

## 1. SCOPE

- 1.1 This page sets out the general terms and conditions (**Terms**) which apply to all Equipment which the Lessor may rent or lease to the Lessee, as may be more specifically set out in any Order Form in respect of the relevant Equipment.
- 1.2 Each agreement between the parties is made up of (i) these Terms; (ii) the Order Form issued by the Lessor to the Lessee in connection with the relevant Equipment; and (iii) any other written document either issued by the Lessor (and expressly referring to and incorporating itself into the Agreement) or any amendments or supplements to the Agreement signed and agreed in writing between the parties. Together the above documents shall constitute and be known as the **agreement**, and apply to the contract between the Lessee and the Lessor to the exclusion of any other terms that the Lessee may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 When construing the meaning of the agreement, the documents listed in clause 1.2 shall, unless otherwise stated in any Order Form, be interpreted in an order of priority in the event of any inconsistency or conflict, with documents appearing earlier in the list taking priority over documents appearing later in the list, unless otherwise expressly stated in those documents.
- 1.4 The Lessee should keep, print or save a copy of these Terms for its records.
- 1.5 Any quotation given by the Lessor shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.
- 1.6 Any order placed by the Lessee shall only be deemed to be accepted upon the Lessee's at which point and on which date the agreement shall come into existence.
- 1.7 The Lessor may amend these Terms from time to time at its sole discretion. Every time the Lessee signs or agrees a new Order Form for the rental of specific Equipment it should check these Terms to ensure that it understands the terms which will apply to the agreement at that time. This version 1 of these Terms was most recently updated in March 2018.

## 2. INTERPRETATION

- 2.1 The following definitions and rules of interpretation apply in the agreement.
- Business Day** means a day other than a Saturday, Sunday or public holiday in Northern Ireland when banks in Belfast are open for business;
- Commencement Date** means the date that the Lessee takes responsibility of the Equipment, as specified on the Order Form;
- Dangerous Goods** means verminous, infested, infected, contaminated or condemned goods or those goods in the list of dangerous goods as defined by the European Agreement Concerning the International Carriage of Dangerous Goods by Road) or any other goods which prevents any of the Vehicles subsequently carrying any goods;
- Delivery** means the transfer of physical possession of the Equipment to the Lessee;
- Deposit** means the deposit amount, which is set out in the Order Form;
- Equipment** means any vehicles, trailers or other equipment that may be provided by the Lessor to the Lessee, as more particularly set out in the relevant Order Form, and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;
- Lessee** means the legal person with whom the Lessor has entered into the agreement, on whose behalf the Order Form has been signed (if applicable);
- Lessor** means Cormac Leonard Commercials Limited, a company incorporated and registered in Northern Ireland with company number NI025839 whose registered office is at Loughgall Road, Armagh, BT61 7NN, trading as AT&T Rentals;
- Order Form** means the rental agreement order form signed between the Lessor and Lessee in respect of any specific order for the rental of Equipment made pursuant to these Terms;
- Payment Schedule** means the payment schedule agreed in the Order Form which sets out the sums payable under the agreement and the means by which such sums are to be paid;
- Rental Payments** means the payments made by or on behalf of Lessee for hire of the Equipment;
- Rental Period** means the period of hire as set out in clause 4;
- Return Conditions** means the return conditions set out in the Order Form or otherwise specified by the Lessor from time to

time, but including a requirement that the Equipment be clean, tidy and in good working order and condition subject to fair wear and tear over the Rental Period and any defects or issues noted on the checklist attached to the Order Form and signed off by both parties at the time of Delivery of the Equipment to the Lessee;

**Servicing** means installation, calibration, inspection, servicing, maintenance, repairs, plating, or testing of the Vehicle or its components and the terms, "Service" and "Serviced" shall be construed accordingly;

**Service Interval** means the agreed intervals in which the Vehicle will be Serviced by the Lessor (unless responsibility is given to the Lessee under the Order Form);

**Terms** means these general terms and conditions in respect of the rental of Equipment by the Lessor;

**Total Loss** means the Equipment is, in the Lessor's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated;

**VAT** means value added tax chargeable under the Value Added Tax Act 1994; and

**Vehicles** means any Equipment which is a road vehicle or trailer.

- 2.2 Clause headings shall not affect the interpretation of the agreement.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 2.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to **writing** or **written** does not include fax or e-mail.
- 2.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.11 A reference to **the agreement** or to any other agreement or document referred to in the agreement is a reference to the agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of the agreement) from time to time.
- 2.12 References to clauses are to the clauses of these Terms.
- 2.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 3. EQUIPMENT HIRE

- 3.1 The Lessor shall hire the Equipment to the Lessee subject to the terms and conditions of the agreement.
- 3.2 The Lessor shall not, other than in the exercise of its rights under the agreement or applicable law, interfere with the Lessee's quiet possession of the Equipment.
- 3.3 The Lessor shall (a) obtain and pay for Vehicle Excise Duty and any statutorily required test certificates for the Vehicles during the Rental Period; and (b) where applicable and where it elects to do so, fit and maintain on each of the Vehicles a distance recorder which shall form the basis upon which any mileage charge is calculated.

## 4. RENTAL PERIOD

The Rental Period starts on the Commencement Date and shall continue indefinitely, subject to each party's adherence to the terms of the agreement, until the agreement is terminated in accordance with its terms (or until the expiry of any fixed term specified in the Order Form).

## 5. RENTAL PAYMENTS, DEPOSIT AND CREDIT OR CHARGE CARD - THE LESSEE'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 5.1 The Lessee shall pay the Rental Payments to the Lessor in accordance with the Payment Schedule. The Rental Payments shall be paid in the currency denominated in the Order Form.

- 5.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.
- 5.3 All amounts due under the agreement 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).
- 5.4 If the Lessee fails to make any payment due to the Lessor under the agreement by the due date for payment, then, without limiting the Lessor's remedies under clause 11, the Lessee shall pay interest on the overdue amount at the rate of 12% per annum above HSBC Bank plc's base rate from time to time, compounded monthly. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Lessee shall pay the interest together with the overdue amount.
- 5.5 If demanded the Lessee shall, on the date of signature of the Order Form, or such other date as is agreed in the Order Form, pay any Deposit set out in the relevant Order Form to the Lessor, or provide details of a credit or charge card to the Lessor. The Deposit may take several forms depending on the nature and value of the Equipment in question: (a) a prepayment payable before the commencement of the Rental Period consisting of a reservation deposit which will be forfeited in the event of a cancellation of the reservation before the Rental Period commences, (b) an estimated rental computed on the basis of the time charge and mileage charge relevant to the reserved dates and the estimated mileage entered; and/or (c) a deposit against default by the Lessee of payment of any Rental Payments or any loss or damage caused to the Equipment. If the Lessee fails to make any Rental Payments in accordance with the Payment Schedule, or causes any loss or damage to the Equipment (in whole or in part), the Lessor shall be entitled to apply the Deposit or charge the credit card or charge card against such default, loss or damage, with immediate effect. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Rental Period or the termination of the agreement (save where terminated due to default or repudiation by the Lessee pursuant to clause 11.1, in which case the Deposit shall be forfeited).
- 5.6 Any Deposit paid or amounts deducted from the Lessee's credit or charge card may be set off against any final assessment of Rental Payments due upon termination or expiry of the agreement.
- 6. DELIVERY AND ISSUES CHECKLIST – THE LESSEE'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 6.1 Unless otherwise agreed in writing in the relevant Order Form (in which case a separate Delivery charge to be specified in the relevant Order Form shall be payable), Delivery of the Equipment shall take place ex works (according to Incoterms) from the location of Lessor's premises from time to time. The Lessor shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer between the parties in accordance with clause 7 of the agreement.
- 6.2 The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Lessee 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. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.
- 6.3 Any defects, damage or mechanical malfunction must be noted to the Lessor in writing by the Lessee when taking Delivery on the Equipment checklist provided by the Lessor, and such checklist provided to the Lessor and signed off by both parties. Any defects, damage or malfunctions arising during the Rental Period, save to the extent that the Lessor (acting reasonably) determines that these arose due to fair wear and tear, which were not noted on such checklist at Delivery and signed off by both parties, shall be deemed to have been caused by the Lessee and the Lessee shall be liable to compensate the Lessor on demand for same (any Deposit or credit or charge card may be charged or deducted to account for same).
- 7. TITLE, RISK AND INSURANCE**
- 7.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee 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 agreement).
- 7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee (**Risk Period**) until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain the following insurances with a reputable insurance company approved by the Lessor in advance: (a) comprehensive insurance for 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 the Lessor may from time to time nominate in writing, including, in the case of any Vehicles, cover against passenger liability and any liability required to be covered as a matter of relevant law (including under the relevant road traffic acts and orders applicable within the jurisdictions within which the Vehicles are to be driven); (b) any other insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Lessor 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 (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Lessor may from time to time consider reasonably necessary and advise to the Lessee.
- 7.3 All insurance policies procured by the Lessee shall be endorsed to provide the Lessor with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Lessor's request name the Lessor on the policies as a loss payee in relation to any claim relating to the Equipment. The Lessee shall be responsible for paying any deductibles due on any claims under such insurance policies. Such policies shall also indemnify the Lessor against all loss in connection with the Equipment including any damages payable by the Lessor in respect of the Equipment or the use of the Equipment.
- 7.4 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's possession or use of the Equipment.
- 7.5 If the Lessee fails to effect or maintain any of the insurances required under the agreement, the Lessor 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 the Lessee.
- 7.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm the insurance arrangements.
- 8. LESSEE'S RESPONSIBILITIES**
- 8.1 The Lessee shall during the term of the agreement: (a) ensure that the Equipment is kept and operated in a suitable manner, which shall as a minimum meet the requirements set out in the relevant manufacturer's manuals or specifications, 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 provided by either the Lessor or the Equipment manufacturer; (b) take such steps (including compliance with all safety and usage instructions provided by the Lessor) 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; (c) provide the Equipment on request for the routine servicing agreed and undertaken by the Lessor, and notify the Lessor of any issues with the Equipment rendering it in any condition other than good working order (fair wear and tear excepted); (d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Lessor 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 the Lessor immediately upon installation; (e) keep the Lessor fully informed of all material matters relating to the Equipment; (f) at all times keep the Equipment in the possession or control of the Lessee and inform the Lessor of its location upon request; (g) permit the Lessor or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection; (h) maintain the service records for the Equipment and make copies of such records readily available to the Lessor, together with such additional information as the Lessor may reasonably require; (i) not, without the prior written consent of the Lessor, 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; (j) not without the prior written consent of the Lessor, 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 the Lessee shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal; (k) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter such land or building and recover the Equipment both during the term of the 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 favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment; (l) 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 Lessee shall notify the Lessor immediately (and notify the third party confiscating or otherwise seizing the Equipment that it is owned by the Lessor) and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation, and will continue to pay the Rental Payments for the Vehicle until it is returned to the Lessor, or at the Lessor's option, pay the Lessor the Total Loss value of the Equipment; (m) not use the Equipment for any unlawful purpose; (n) ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; (o) deliver up the Equipment at the end of the Rental Period or on earlier termination of the agreement at such address and in such condition as the Lessor requires, or if necessary allow the Lessor or its representatives access to any premises where the Equipment is located for the purpose of removing the Equipment; and (p) not do or permit to be done anything which could invalidate the insurances referred to in clause 7.

**8.2** The Lessee acknowledges that the Lessor 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 Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor 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 the Lessee to comply with the terms of the agreement.

**8.3** In addition to its obligations set out above, in relation to any Vehicles rented by the Lessee shall during the term of the agreement, the Lessee shall additionally: (a) ensure that that all lubricants, fluids and coolants are kept to the manufacturer's specified levels and that all tyre pressures are maintained in accordance with the manufacturer's recommendations; (b)

ensure that the Vehicle is returned at the direction of the Lessor for Servicing within three days of the Lessor requesting its return; (c) not cause, permit or undertake neither any repairs to the Vehicle without the prior express permission in Writing of the Lessor nor, if any repairs are required, to use the Vehicle until it has been properly and fully repaired; (d) not cause, permit or suffer the removal or tampering with any plates, marking, paintwork or bodywork or sign writing upon the Vehicle; (e) ensure that that the Vehicle is driven only by a person nominated by the Lessee who must (i) be at least 21 years of age; (ii) be the holder of a current licence permitting the driver to drive the Vehicle in the United Kingdom or operate any ancillary equipment; (iii) not except with the Lessor's prior written approval have been convicted of any monitoring offence or involved in any accident within 3 years prior to the start of the Rental Period; (iv) not be a person using a false name or address; (v) not be a person who is unfit to drive as a result of any drug or suffer from any physical or mental incapacity; and (vi) at the Lessor's request undertake a Vehicle driving test to the Lessor's required standard; (f) ensure that no tyre of the Vehicle (i) goes below the "Required Tread Depth" set out in the Order Form, (ii) has a cut longer than 25mm (or 10% of the section of the tyre, whichever is greater) or deep enough to reach the ply or cords, (iii) is used with any lump, bluge or tear, or has any of the cords exposed, (iv) has grooves of less than least 1mm around the whole circumference and across three quarters of the breadth of the tread (if the original tread pattern was only across three-quarters of the tread, all grooves must be at least 1mm deep); or (v) the tyre is otherwise not maintained in such condition as to be fit for the use to which the Vehicle is being put or has a defect which might in any way cause damage to the surface of the road or damage to persons on or in the Vehicle or to other persons using the road (or otherwise not in compliance with legal obligations), and in the event that any of these obligations are breached the Lessor may at any time apply a charge at standard rate; (g) provide proper and secure parking for the Vehicles at all times and ensure that when the Vehicle is left unattended that the keys are removed, all doors, windows and other openings are securely locked and that any security devices activated; (h) wash and clean the Vehicle at least once every 30 (thirty) days during the term of the Agreement; (i) be responsible for all costs incidental to the use of the Vehicle including bridge, ferry, congestion charges, fixed penalty fines, parking fines or road tolls or similar charges and, if applicable, reimburse the amount of any such charges to the Lessor that may be paid by the Lessor and further pay to the Lessor such reasonable administration charge as is set out in the Lessor's standard tariffs for such charges set out on its website which are applicable at the time the Lessor requests reimbursement; (j) not load or cause the Vehicle to be loaded with Dangerous Goods without the written previous consent of the Lessor; (k) not to load or cause the Vehicle to be loaded in contravention or in excess of the maximum carrying capacity for which the Vehicle was designed, or as imposed by law; (l) not take or allow the Vehicle to be taken out of the United Kingdom except with the prior written consent of and prior payment of the relevant administration and other charges to the Lessor; (m) not use, permit or cause the Vehicle to be used for any illegal purpose (including, without limitation, in violation of the Immigration and Asylum Act 1999); (n) notify the Lessor as soon as possible of any accident, breakdown, damage, defect, mechanical malfunction or loss to the Vehicle giving full details. Notification to the Lessor of any major damage should be in writing. The Lessor reserves the right to charge for costs incurred should the Lessee contravene this clause (the Lessee will continue to pay the Rental Payment whilst the Vehicle is undergoing such repairs and/or awaiting such replacement parts); (p) keep the Lessor informed of any prosecution, inquest, accident or enquiry relating to the Vehicle or its driver and promptly provide a copy to the Lessor of all associated communications relating to the Vehicle or the agreement; (q) not make or give any admission of liability or indemnity in respect of any accident, prosecution, inquest or incident as shall entitle the insurers of the Vehicle to repudiate the claim wholly or partly; (r) promptly give all such information and assistance as may be required by the insurers or the Lessor as a result of any such prosecution, inquest, accident or enquiry; (s) hold a valid operator's licence for the Vehicle if the Vehicle is over 3.5 tonnes and is to be used for commercial purposes or such a licence is otherwise required; (t) if the Vehicle is a refrigerated Vehicle

ensure that the annual engine hour use does not exceed 2500 hours and in the event that this limit is exceeded the Lessor may at any time apply a charge at standard rate determined by the Lessor; and (u) carry out the daily safety checks on the Vehicle as follows: maintain tyre pressures, check condition of tyres, and repair any punctures, tighten wheel nuts, check correct operation of lights, check correct operation of brakes, check overall condition of the Vehicle for safety and compliance with all legal requirements and the manufacturer's manuals and specifications.

## **9. WARRANTY**

**9.1** The Lessor warrants that the Equipment shall substantially conform to the relevant manufacturer's specification (as made available by the Lessor), be of satisfactory quality and reasonably fit for its intended purpose for the duration of the Rental Period (fair wear and tear accepted). The Lessee's only remedy for breach of the foregoing warranty shall be for the Lessor to use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period (subject to the caveats above), provided that:

- (a) the Lessee notifies the Lessor of any defect in writing within ten (10) Business Days of the defect occurring;
- (b) the Lessor is permitted to make a full examination of the alleged defect and the Equipment;
- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Lessor's authorised personnel;
- (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Lessee or on its behalf; and
- (e) the defect is directly attributable to defective material, workmanship or design.

**9.2** If the Lessor fails to remedy any material defect in the Equipment in accordance with clause 9.1, the Lessor shall, at the Lessee's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the Rental Period and, if relevant, return any Deposit (or any part of it).

## **10. LIABILITY**

**10.1** Without prejudice to clause 10.2, the Lessor's maximum aggregate liability for breach of the agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the total amounts actually paid by the Lessee in respect of the Equipment the subject of the breach over the period of 12 months immediately preceding the date the relevant claim arose.

**10.2** Nothing in the agreement shall exclude or in any way limit:

- (a) either party's liability for death or personal injury caused by its own negligence;
- (b) either party's liability for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded by law.

**10.3** The agreement sets forth the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in the agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the agreement, whether by statute, common law or otherwise, is expressly excluded.

**10.4** Without prejudice to clause 10.2, neither party shall be liable under the agreement for any loss of profit, loss of revenue, loss of business or business opportunity, or any other indirect or consequential loss or damage (including exemplary fines or damages) in each case, however caused, even if foreseeable.

## **11. TERMINATION**

**11.1** Without affecting any other right or remedy available to it, the Lessor may terminate the agreement with immediate effect by giving notice (by email, in writing or telephone) to the Lessee if:

- (a) the Lessee fails to pay any amount due under the agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

- (b) the Lessee commits a material breach of any other term of the agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (c) the Lessee repeatedly breaches any of the terms of the 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 agreement;
  - (d) the Lessee 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 article 129 of the Insolvency (Northern Ireland) Order 1989, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of article 242 of the Insolvency (Northern Ireland) Order 1989 or (being a partnership) has any partner to whom any of the foregoing apply;
  - (e) the Lessee 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 creditor;
  - (f) 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 Lessee (being a company);
  - (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Lessee (being a company);
  - (h) the holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over the assets of the Lessee or a receiver is appointed over the assets of the Lessee;
  - (j) the Lessee (being an individual) is the subject of a bankruptcy petition or order;
  - (k) a creditor or encumbrancer of the Lessee 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 Lessee's assets and such attachment or process is not discharged within 14 days;
  - (l) any event occurs, or proceeding is taken, with respect to the Lessee 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(d) to clause 11.1(k) (inclusive);
  - (m) the Lessee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - (n) [the Lessee (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- 11.2** For the purposes of clause 11.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Lessor would otherwise derive from:
- (a) a substantial portion of the agreement; or
  - (b) any of the obligations set out in clause 8, over the term of the agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 11.3** The agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

## **12. CONSEQUENCES OF TERMINATION**

**12.1** Upon termination of the agreement, however caused:

- (a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and
- (b) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:
  - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.4;
  - (ii) any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under the

- agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 12.2** Upon termination of the agreement pursuant to clause 11.1, any other repudiation of the agreement by the Lessee which is accepted by the Lessor or pursuant to clause 11.3, or expiry of the agreement at the end of the Rental Period, without prejudice to any other rights or remedies of the Lessor, the Lessee shall: (a) return the relevant Equipment to the address directed by the Lessor at the time and date shown on the Order Form, or earlier as specified by the Lessor, together with all accessories and equipment, in in good and proper condition and in accordance with the Return Conditions, fair wear and tear excepted (the Lessee must also sign a sheet and agree on any defects, damage or mechanical malfunction of any of the Equipment which mean such Equipment is not in accordance with the Return Conditions, and in such event the Lessee will pay such excess and other Return Condition charges as are calculated by the Lessor, in its discretion, including any costs and expenses incurred by the Lessor to repair or refurbish any of the Equipment into the condition required by the Return Conditions); and (b) pay to the Lessor on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less a discount for accelerated payment at the percentage rate set out in the Payment Schedule.
- 12.3** The Lessee also acknowledges that where it has rented a Vehicle from the Lessor it shall be liable to pay the Lessor at any time (if demanded): (a) a mileage charge computed at the rates entered for the mileage covered by the Vehicle from the commencement of the Rental Period until the Vehicle is returned. The number of miles which the Vehicle shall be deemed to have covered under the agreement shall be determined by reading the speedometer installed by the manufacturer. If the speedometer fails through mechanical breakdown or if the speedometer seal being broken the mileage charge shall be calculated by the Lessor (at its sole discretion) based upon full particulars regarding to the use to which the Vehicle has been put during the Rental Period, which the Lessee shall furnish to the Lessor upon demand (and which the Lessee warrants and represents as being true and accurate in all material respects) (in such circumstances the Lessee shall additionally pay the cost of repair of the speedometer / hubometer unit or replacement of the broken seal on the unit, without prejudice to the generality of the remainder of the agreement); (b) a time charge computed on a daily basis at the rate set out in the Order Form from the commencement of the Rental Period until the Vehicle is returned (any part day being treated as a fully day); (c) a fuel and oil charge computed on the basis of the amount of fuel and oil required when the Vehicle is returned to bring the fuel and oil levels up to the full position; (d) the Lessor's costs including reasonable legal fees incurred collecting payments due from the Lessee; (e) the Lessor's costs to repair collision or other damage to the Vehicle or the Lessor's full certified value of the Vehicle whichever is less; and (f) any other costs which are applicable as set out under the agreement.
- 12.4** The sums payable pursuant to clause 12.1(b)(ii) shall be agreed compensation for the Lessor's loss and shall be payable in addition to the sums payable pursuant to clause 12.1(b). Such sums may be partly or wholly recovered from any Deposit.
- 12.5** Termination or expiry of the 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 agreement which existed at or before the date of termination or expiry.
- 12.6** If at any time whilst the Lessee has possession or control of Vehicles in accordance with the agreement, all or any of the Vehicles is or becomes a Total Loss for insurance purposes the Lessee shall pay, or cause to be paid, to the Lessor all the insurance proceeds in respect of such Vehicle. If the insurance proceeds are less than the Replacement Value in respect of such Vehicle the Lessee shall pay the amount of any shortfall on demand by the Lessor. The Lessee will continue to pay the Rental Payment in respect of the Vehicle until the insurance proceeds are received by the Lessor, and in addition the Lessee will pay the Rental Payment that would have been paid in the remainder of the term of the Agreement but for the Total Loss.
- 13. FORCE MAJEURE**  
Neither party shall be in breach of the agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the agreement by giving 7 days' written notice to the affected party.
- 14. CONFIDENTIAL INFORMATION**
- 14.1** Each party undertakes that it shall not at any time during the agreement, and for a period of five years after termination of the agreement, disclose to any person any confidential information concerning the business, 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 14.2.
- 14.2** Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3** No party shall use any other party's confidential information for any purpose other than to perform its obligations under the agreement.
- 15. ASSIGNMENT AND OTHER DEALINGS**  
The agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the agreement.
- 16. ENTIRE AGREEMENT**
- 16.1** The agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2** Each party acknowledges that in entering into the agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the agreement.
- 16.3** Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the agreement.
- 16.4** Nothing in this clause shall limit or exclude any liability for fraud.
- 17. VARIATION**  
No variation of the agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18. NO PARTNERSHIP OR AGENCY**
- 18.1** Nothing in the agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.2** Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19. FURTHER ASSURANCE**  
At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the agreement.
- 20. THIRD PARTY RIGHTS**  
No one other than a party to the agreement[, their successors and permitted assignees,] shall have any right to enforce any of its terms.

**21. NOTICES**

**21.1** Any notice given to a party under or in connection with this contract shall be in writing and shall be 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).

**21.2** Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) 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 at the time recorded by the delivery service.

**21.3** This clause 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. For the purposes of this clause, "writing" shall not include e-mail.

**22. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**23. RIGHTS AND REMEDIES**

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

**24. SEVERANCE**

**24.1** If any provision or part-provision of the agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.

**24.2** If one party gives notice to the other of the possibility that any provision or part-provision of the agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**25. GOVERNING LAW**

The 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 law of Northern Ireland.

**26. JURISDICTION**

Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the agreement or its subject matter or formation (including non-contractual disputes or claims).