruptcy order or you take or suffer any similar or analogous action in consequence of debt in any jurisdiction.

- 14.3 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 14.4 Termination of this Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 14.5 On termination of this Agreement for any reason:
- 14.5.1 we shall cease to provide the Equipment and Services under this Agreement;
14.5.2 you shall comply with Clause 10.1.19 if you have not already done so;
14.5.3 you shall pay to us all amounts owing to us under this Agreement, whether invoiced or not; and
14.5.4 we may at any time on termination of this Agreement, without notice recover possession of the Equipment which are our property, or goods to the equivalent value of the Equipment. You hereby grant, or procure the grant, to us and our employees, agents and subcontractors, an irrevocable licence to enter for that purpose any premises then occupied by or in the ownership or possession of you or your direct or indirect customer. You must indemnify us against all claims, losses, damages, liabilities, costs and expenses so arising.

15. Force Majeure

- 15.1 Subject to Clause 13.2, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "**Event of Force Majeure**" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.
- 15.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 15.3 Notwithstanding your obligation to pay any relevant Fee under the Agreement in accordance with Clause 11, the performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an

extension of time for performance equal to the period of the delay.

- 15.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 15.5 If the performance of any obligations is delayed under this Clause 15, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 15.6 If the breach, hindrance or delay caused by the Event of Force Majeure set out in Clause 15.1 continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 13.2) to the other Party by reason of such termination.
- 15.7 If we have contracted to provide identical or similar services to more than one customer and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.

16. Notices

- 16.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 16.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 16.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 16.3 The provisions of this Clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

17. Assignment

You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

18. Severance

- 18.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 18.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19. Waiver

A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

20. Third party rights

A person who is not a Party shall not have any rights under or in connection with this Agreement.

21. Variation

This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.

22. No partnership

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

23. Governing law and jurisdiction

- 23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 23.2 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement, or its subject matter or formation.