

Equipment Hire Agreement Terms & Conditions

1 Interpretation

1.1 Words appearing in these terms and conditions with capital initial letters shall have the following meanings:

“Agreement Details” means the commercial details set out at the beginning of the Equipment Hire Agreement;

“Business Day” means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

“Business Hours” means the period from 8.00 am to 5.00 pm on any Business Day;

“Commencement Date” has the meaning given to it in clause 3.1 of these terms and conditions;

“Delivery” means the transfer of physical possession of the Equipment to the Hirer at the Equipment Location;

“Decommissioning and Removal Charge” means the charge for decommissioning and removal of the Equipment, as set out in the Agreement Details;

“Delivery and Installation Charge” means the charge for Delivery and installation of the Equipment, as set out in the Agreement Details;

“Equipment” means the equipment being hired, as set out in the Agreement Details, and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

“Equipment Hire Agreement” means an agreement for hire of the Equipment, incorporating these terms and conditions, which contains the Agreement Details;

“Equipment Location” means the location where the Equipment will be installed and used, as set out in the Agreement Details;

“Force Majeure Event” means an event, circumstance or cause beyond a party’s reasonable control;

“Hire Payments” means the Initial Payment and the monthly hire payments, as set out in the Agreement Details;

“Hire Period” means the period of the hire of the Equipment, as set out in clause 3 of these terms and conditions;

“Hirer” means the party hiring the Equipment, as set out in the Agreement Details;

“Initial Payment” means the initial payment due on signing of the Equipment Hire Agreement by the Hirer, as set out in the Agreement Details;

“Insurance Value” means the insurance value set out in the Agreement Details, unless an insurance value is not specified in the Agreement Details, in which case the full replacement value of the Equipment;

“Minimum Period” means the minimum Hire Period, as set out in the Agreement Details;

“Owner” means the party that owns the Equipment, as set out in the Agreement Details;

“**Payment Schedule**” means the schedule for payment of the sums payable under the Equipment Hire Agreement, as set out in the Agreement Details;

“**Risk Period**” has the meaning given to it in clause 5.4 of these terms and conditions;

“**Supplier**” means the company that supplied the Equipment to the Owner;

“**Total Loss**” means due to the Hirer’s default the Equipment is, in the Owner’s reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated;

“**VAT**” means value added tax or any equivalent tax chargeable in the UK; and

“**Warranty Period**” means the warranty period set out in the Agreement Details.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular and a reference to one gender includes a reference to the other genders.
- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 A reference to **writing** or **written** excludes fax but not email.
- 1.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that legislation or legislative provisions.
- 1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2 Equipment hire

- 2.1 The Owner hires the Equipment to the Hirer for use at the Equipment Location subject to these terms and conditions.
- 2.2 The Owner shall not, other than in the exercise of its rights under the Equipment Hire Agreement or applicable law, interfere with the Hirer’s quiet possession of the Equipment.

3 Hire Period

- 3.1 The Hire Period shall commence:
 - 3.1.1 if the Equipment is Delivered to and installed at the Equipment Location on the same day, on the date that the Equipment is Delivered to and installed at the Equipment Location; or
 - 3.1.2 if the Equipment is not Delivered to and installed at the Equipment Location on the same day:
 - (i) if the Owner Delivers the Equipment to the Equipment Location in advance of the date agreed with the Hirer in writing for Delivery and installation or if installation is delayed by the Owner, on the date that the Equipment is installed at the Equipment Location; or

- (ii) if installation is delayed by the Hirer, on the date that the Equipment is Delivered to the Equipment Location,

such date being the “**Commencement Date**”. Risk shall transfer in accordance with clause 5.4 of these terms and conditions.

- 3.2 The Hire Period shall continue, unless terminated earlier in accordance with clause 11, until the expiry of three months’ notice of termination to be given in writing by either party to the other, such notice to expire not earlier than the end of the Minimum Period or thereafter at each anniversary thereof.

4 Delivery and installation

- 4.1 In consideration of the payment by the Hirer of the Delivery and Installation Charge, the Owner shall:

- 4.1.1 Deliver the Equipment to the Equipment Location; and

- 4.1.2 install the Equipment at the Equipment Location.

- 4.2 The Owner may increase the Delivery and Installation Charge for Delivery to an Equipment Location that is not local to the Owner’s site at its reasonable discretion.

- 4.3 The Owner shall use all reasonable endeavours to effect Delivery by the date for Delivery agreed with the Hirer in writing. Risk shall transfer in accordance with clause 5.4 of these terms and conditions.

- 4.4 The Owner shall perform the Delivery and installation of the Equipment with reasonable care and skill in accordance with the generally recognised standards and practices in its industry.

- 4.5 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Owner, the Hirer’s duly authorised representative shall sign a receipt confirming such acceptance.

- 4.6 The Hirer shall provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously. This shall include writing to authorities if required and disclosing the conditions relevant for Delivery and installation, all required construction work at the Equipment Location (such as openings, brickwork, concrete bases), allocating a suitable place at the Equipment Location for the interim storage of any parts to be Delivered by the Owner, providing a level base for the Equipment, providing power, light, service water and compressed air for the assembly and commissioning period, providing power with sufficient output close to where the Equipment will be installed, connecting the main electrical cable in the control cabinet to the terminals provided for it, providing all safety-related devices for fire-fighting, safe access, working at height and other accident prevention measures.

- 4.7 If the Hirer fails to accept Delivery of the Equipment when the Owner tenders Delivery, then, except where such failure is caused by the Owner’s failure to comply with its obligations under these terms and conditions:

- 4.7.1 the Equipment shall be deemed to have been Delivered at 9.00 am on the date the Owner tendered Delivery; and

- 4.7.2 the Owner shall store the Equipment until the Hirer takes possession of the Equipment, and charge the Hirer for all related costs and expenses (including insurance).

5 Title and risk

- 5.1 The Equipment shall at all times remain the property of the Owner, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Equipment Hire Agreement).
- 5.2 Title in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Owner immediately on installation.
- 5.3 The Owner may assign or sell its rights under the Equipment Hire Agreement and / or its rights in and to the Equipment.
- 5.4 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Hirer ("**Risk Period**") until such time as the Owner retakes possession of the Equipment.

6 Insurance

- 6.1 During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:
- 6.1.1 insurance of the Equipment to a value not less than the Insurance Value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Owner may from time to time nominate in writing;
- 6.1.2 insurance for such amounts as a prudent owner or operator of the Equipment in all the circumstance would insure for, or such amount as the Owner may from time to time reasonably require, and in any event for not less than £1,000,000, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment, including but not limited to death, personal injury, damage to or loss of property and any claim for loss arising directly or indirectly out of the use possession or operation of the equipment; and
- 6.1.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Owner may from time to time consider reasonably necessary and advise to the Hirer in writing.
- 6.2 The Hirer shall pay punctually all premiums due for the insurances in clause 6.1 and, on request, supply the Owner with copies of the insurance policy certificates and details of the cover provided and proof of premium payment to confirm the insurance arrangements.
- 6.3 If the Hirer fails to effect or maintain any of the insurances required under these terms and conditions, the Owner shall be entitled (though it is not under any obligation to do so) 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 the Hirer.
- 6.4 The Hirer shall give immediate written notice to the Owner in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.

7 Hirer's Covenants

- 7.1 The Hirer (and if the Hirer comprises more than one person each such person jointly and severally) shall during the term of the Equipment Hire Agreement:
- 7.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, used only by the Hirer and operated

- in a proper manner by trained competent staff in accordance with any operating instructions;
- 7.1.2 unless the Owner otherwise agrees in writing, keep the Equipment only at the Equipment Location;
- 7.1.3 make no alteration to the Equipment;
- 7.1.4 at its own expense maintain and service the Equipment and keep it at all times in good and substantial repair in order to keep it in as good an operating condition as it was on Delivery (fair wear and tear only excepted), including replacement of worn, damaged and lost parts;
- 7.1.5 notify the Owner of, and be responsible for making good, any damage or loss to the Equipment which may occur for any reason whatsoever;
- 7.1.6 so as to protect any warranty provided by the manufacturer of the Equipment, enter into a maintenance agreement within 3 months of the Commencement Date with the Owner or another servicing company approved by the Owner in writing and, should the Hirer fail to secure such maintenance agreement, the Owner may carry out the maintenance itself or enter into its own maintenance agreement in respect of the Equipment, and the Hirer shall, upon receipt of an invoice from the Owner, pay the Owner an annual sum equivalent to 20% of the Hire Payments for that year in respect of such maintenance or maintenance agreement;
- 7.1.7 maintain operating and maintenance records of the Equipment and make copies of such records available to the Owner upon request, together with such additional information as the Owner may reasonably require;
- 7.1.8 permit the Owner or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose enter the Equipment Location or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 7.1.9 not, without the prior written consent of the Owner, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 7.1.10 not without the prior written consent of the Owner, 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, but if the Equipment does become affixed to any land or building then:
- (i) the Equipment must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Owner against all losses, costs or expenses incurred as a result of such affixation or removal; and
 - (ii) the Hirer must take all necessary steps to ensure that the Owner may enter such land or building and recover the Equipment both during the term of the Equipment Hire Agreement and for a reasonable period thereafter;
- 7.1.11 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, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Owner on demand

against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation;

7.1.12 ensure that at all times the Equipment remains identifiable as the Owner's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

7.1.13 not use the Equipment for any unlawful purpose; and

7.1.14 not do or permit to be done anything which could invalidate the insurances referred to in clause 6.1.

8 Warranties

8.1 The Hirer declares and warrants (in knowledge that the Owner will rely upon such declarations and warranties if the Hirer signs the Equipment Hire Agreement) that:

8.1.1 the Equipment is for use in business only;

8.1.2 the Equipment was selected by the Hirer using its own skill and judgment and the Owner has not inspected the Equipment;

8.1.3 the Hirer is aware that the Owner relies upon the Hirer to examine and inspect the Equipment immediately after Delivery and to ensure that it is of merchantable quality and fit for the Hirer's purpose; and

8.1.4 the Hirer will inform the Owner in writing within 7 days of Delivery if the Hirer is not entirely satisfied with the Equipment.

8.2 Subject to clause 8.3, the Owner warrants that, during the Warranty Period, the Equipment shall substantially conform to its specification (as made available by the Owner), be of satisfactory quality and be fit for the purpose for which it is designed. The Owner shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within the Warranty Period, provided that:

8.2.1 throughout the Warranty Period the Equipment has been serviced according to the maintenance schedule by the Owner or another servicing company approved by the Owner in writing and has not regularly run for more than 40 hours per week;

8.2.2 the Hirer notifies the Owner of any defect in writing within 5 Business Days of the Hirer becoming aware of the defect;

8.2.3 the Owner is permitted to make a full examination of the alleged defect;

8.2.4 the defect was not caused, in whole or in part, by misuse, use for a purpose different to that for which it was designed, improper operation, neglect, mishandling or unauthorised alteration or manipulation;

8.2.5 the defect was not caused, in whole or in part, by any information, design or any other assistance supplied by the Hirer or on its behalf;

8.2.6 the Hirer has not attempted to rectify the defect itself or allowed a third party to attempt to rectify the defect; and

8.2.7 the defect is directly attributable to defective material, workmanship or design.

8.3 The warranty given by the Owner in clause 8.2 does not include:

8.3.1 wear parts, including but not limited to batteries, knives, seals, wear pads;

- 8.3.2 rectification of defects outside of Business Hours on Business Days; or
 - 8.3.3 the urgent air freight shipping of parts.
- 8.4 The Owner is not obligated to supply replacement equipment during any period when the Equipment or part of it is unusable.

9 Payment

- 9.1 The Hirer (and if the Hirer comprises more than one person each such person jointly and severally) shall pay the Hire Payments to the Owner in accordance with the Payment Schedule. The Hire Payments shall be paid in advance in pounds sterling in cleared funds to the bank account nominated in writing by the Owner immediately on receipt of an invoice from the Owner or, at the discretion of the Owner, by direct debit.
- 9.2 The Owner may increase the Hire Payments in line with the percentage increase in the Consumer Prices Index during the previous year from time to time but not more than once per year by giving 30 day's prior notice in writing to the Hirer.
- 9.3 The Hirer shall be liable for Hire Payments throughout the Hire Period notwithstanding any period during which the Equipment is not working, under repair or otherwise unavailable to the Hirer.
- 9.4 The Hirer shall pay the Delivery and Installation Charge and Decommissioning and Removal Charge to the Owner in pounds sterling in cleared funds to the bank account nominated in writing by the Owner within 5 Business Days of receipt of an invoice for such amounts.
- 9.5 The Hirer may increase the Decommissioning and Removal Charge to reflect the percentage increase in the Consumer Prices Index since the Commencement Date.
- 9.6 All amounts payable under the Equipment Hire Agreements are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by applicable law.
- 9.7 All amounts due shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.8 In respect of all amounts payable under the Equipment Hire Agreement time shall be of the essence.
- 9.9 If the Hirer fails to make a payment due to the Owner by the due date, then, without limiting the Owner's remedies under clause 11, the Hirer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.9 will accrue each day at the rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time.

10 Tax and accounting treatment

- 10.1 The parties acknowledge that title to the Equipment shall remain with the Owner for the duration of the Hire Period.
- 10.2 The Owner shall be entitled to claim all applicable capital allowances, including first-year allowances, annual investment allowance, and writing down allowances, in respect of the Equipment under the Capital Allowances Act 2001 and any successor legislation.
- 10.3 The Owner retains all rights regarding tax filings, elections, and claims necessary to preserve and optimise capital allowances in respect of the Equipment.
- 10.4 The Hirer shall not be entitled to claim any capital allowances on the Equipment.

10.5 The Hirer shall promptly provide such information or assistance as the Owner reasonably requires to substantiate any claim for capital allowances, without conferring any entitlement to tax relief on the Hirer.

10.6 This Equipment Hire Agreement shall be conducted on a commercial basis, and the Owner retains discretion to treat any adjustments to the Hire Payments to reflect tax law changes, including anti-avoidance measures, without transfer of capital allowance benefit to the Hirer.

11 Termination

11.1 Without affecting any other right or remedy available to it, including but not limited to rights to arrears of Hire Payments or other sums due for damages for breach of contract, the Owner may terminate the Equipment Hire Agreement with immediate effect by giving written notice to the Hirer if:

11.1.1 the Hirer fails to pay any amount due under the Equipment Hire Agreement on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment;

11.1.2 the Hirer commits a material breach of any other term of the Equipment Hire Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;

11.1.3 the Hirer repeatedly breaches any of the terms of the Equipment Hire Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Equipment Hire Agreement;

11.1.4 the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

11.1.5 the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;

11.1.6 the Hirer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

11.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Hirer with one or more other companies or the solvent reconstruction of the Hirer;

11.1.8 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Hirer (being a company);

11.1.9 the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 11.1.10 a person becomes entitled to appoint a receiver over all or any of the assets of the Hirer or a receiver is appointed over all or any of the assets of the Hirer;
 - 11.1.11 a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;
 - 11.1.12 the Hirer (being an individual or where there is more than one Hirer any of them) is the subject of an interim order or has a statutory demand made upon him under the Insolvency Act 1986 (or any statutory re-enactment thereof) or has a bankruptcy petition presented in respect of him;
 - 11.1.13 the Equipment Location or any other premises of the Hirer or any other premises where the Equipment is located or any goods on such premises are subject to distraint or execution;
 - 11.1.14 any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.4 to clause 11.1.12 (inclusive);
 - 11.1.15 the Hirer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Equipment Hire Agreement is in jeopardy; or
 - 11.1.16 the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 11.1.17 there is a change of control of the Hirer (within the meaning of section 1124 of the Corporation Tax Act 2010);
 - 11.1.18 the Hirer shall do or omit to do anything which in the opinion of the Owner may prejudice the Owner's rights of ownership in the Equipment: or
 - 11.1.19 the Hirer shall abandon the Equipment.
- 11.2 The Equipment Hire Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

12 Consequences of termination or expiry

- 12.1 On expiry or termination of the Equipment Hire Agreement, however caused:
- 12.1.1 the Owner's consent to the Hirer's possession of the Equipment shall terminate;
 - 12.1.2 the Hirer agrees to pay the Owner's reasonable costs of inspecting the Equipment both prior to leaving the Equipment Location or any other premises where the Equipment is located and after delivery to the Owner's nominated site;
 - 12.1.3 in consideration of the Decommissioning and Removal Charge paid by the Hirer to the Owner, the Owner shall decommission the Equipment and collect the Equipment from the Equipment Location;
 - 12.1.4 the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Equipment Location or any premises at which the Equipment is located;
 - 12.1.5 the Hirer shall ensure the safe and proper storage of the Equipment until it has been collected by the Owner;

- 12.1.6 the Hirer shall maintain insurance for the Risk Period in accordance with clause 6.1;
- 12.1.7 without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand:
- (i) all Hire Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 9.9; and
 - (ii) any costs and expenses incurred by the Owner in recovering the Equipment or in collecting any sums due under the Equipment Hire Agreement (including any storage, insurance, repair, transport, legal and remarketing costs); and
- 12.1.8 any provision of the Equipment Hire Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Equipment Hire Agreement shall remain in full force and effect.
- 12.2 On termination of the Equipment Hire Agreement pursuant to clause 11.1 or following any repudiatory breach of the Equipment Hire Agreement by the Hirer which is accepted by the Owner, without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand a sum equal to the whole of the Hire Payments that would (but for the termination) have been payable if the Equipment Hire Agreement had continued from the date of termination to the end of the Minimum Period, less a discount for accelerated payment at the rate of 5% per year.
- 12.3 On termination of the Equipment Hire Agreement pursuant to clause 11.2, without prejudice to any other rights or remedies of the Owner, the Hirer shall pay to the Owner on demand the greater of the sum in clause 12.2 and the replacement cost of the Equipment at the current market rates. The Hirer shall also continue to pay the Hire Payments until the Owner has replaced the Equipment, using reasonable commercial endeavours to do so as quickly as possible, unless the Owner elects not to replace the Equipment.
- 12.4 The sums payable pursuant to clause 12.2 and 12.3 shall be agreed compensation for the Owner's loss and shall be payable in addition to the sums payable pursuant to clause 12.1.7.
- 12.5 Termination or expiry of the Equipment Hire Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Equipment Hire Agreement which existed at or before the date of termination or expiry.

13 Liability

- 13.1 The following definitions apply in this clause 13:
- 13.1.1 **liability:** every kind of liability arising under or in connection with the Equipment Hire Agreement including liability in contract, tort (including negligence) or otherwise; and
 - 13.1.2 **default:** any act or omission resulting in the Owner incurring liability to the Hirer.
- 13.2 Nothing in these terms and conditions limits or excludes:
- 13.2.1 liability for deliberate or wilful default;
 - 13.2.2 liability for death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;
 - 13.2.3 liability for fraud or fraudulent misrepresentation;

- 13.2.4 liability for breach of the terms implied by section 7 of the Supply of Goods and Services Act or section 8 of the Supply of Goods (Implied Terms) Act 1973; or
- 13.2.5 any liability that cannot legally be limited.
- 13.3 Subject to clause 13.2, the Owner's total liability shall not exceed the lower of £100,000 and 100% of all sums paid or payable by the Hirer under the Equipment Hire Agreement.
- 13.4 Subject to clause 13.2, the Owner shall have no liability for:
 - 13.4.1 loss of profits (including loss of anticipated savings);
 - 13.4.2 loss of sales or business;
 - 13.4.3 loss of agreements or contracts;
 - 13.4.4 loss of use or corruption of software, data or information;
 - 13.4.5 loss of or damage to goodwill; or
 - 13.4.6 indirect or consequential loss.
- 13.5 Without prejudice to clause 13.4, the Owner shall not be liable to the Hirer:
 - 13.5.1 in contract or in tort for loss, injury or damage arising by reason of any defects in the Equipment whether such defects be latent or apparent on examination, other than liability for death or personal injury arising from the negligence of the Owner;
 - 13.5.2 for any statement, term, condition, warranty or representation made by any Supplier, dealer, agent, broker or other person through whom the transaction may have been introduced, negotiated or conducted and persons other than those in the employment of the Owner have no authority express or implied to act as agent for the Owner or make any representations on the Owner's behalf;
 - 13.5.3 for any loss suffered by the Hirer as the result of the Equipment or any of it being unusable; or
 - 13.5.4 for any loss or damage incurred or sustained by the Hirer as a result of the Owner terminating the Equipment Hire Agreement or retaking possession of the Equipment.
- 13.6 Subject to clause 13.2, all terms, conditions and warranties (whether express or implied by statute or otherwise) as to the description, quality, performance, merchantability and fitness for purpose of the Equipment and any other goods or services provided under the Equipment Hire Agreement are, to the fullest extent permitted by law, excluded from the Equipment Hire Agreement.

14 Indemnities

- 14.1 The Hirer acknowledges that the Owner shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer shall indemnify the Owner in full 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Owner arising out of, or in connection with any failure by the Hirer to comply with its obligations in clause 7.

- 14.2 The Hirer shall indemnify the Owner in full 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Owner arising directly or indirectly from the Hirer's failure or alleged failure to carry out its duties under this Equipment Hire Agreement or by reason of any loss, injury or damage suffered by any person (including, without limitation, the Owner) arising from the Hirer's use of the Equipment.

15 Confidentiality

- 15.1 Each party undertakes that it shall not, at any time during the term of the Equipment Hire Agreement and for a period of two years after termination or expiry of the Equipment Hire Agreement, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information:
- 15.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Equipment Hire Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 No party may use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Equipment Hire Agreement.

16 Dispute resolution

- 16.1 If any dispute arises under or in relation to the Equipment Hire Agreement (except disputes relating to payment), the parties shall first meet to seek to resolve the dispute. If they are unable to resolve it within 14 days of the dispute arising, they shall refer the dispute to a mediator either agreed between the parties or appointed by the Centre for Effective Dispute Resolution, provided that this clause 16.1 shall not preclude either party from seeking any immediate remedy from the courts to protect any rights reasonably considered to have been infringed.

17 Force majeure

- 17.1 The Owner shall not be liable for any delay of failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 14 days or more, the Owner may terminate the Equipment Hire Agreement by giving not less than 14 days' written notice to the Hirer.

18 Entire agreement

- 18.1 The Equipment Hire Agreement constitutes the entire agreement between the parties.
- 18.2 Each party acknowledges that in entering into the Equipment Hire Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Equipment Hire Agreement. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Equipment Hire Agreement.

19 Assignment and other dealings

- 19.1 The Owner may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Equipment Hire Agreement.
- 19.2 The Hirer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Equipment Hire Agreement.

20 Variation

- 20.1 Unless otherwise set out in these terms and conditions, no variation of the Equipment Hire Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21 Counterparts

- 21.1 The Equipment Hire Agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.
- 21.2 Transmission of the executed signature page of a counterpart of the Equipment Hire Agreement by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed "wet-ink" counterpart of the Equipment Hire Agreement.
- 21.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

22 Third party rights

- 22.1 Subject to clause 22.2, unless it expressly states otherwise, the Equipment Hire Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Equipment Hire Agreement.
- 22.2 Other companies in the Owner's group of companies shall have the right to enforce this Equipment Hire Agreement as if they were the Owner.

23 Notices

- 23.1 Any notice given to a party under or in connection with the Equipment Hire Agreement shall be in writing and shall be:
- 23.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 23.1.2 sent by email to the email addresses provided by the party to be served.
- 23.2 Any notice shall be deemed to have been received:
- 23.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 23.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - 23.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

23.3 This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24 Waiver

24.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

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

25 Rights and remedies

25.1 Except as expressly provided in the Equipment Hire Agreement, the rights and remedies provided under the Equipment Hire Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

26 Severance

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

26.2 If any provision or part-provision of the Equipment Hire Agreement is deemed deleted under clause 26.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

27 Governing law and jurisdiction

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

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