

**1 Definitions and Interpretation**

## 1.1 In this agreement:

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"CAA" means the Capital Allowances Act 2001.

"Commencement Date" means the date of deemed delivery of the Equipment to the Lessee pursuant to Clause 3.4.

"Corporation Tax" means corporation tax chargeable in the context of the scheme of taxation contained in the Corporation Tax Acts (as defined in s.831 of ICTA) or any other tax of a similar nature imposed in addition to, or in substitution for, corporation tax.

"Default Rate" means at any date the percentage rate per annum that is the aggregate of 8 per cent and the sterling base rate of Barclays Bank Plc on that date.

"Destroyed Equipment" means any item of Equipment that becomes a Total Loss.

"Headlease" means the contract for the supply of Equipment by the Supplier to the Lessor.

"Holding Company" means, in relation to a company, any other company of which it is a Subsidiary.

"ICTA" means the Income and Corporation Taxes Act 1988.

"Indemnified Person" means any company that is a member of the Lessor's Group and the officers, directors, agents, employees and secondees of any such member.

"Insurances" means, in relation to the Equipment, all insurances effected, or which the Lessee is obliged to effect, under Clause 13.

"Lease Period" means the aggregate of the Primary Period and any Secondary Period, subject to early termination pursuant to this agreement.

"Lessor's Group" means the group of companies from time to time comprising the Lessor and its ultimate Holding Company and all Subsidiaries of that Holding Company.

"Loss" means any claim, damage, demand, expense, fee, fine, payment, proceeding, liability, loss, break funding cost or penalty other than Taxes.

"Primary Period" means the period starting on the Commencement Date and ending on the day preceding the date falling 36 months after the Commencement Date.

"Rent" means the Initial Rent and each Primary Period Rent and Secondary Period Rent.

"Rent Payment Date" means the Commencement Date, each Primary Period Rent Payment Date and each Secondary Period Rent Payment Date.

"Secondary Period" means the period or the aggregate of periods for which the leasing of the Equipment extends past the Primary Period.

"Secondary Period Rent Payment Date" means the first day of the Secondary Period and each corresponding day of each following month.

"Security Interest" means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

"Subsidiary" means a subsidiary within the meaning of s.1159 of the Companies Act 2006.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature in any jurisdiction (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and

"Taxes" and "Taxable" shall be construed accordingly.

"Termination Event" means any of the events referred to in Clause 16.

"Termination Sum" means, on a termination, a sum equal to all Primary Period Rent that would have been payable but for termination from the date of such termination to and including the last day of the Primary Period, the amount of each such Primary Period Rent being discounted at a rate of 2 per cent per annum from the due date for payment to the date of calculation of the Termination Sum.

"Total Loss" means, in relation to an item of Equipment, any actual, constructive, compromised, agreed or arranged total loss (in the conclusive opinion of the insurer of that Equipment) as a result of the loss, destruction, theft, damage beyond economic repair, compulsory acquisition, requisition, forfeiture, seizure or confiscation of that Equipment.

"Total Loss Date" means, in relation to an item of Equipment, the date of its Total Loss or, if later, the date on which the insurers of such Equipment determine that Equipment to have become a Total Loss.

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Unless a contrary indication appears, any reference in this agreement to:

- (i) any party to this agreement shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) "expense" means any kind of cost or expense, including all legal costs and expenses;
- (iii) this agreement or any other agreement or document is a reference to this agreement or other agreement or document as amended or novated; and
- (iv) except in relation to Clause 6, a provision of law is a reference to that provision as amended or re-enacted.

## 1.3 Clause and Schedule headings are for ease of reference only.

1.4 Unless expressly provided to the contrary in this agreement, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this agreement.

1.5 Any Indemnified Person shall have the right to enforce or to enjoy the benefit of any term of this agreement that is expressed to be for its benefit.

1.6 Notwithstanding any term of this agreement, the consent of any person who is not a party to this agreement is not required to rescind or vary this agreement.

**2 Leasing and Term of Leasing**

2.1 The Lessor shall lease the Equipment to the Lessee, and the Lessee shall lease the Equipment from the Lessor, for the duration of the Lease Period.

2.2 The leasing of Equipment shall start on the Commencement Date and shall continue until terminated in accordance with this agreement.

2.3 The Leasing of the Equipment under this agreement shall not exceed the useful economic life of the Equipment as determined by the Supplier.

2.4 The Lessee may terminate this agreement by giving the Lessor not less than 3 month's notice, which notice cannot expire before the expiry of the Primary Period.

2.5 Any notice given under this Clause 2.4 shall be irrevocable.

2.6 The Lessor undertakes with the Lessee that, subject to the Lessee paying the Rent in accordance with this agreement and the rights of the Lessor under this agreement or under applicable law, the Lessor shall not interfere with the quiet use, possession, enjoyment and operation of the Equipment by the Lessee.

**3 Risk, Delivery and Acceptance**

3.1 From the time at which risk in each item of Equipment passes from the Supplier under the terms of the Headlease, that Equipment shall be at the absolute risk of the Lessee and, as between the Lessor and the Lessee, risk in that Equipment shall pass to the Lessee at that time.

3.2 The Lessor appoints the Lessee as the Lessor's agent, and the Lessee agrees to act as the Lessor's agent, in respect of the installation, inspection, testing and commissioning of the Equipment and the delivery and acceptance of the Equipment from the Supplier.

3.3 The Lessee shall examine each item of Equipment upon its delivery. Unless the Lessee notifies the Lessor in writing within three Business Days from the date of delivery of the Equipment of any rejection of the Equipment, the Equipment shall be deemed delivered to and unconditionally accepted by the Lessee from the Lessor. Such acceptance shall be conclusive evidence that the Lessee has examined and tested the Equipment and found it to be complete and in every way satisfactory.

3.4 The Equipment shall be deemed to have been delivered to and accepted by the Lessee under this agreement and the Commencement Date shall occur on the passing of title in the Equipment to the Lessor under the Headlease.

3.5 The Lessee shall not be entitled for any reason to refuse to accept delivery of any item of Equipment under this agreement once the title in the Equipment has passed to the Lessor under the Headlease.

3.6 The Equipment shall be subject to all the terms and conditions of this agreement from the Commencement Date.

**4 Rent**

4.1 The Lessee shall pay to the Lessor the Initial Rent on the Commencement Date. The Initial rent is non-refundable, irrespective of whether the Equipment is accepted or not.

4.2 The Lessee shall pay to the Lessor the Primary Period Rent on each Primary Period Rent Payment Date.

4.3 The Lessee shall pay to the Lessor each Secondary Period Rent on each Secondary Period Rent Payment Date.

4.4 No Rent payable under this agreement in advance shall be repayable by or recoverable from the Lessor.

**5 Payments**

5.1 On each date on which the Lessee is required to make a payment under this agreement the Lessee shall pay such amount to the Lessor in pounds for value in immediately available funds.

5.2 Payment shall be made to such account with such bank as the Lessor specifies from time to time.

5.3 The Lessee shall put in place and maintain a standing order from its bank account into the bank account specified by the Lessor to facilitate payment of the Rent.

5.4 All payments to be made by the Lessee under this agreement shall be calculated and be made without and free and clear of any deduction for set-off or counterclaim.

5.5 All payments to be made by the Lessee under this agreement shall be made without any deductions or withholdings unless a deduction or withholding is required by law.

5.6 If the Lessee is required to make a deduction or withholding, the amount of the payment due from the Lessee shall be increased to an amount which, after making the deduction or withholding, leaves an amount equal to the payment that would have been due if no deduction or withholding had been required.

5.7 The Lessee's obligation to pay Rent and to pay all other payments in accordance with this agreement is absolute irrespective of any contingency, including:

- (i) any unavailability of any item of Equipment for any reason, including any lack or invalidity of title to any item of Equipment, any other defect in the title to any item of Equipment, arising out of the condition, design, operation, merchantability or fitness for use or purpose of any item of Equipment or, the Total Loss of or any damage to any item of Equipment;
- (ii) any failure or delay on the part of either party to this agreement, whether with or without fault on its part, in performing this agreement;
- (iii) any insolvency, bankruptcy, reorganisation, arrangement, readjustment of debt, dissolution, administration, liquidation or similar proceedings by or against either party to this agreement; or
- (iv) any lack of due authorisation of or other defect in this agreement.

5.8 Any payment which is due to be made on a day that is not a Business Day shall be made on the preceding Business Day.

5.9 If the Lessee fails to pay any amount payable by it under this agreement on its due date, interest shall accrue on the amount payable but unpaid from the due date up to the date of actual payment, both before and after judgment, at the

- Default Rate. Any interest accruing under this Clause 5.6 shall be payable by the Lessee on demand by the Lessor.
- 5.10 If a change of currency occurs in England this agreement shall be amended as the Lessor determines to be appropriate to comply with generally accepted conventions and market practice, including in connection with such change of currency.
- 5.11 If more than one currency is recognised by the central bank of England as the lawful currency of England:
- any reference in this agreement to the currency of England shall be amended to refer to the currency of England designated by the Lessor; and
  - any conversion from one currency to another shall be at the official rate of exchange recognised by the central bank of England for the conversion of one currency into the other.
- 6 Adjustment to Rent**
- 6.1 The Primary Period Rent is calculated on the assumption that during the period of this agreement tax law and practice, interest rates, LIBOR and the standard rate of Corporation Tax will remain the same as applicable at the date of this agreement. If during the period of this agreement there are any changes to tax law or practice, interest rates, LIBOR or to the rate of Corporation Tax which decreases the Lessor's after tax return, the Lessor may recalculate and increase the Rent provided the Lessor has given the Lessee 5 Business Days prior notice of the change to the Rent.
- 6.2 In calculating an adjustment pursuant to Clause 6.1, the Lessor may make such revised and additional assumptions as the Lessor considers necessary or desirable.
- 6.3 The provisions of this Clause 6, including the provisions relating to the adjustment of any Rent, shall continue to have effect even if this agreement or the leasing of any item of Equipment under this agreement has expired or been terminated.
- 7 Limitation and Exclusion of Lessor's Liability**
- 7.1 The Lessee acknowledges that:
- the Lessor is not the original manufacturer or supplier of the Equipment;
  - the Equipment was selected by the Lessee;
  - the condition of the Equipment on delivery to the Lessee under this agreement is the sole responsibility of the Lessee;
  - each item of Equipment is satisfactory to the Lessee and suitable for the business of the Lessee and any intended use of each item of Equipment by the Lessee; and
  - the Lessor has purchased the Equipment solely for the purpose of leasing the Equipment to the Lessee pursuant to this agreement.
- 7.2 The Lessee acknowledges and agrees that no condition, warranty or representation of any kind has been or is given or made by the Lessor or any other person on the Lessor's behalf (whether authorised or not), express or implied, whether arising by law or otherwise in relation to the Equipment.
- 7.3 The conditions, warranties and representations referred to in Clause 7.2 include any conditions, warranties or representations relating to the title to the Equipment or the description, quality, suitability or fitness for any purpose, value, condition, design or operation of any kind of the Equipment.
- 7.4 The Lessor shall have no liability in contract, tort or otherwise for any Loss (including consequential loss) of any kind arising directly or indirectly from:
- delay in delivery of or failure to deliver any item of Equipment;
  - defect or alleged defect in any item of Equipment or its use or performance;
  - inadequacy of any item of Equipment for any purpose;
  - repairs or servicing to any item of Equipment; or
  - an interruption in the use of any item of Equipment.
- 7.5 The Lessor shall have no obligation to supply to the Lessee a replacement item for any item of Equipment.
- 7.6 Nothing in this Clause 7 shall afford the Lessor any wider exclusion of any liability of the Lessor for death or personal injury than the Lessor may effectively exclude having regard to the Unfair Contract Terms Act 1977.
- 7.7 In no event shall the Lessor's liability under this agreement exceed the aggregate of the Primary Period Rent paid by the Lessee at the time the liability arises.
- 8 General Indemnities**
- 8.1 The Lessee shall pay promptly, and shall on demand indemnify the Lessor and each other Indemnified Person against, any Loss incurred by the Lessor and each other Indemnified Person at any time arising out of, resulting from or in connection with:
- this agreement and the transactions contemplated by this agreement and any other document entered into in contemplation of, in connection with this agreement;
  - the purchase, testing, design, manufacture, delivery, late delivery, non-delivery, purchase, importation, ownership, letting, sub-letting, possession, control, use, operation, maintenance, repair, replacement, refurbishment, modification, overhaul, insurance, sale or other disposal, return or storage of, or loss of or damage to, the Equipment or otherwise in connection with the Equipment and regardless of:
    - whether or not such Losses are attributable to any defect in any Equipment or to the design, construction or use of any item of Equipment or to any other reason; and
    - when the Loss arises;
  - claims that are made on the ground of an infringement of patent or copyright or registered design or other intellectual property right;
- preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of any item of Equipment, or in securing or attempting to secure the release of any item of Equipment;
  - the Total Loss of any Equipment;
  - the occurrence of a Termination Event; and
  - the sale of the Equipment or any part of the Equipment pursuant to this agreement including broker's commissions, redelivery expenses (if any), marketing expenses, legal expenses, storage, insurance and any other expenses of the Lessor incurred pending the sale or disposal of the Equipment or otherwise in connection with the sale or disposal of the Equipment.
- 8.2 Where in this Clause 8 an indemnity is expressed to be for the benefit of any person who is not a party to this agreement:
- the Lessor shall be entitled to indemnify such person on the same terms, with appropriate and necessary modifications, as the indemnities expressed to be for the benefit of such person in this Clause 8; and
  - the Lessee shall indemnify the Lessor on demand against any amount paid or payable by the Lessor to such person under any such indemnity.
- 9 Tax Indemnities**
- 9.1 The Lessee shall pay promptly, and shall on demand indemnify the Lessor and each other Indemnified Person against, any Taxes which are imposed on or payable in respect of this agreement, the Equipment or any activity relating to the Equipment or any Rent or other amounts paid under this agreement.
- 9.2 If and to the extent that any amount (the "basic amount") payable to the Lessor by the Lessee or any other Indemnified Person under this agreement by way of indemnity is Taxable in the hands of the Lessor or such other Indemnified Person, the Lessee shall pay to the Lessor or such other Indemnified Person such additional amount as the Lessor determines and certifies to the Lessee will, after taking into account any Tax suffered by the Lessor or such other Indemnified Person in respect of that sum, leave the Lessor or such other Indemnified Person with the basic amount.
- 9.3 There shall be taken into account in determining any additional amount payable by the Lessee pursuant to Clause 9.2 the amount of any deduction or other relief, allowance or credit received by the Lessor or such other Indemnified Person in respect of the corresponding liability to a third party to the extent that the Lessor determines that such deduction or other relief, allowance or credit confers a genuine benefit on the Lessor or such other Indemnified Person.
- 9.4 If any amount paid by the Lessor to any person pursuant to or as envisaged by this agreement by way of rebate or otherwise is not or may not be fully allowed as a deductible trading expense in computing for Tax purposes the chargeable profits of the Lessor, the Lessor shall be entitled to withhold from that amount, or if that amount has already been paid the Lessee shall pay to the Lessor, such amount as the Lessor determines and certifies will put it in the same after-Tax position as it would have been in had the payment been allowed as a deductible trading expense.
- 9.5 If a payment is made by the Lessor subject to a withholding or a payment is made by the Lessee pursuant to Clause 9.4 and the Lessor in fact obtains a deduction for the whole or part of the rebate or other payment, the Lessor shall pay to the Lessee such amount as the Lessor determines and certifies will leave it in the same after-Tax position had the payment pursuant to Clause 9.4 not been necessary to that extent.
- 9.6 All payments due to the Lessor under this agreement shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by the Lessor to the Lessee in connection with this agreement, the Lessee shall pay to the Lessor, in addition to and at the same time as paying the amount due, an amount equal to the amount of the VAT.
- 9.7 Where this agreement requires the Lessee to reimburse the Lessor for any expenses, the Lessee shall also at the same time pay and indemnify the Lessor against all VAT incurred by the Lessor in respect of the expenses to the extent that the Lessor reasonably determines that it is not entitled to credit or repayment of the VAT.
- 9.8 The Lessee shall not be obliged to indemnify the Lessor or any other Indemnified Person under this Clause 9 to the extent that the Lessor or such other Indemnified Person has been compensated pursuant to Clause 6.1 or any other provision of this agreement in respect of the same matter.
- 10 Warranties**
- 10.1 The Lessee makes the warranties set out in this Clause 10 to the Lessor on the date of this agreement and on each day of the Lease Period by reference to the facts and circumstances then existing on each such date.
- 10.2 The Lessee warrants that:
- The obligations expressed to be assumed by it in this agreement are legal, valid, binding and enforceable obligations.
  - It has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this agreement and the transactions contemplated by this agreement.
  - No Termination Event or event or circumstance that, with the lapse of time, giving of notice or otherwise, would be a Termination Event has occurred and is continuing.
  - Any information that has been provided by or on behalf of the Lessee was accurate in all material respects as at the date it was provided or as at the date (if any) at which it was stated.
  - Nothing has occurred since the information referred to in Clause 10.2(iv) was provided and no information has been given or withheld that results in any of the information referred to in Clause 10.2(iv) being untrue or misleading in any material respect.

**11 Equipment and Information Undertakings**

- 11.1 The undertakings in this Clause 11 remain in force throughout the Lease Period except as the Lessor may otherwise permit.
- 11.2 The Equipment shall be used solely in the Lessee's business and for a qualifying purpose within the meaning of s.122 of CAA, and shall not be used for any other purpose, during the Lease Period.
- 11.3 The Lessee shall:
- not cause or permit any item of Equipment to be employed, used or operated in any manner contrary to any law or regulation;
  - ensure that each item of Equipment is employed, used or operated:
    - in a skilful, careful and proper manner;
    - only for the purpose for which it was designed; and
    - in accordance with and subject to all instructions issued by the manufacturer of that item of Equipment and any government agency or authority; and
    - in accordance with and subject to all applicable laws and regulations.
- 11.4 The Lessee shall comply, and shall ensure that each item of Equipment complies, with all obligations imposed on the Lessee and the Lessor in relation to the Equipment by and all other obligations applicable to the Equipment pursuant to, applicable law including the Health and Safety at Work Act 1974 or by any regulations issued under that Act and shall comply with the requirements of any improvement or prohibition notice served under that Act.
- 11.5 The Lessee shall ensure that each item of Equipment is kept in a good, safe and serviceable condition and state of repair (fair wear and tear excepted):
- consistent with first-class operating and management practice; and
  - strictly to the standard and at the service intervals recommended by the manufacturer of that item of Equipment.
- 11.6 The Lessee shall not pledge the Lessor's credit.
- 11.7 Subject to Clause 11.8, the Lessee shall not make additions, alterations or modifications to, or remove any part of, any item of Equipment.
- 11.8 The Lessee may make additions, alterations or modifications to, or remove parts from, any item of Equipment if such addition, alteration, modification or removal is:
- required by applicable law or regulation; or
  - intended to improve the performance or safety of that item of Equipment and is approved by the manufacturer of the Equipment.
- 11.9 Any addition, alteration or modification to any item of Equipment shall become the property of the Supplier free of any Security Interest.
- 11.10 The Lessee shall permit the Lessor, the Supplier or any of their respective representatives at all reasonable times to inspect the Equipment and the Lessee's management systems and facilities relating to the Equipment and shall afford all necessary access, assistance and proper facilities for such inspections. For this purpose the Lessee authorises the Lessor, the Supplier and their respective representatives to enter any land or premises at which the Equipment or any of it may from time to time be located.
- 11.11 The Lessee shall:
- maintain all such records, information and documents that are required to be maintained in respect of the Equipment to comply with any applicable law or regulation and in accordance with first-class ownership, operating and management practice;
  - keep accurate, complete and up to date records of the location of each item of Equipment and of all maintenance, repairs, additions, alterations and modifications to, and removal of parts from, each item of Equipment; and
  - permit the Lessor or its representatives at any time on reasonable notice to examine and take copies of such records, information and documents.
- 11.12 The Lessee shall promptly discharge:
- all liabilities which give or may give rise to claims enforceable against the Equipment;
  - all Taxes and other amounts payable in respect of the Equipment; and
  - all other outgoing in respect of the Equipment.
- 11.13 The Lessee shall promptly obtain, comply with and do all that is necessary to maintain in full force and supply a certified copy to the Lessor of any authorisation, consent, licence or permit that is required under any applicable law or regulation in relation to the Equipment to enable the Lessee to possess or use the Equipment and any land or premises at which the Equipment or any of it is located.
- 11.14 The Equipment shall not be taken outside the United Kingdom without the prior consent of the Lessor.
- 11.15 The Lessee shall ensure that the Equipment remains personal and moveable property even if temporarily annexed to land or buildings. If any item of Equipment becomes fixed to land or buildings, the Lessee shall ensure that the owner of, or any other person having an interest in, such land or buildings gives to the Lessor a waiver in writing of any right to that item of Equipment and a right to enter onto such land or buildings to remove that item of Equipment.
- 11.16 If any Equipment has or may have become a fixture, the Lessee shall, if required by the Lessor, join with the Lessor in an election under s.177 of CAA.
- 11.17 The Lessee shall, at the request of the Lessor or of HM Revenue & Customs, promptly furnish to the Inland Revenue and HM Customs and Excise such information and copies of such records, information and documents as may be legally required to be so furnished about the acquisition of the Equipment, the leasing of the Equipment pursuant to this agreement or the use to which the Equipment is being or has been put.
- 11.18 The Lessee shall supply to the Lessor promptly such information relating to the financial condition of the Lessee and otherwise in relation to the business of the Lessee as the Lessor reasonably requests.

**12 Title**

- 12.1 This Clause 12 shall remain in force throughout the Lease Period except as the Lessor may otherwise permit.
- 12.2 The Equipment shall belong to the Lessor and title to, and ownership of the Equipment shall remain vested in the Lessor.
- 12.3 The Lessee shall have no right, title or interest in or to any part of any item of Equipment except the right to hire the Equipment in accordance with this agreement.
- 12.4 The Lessee shall not attempt or hold itself out as having any power to sell, charge or otherwise encumber or to sell or otherwise dispose of any item of Equipment or any interest in any item of Equipment.
- 12.5 The Lessee shall not create, incur or suffer to exist any Security Interest in respect of any item of Equipment or any insurances.
- 12.6 The Lessee shall not, without the prior written consent of the Lessor, sub-let or, except for the purposes of maintenance, repair, addition, alteration or modification permitted pursuant to this agreement, voluntarily part with the possession or operational control of any item of Equipment.
- 12.7 The Lessee shall take or procure the taking of all necessary steps to safeguard the Lessor's and the Supplier's rights in respect of the Equipment and shall not do or permit to be done anything that jeopardises the rights of the Lessor in the Equipment or deliberately omit to do anything that would prevent those rights from being jeopardised.
- 12.8 The Lessee shall prevent any item of Equipment being removed from its possession and the confiscation, distress, execution, impounding, forfeiture, requisition for title or seizure of any item of Equipment.
- 12.9 The Lessee shall immediately procure the release from confiscation, distress, execution, impounding, forfeiture, requisition for title or seizure of any item of Equipment.
- 12.10 The Lessee shall make clear to third parties that title to the Equipment is held by the Lessor in circumstances and on occasions where the ownership of the Equipment may be relevant.

**13 Insurance Undertakings**

- 13.1 The undertakings in this Clause 13 remain in force throughout the Lease Period except as the Lessor may otherwise permit.
- 13.2 The Lessee shall keep the Equipment insured at its expense against:
- all loss or damage in an amount equal to the higher of the new replacement value of the Equipment from time to time and the highest Termination Sum from time to time applicable to the relevant period of insurance;
  - all third party liability risks in an amount agreed by the Lessor; and
  - all other risks in relation to the Lessee or the Equipment as required by law.
- 13.3 The Lessee shall, arrange for the interest of both the Lessor and the Supplier to be noted on the Lessee's insurance policy and if requested by the Lessor, provide the Lessor with copies of all policies relating to the Insurances.
- 13.4 The Lessee shall punctually pay all premiums or other sums payable in respect of the Insurances and, if required by the Lessor, provide the Lessor with all relevant receipts.
- 13.5 The Lessee shall not do nor omit to do, or permit to be done or not to be done, anything that would or might render any Insurances invalid, void, voidable or unenforceable or render any sum payable under any Insurance repayable.
- 13.6 The Lessee shall not make or agree to any alteration to any insurances or waive any right relating to any insurances.
- 13.7 The Lessee shall do all things necessary and provide all documents, evidence and information to enable the Lessor to collect or recover any sums that at any time become payable in respect of the Insurances.

**14 Total Loss**

- 14.1 The leasing of any Destroyed Equipment shall terminate on the Total Loss Date relating to it.
- 14.2 Without prejudice to the Lessor's right to recovery under clause 8.1(v), the Lessee shall, not later than 30 days after the Total Loss Date in relation to any Destroyed Equipment, pay to the Lessor the aggregate of:
- all Rent and any other amounts then payable by the Lessee under this agreement; and
  - by way of agreed compensation:
    - if the Total Loss Date is a date falling within 33 months after the first Primary Period Rent Payment Date the Termination Sum in relation to all of the Destroyed Equipment calculated at the date of payment;
    - in all other cases, a sum equal to 150% of the Initial Rent.
- 14.3 All monies received by the Lessor from the insurers in respect of the Total Loss of any item of Destroyed Equipment shall be applied in the following order:
- first, in or towards payment of any Rent and any other amounts then payable by the Lessee under this agreement; and
  - secondly, the balance, if any, shall be retained by the Lessor.
- 14.4 The Lessee shall promptly reinstate or repair at its own expense any damage to any Equipment that does not constitute a Total Loss of that Equipment. All monies received from the insurers in respect of the loss or damage to that Equipment shall be applied in the following order:
- first, in or towards payment of any Rent and any other amount then payable by the Lessee under this agreement;
  - secondly, in or towards reimbursing the Lessee for the cost of the reinstatement or repair of that Equipment.

**15 Power of Lessor to Remedy Defaults**

- 15.1 If the Lessee fails to comply with any provision of this agreement, the Lessor may take all steps necessary to effect compliance with such provision.
- 15.2 The Lessor shall not be obliged to take any steps pursuant to Clause 15.1 but shall have no liability as a result of the taking of any such steps.

15.3 The exercise by the Lessor of any of its powers pursuant to Clause 15.1 shall be without prejudice of the right of the Lessor to treat the Lessee's non-compliance as a Termination Event.

#### 16 Termination Events

- 16.1 Each of the events or circumstances set out in this Clause 16 is a Termination Event.
- 16.2 The Termination Events specified in Clauses 16.3, 16.4 and 16.5 are fundamental terms and conditions of this agreement and the occurrence of any such Termination Event shall go to the root of this agreement. Accordingly the occurrence of such a Termination Event shall be a breach of condition and shall constitute a repudiatory breach of this agreement by the Lessee.
- 16.3 The Lessee does not pay within 3 Business Days of the due date any amount payable pursuant to this agreement.
- 16.4 The Lessee does not comply with any provision of this agreement (other than as referred to in Clause 16.2) and if the failure to comply is capable of remedy it is not remedied within 14 days of the Lessor giving notice to the Lessee or, if earlier, of the Lessee becoming aware of the failure to comply.
- 16.5 Any representation made or deemed to be made by or on behalf of the Lessee in this agreement or any other document relating to this agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- 16.6 Any indebtedness of the Lessee exceeding £5,000 in aggregate is not paid when due or within any originally applicable grace period or is declared to be or otherwise becomes payable before its specified maturity as a result of an event of default (however described).
- 16.7 The Lessee is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with a creditor with a view to rescheduling any of its indebtedness.
- 16.8 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Lessee other than a solvent liquidation or reorganisation of the Lessee that has previously been approved by the Lessor;
  - a composition, assignment or arrangement with any creditor of the Lessee;
  - the appointment of a liquidator other than in respect of a solvent liquidation of the Lessee that has previously been approved by the Lessor, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Lessee or any of its assets; or
  - any Security Interest over any assets of the Lessee becomes capable of enforcement.
- 16.9 Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Lessee or the Equipment.
- 16.10 The Lessee ceases or suspends carrying on its business or any part of it which, in the opinion of the Lessor, is material in the context of this agreement.
- 16.11 It is or becomes unlawful for the Lessee to perform any of its obligations under this agreement or for the Lessor to exercise or enforce any of its rights under this agreement.
- 16.12 There is a breach by any person of any software licence granted in respect of or in connection with the Equipment.

#### 17 Lessor's Rights Following Termination Event

- 17.1 At any time after the occurrence of a Termination Event the Lessor may, by notice to the Lessee, on such date as the Lessor specifies in the notice, terminate the leasing of the Equipment to the Lessee and the consent of the Lessor to the possession of the Equipment by the Lessee pursuant to this agreement or, if the Commencement Date has not occurred, terminate the obligation to purchase the Equipment and to lease it to the Lessee pursuant to this agreement.
- 17.2 At any time after the occurrence of a Termination Event the Supplier may terminate, shut down, wind down, or restrict access to any intellectual property licence or software licence granted by the Supplier or Splicecom Limited in connection with the Equipment.
- 17.3 The Lessee shall pay to the Lessor forthwith on any termination of the leasing of, or obligation to lease, the Equipment pursuant to Clause 17.1:
- an amount equal to the aggregate of:
    - any Rent and any other amounts then payable by the Lessee under this agreement; and
    - the amount of any Losses incurred by the Lessor in connection with that termination; and
  - by way of agreed compensation, the Termination Sum calculated as at the date of that termination.

#### 18 Redelivery and Storage

- 18.1 On the termination or expiry of the Lease Period the Lessee shall at its risk and expense, return the Equipment to the Lessor at such place in the United Kingdom as the Lessor requires. The Equipment shall be returned in a good, safe and serviceable condition and state of repair (fair wear and tear excepted) and otherwise in the condition required pursuant to this agreement, free of any Security Interest.
- 18.2 On the termination or expiry of the Lease Period, the Lessee shall no longer be in possession of the Equipment with the consent of the Lessor and the Lessor shall be entitled to retake possession of the Equipment if it is not returned in accordance with Clause 18.1.

18.3 The Lessor may put into force and exercise all its rights and entitlements at law and may enter upon any land or premises belonging to, or in the occupation or under the control of, the Lessee where any item of Equipment is located for the purposes of retaking possession of that Equipment.

#### 19 Notices

- 19.1 Any communication to be made under or in connection with this agreement shall be made in writing and may be made by fax or letter.
- 19.2 The address and fax number of each party to this agreement for any communication or document to be made or delivered under or in connection with this agreement is set out in the attached specification, or such other address or fax number as one party to this agreement may notify to the other party to this agreement by not less than 5 Business Days' notice.
- 19.3 A communication or document made or delivered by one party to another under or in connection with this agreement will only be effective:
- if by way of fax, when received in legible form; or
  - if by way of letter, when it has been left at the relevant address or 3 Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address.

#### 20 Transfer and Assignment

- 20.1 The Lessor may not dispose of any of its rights or obligations under this agreement.
- 20.2 The Lessee may not dispose of any of its rights or obligations under this agreement.
- 20.3 If the Supplier serves a notice on the Lessee, copied to the Lessor, that:
- confirms that the Supplier wishes to step-in to this agreement; and
  - acknowledges that the Supplier will assume all the Lessor's obligations under this agreement;
- then, from the date of service of the notice, this agreement shall continue in full force and effect, as if it had been entered into between the Supplier and the Lessee, to the exclusion of the Lessor.
- 20.4 The Lessee shall assume that, between the Supplier and the Lessor, the Supplier may give a notice under clause 20.3. The Lessee shall not enquire whether the Supplier may give that notice.

#### 21 Supplemental

- 21.1 If any provision of this agreement at any time is or becomes illegal, invalid or unenforceable under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this agreement under the law of that jurisdiction, nor the legality, validity or enforceability of that provision or any other provisions of this agreement under the law of any other jurisdiction will in any way be affected or impaired.
- 21.2 The rights and remedies provided in this agreement are cumulative and not exclusive of any rights or remedies provided by law. If the Lessor fails to exercise, or delays in exercising, any of its rights or remedies under this agreement, such failure or delay shall not operate as a waiver. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy.
- 21.3 The parties to this agreement may only amend or waive any term of this agreement in writing.
- 21.4 The Lessor may set off any matured obligation due from the Lessee under this agreement against any matured obligation owed by the Lessor to the Lessee.
- 21.5 Any determination or certification by the Lessor of a rate or amount under this agreement is, in the absence of manifest error, conclusive.
- 21.6 This agreement may be executed in 2 counterparts that shall, taken together, be treated as an original version of this agreement.
- 21.7 Subject to any periods of grace referred to in Clause 16, time shall be of the essence as regards the performance by the Lessee of its obligations under this agreement.
- 21.8 The indemnities contained in this agreement in favour of the Lessor and the other Indemnified Persons shall survive any termination or other ending of the Lease Period and any breach of this agreement or repudiation or alleged repudiation of this agreement by the Lessee or the Lessor.
- 21.9 This agreement and any dispute arising out of or in connection with it shall be governed by English law.
- 21.10 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement.