

## Terms & Conditions for Supply of Equipment (for Hire) and Services

### 1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Conditions unless the context otherwise requires the following words and expressions have the following meanings:

**Additional Charges** means the charges payable by the Customer subject to the events listed in Condition 9.2.

**Agreement** the agreement for the hire of Equipment and/or supply of Services between CTM and the Customer in accordance with these Conditions;

**Applicable Laws** means all national, supranational, foreign or local laws, legislation, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time;

**Business Day** means any day which is not a Saturday, a Sunday or a bank or public holiday in the United Kingdom;

**Charges** means the Charges payable under this Agreement; as set out in the Order;

**Commencement Date** as set out in Condition 2.2;

**Conditions** means these terms and conditions;

**Confidential Information** means the provisions of the Agreement and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods or Personal Data, in all cases whether disclosed orally or in writing before or after the date of the Agreement;

**CTM** means Chevron Traffic Management Limited, incorporated and registered in England and Wales with company number 3316774, whose registered office is at Unit 3 Thame Park Business Centre, Wenman Road, Unit 3, Thame, England, OX9 3XA;

**CTM Materials** means all materials, documents and other property belonging to CTM;

**Customer** means the person who hires Equipment and/or purchases Services from CTM;

**Customer Default** means any act or omission by the Customer or failure by the Customer to perform any relevant obligation;

**Data Controller** has the meaning set out in the GDPR;

**Data Processing Agreement** means a data processing agreement to be entered into between the parties in such form as CTM may from time to time specify;

**Data Protection Laws** means the General Data Protection Regulation (Regulation (EU)2016/679) ("GDPR"), and any legislation ratifying or otherwise adopting, replacing or supplementing the GDPR in any of the jurisdictions the parties operate; and any other laws and regulations relating to privacy of the processing of data of natural persons relevant in any other applicable jurisdiction;

**Deliverables** means all documents in any form including without limitation drawings, maps, plans, diagrams, designs, pictures, data specifications, schedules and reports produced by CTM in its performance of the Agreement;

**Delivery** mean the transfer of physical possession of the Equipment to the Customer at the Site;

**Delivery Date** means the date the Equipment is delivered to the Site; as set out in the Order;

**Deposit** means the deposit to be paid in accordance with the Agreement as set out in the Order;

**Equipment** means the Equipment to be provided for hire by CTM to the Customer as set out in the Order;

**Installation** means the installation of the Equipment by CTM at the Site;

**Intellectual Property Rights** means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in Confidential Information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the country in which CTM is registered and all other

countries in the world in each case whether registered or not and including any application for registration of the foregoing;

**Local Authority** shall be defined in section 1 of the Local Government Act 2000;

**Local Authority Charges** means any charge issued by the Local Authority in relation to the activities under this Agreement;

**Order** means the Customer's order for the hire of Equipment and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of CTM's quotation, as the case may be;

**Personal Data** has the meaning set out in the GDPR;

**Rental Period** means the period for with the Equipment is hired, as set out in the Order;

**Service Period** means the period for which the Services are provided as set out in the Order;

**Services** means the services, including the Deliverables, supplied by CTM to the Customer as set out in the Order;

**Site** means the locations where the Equipment and/or Services are to be provided, as set out in the Order;

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

**VAT** means value added tax or any equivalent tax chargeable in the UK.

1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.3 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.4 The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

### 2 ORDER

2.1 The Order constitutes an offer by the Customer to hire Equipment and/or purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when CTM issues written acceptance of the Order at which point and on which date the Agreement shall come into existence ("**Commencement Date**").

2.3 Any samples, drawings, descriptive matter or advertising issued by CTM and any descriptions of the Equipment or illustrations or descriptions of the Services contained in CTM's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Agreement nor have any contractual force.

2.4 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by CTM shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the hire of both Equipment and supply of Services except where application to one or the other is specified.

2.7 This Agreement will come into effect on the Commencement Date and, unless terminated earlier in accordance with its terms, shall continue until the last day of the Rental Period or the Service Period (whichever is later).

2.8 The Rental Period or the Service Period may only be extended by written agreement between the parties, in accordance with Condition 18.7.

2.9 In the event that the Rental Period or the Service Period is not formally extended by written agreement but the goods and/or services continue to be provided by CTM, the terms of this Agreement and the Order shall continue in full force and effect.

### 3 EQUIPMENT

3.1 CTM shall hire the Equipment to the Customer during the Rental Period, for use at the Site, subject to the terms and conditions of this Agreement.

3.2 CTM shall not, other than in the exercise of its rights under this Agreement or Applicable Laws, interfere with the Customer's quiet possession of the Equipment.

### 4 SERVICES

4.1 CTM shall:

- (a) provide the Services to the Customer during the Service Period with reasonable care and skill in accordance (in all material respects) with the provisions of this Agreement and the Order;
- (b) use reasonable endeavours to meet any performance dates specified in the Order, but such dates shall be estimates only and time shall not be of the essence for the performance of the Services; and
- (c) use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Sites, Customer's premises or other location where the Services are to occur and that have been communicated to it, provided that CTM shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.

4.2 CTM shall have the right to make any changes to the Services which are necessary to comply with Applicable Laws, Local Authority requirements and safety requirements or which do not materially affect the nature or quality of the Services.

4.3 If the Customer can prove to CTM's reasonable satisfaction that, due to CTM's own act or omission, CTM has failed to perform the Services in accordance with this Agreement ("**Service Defect**"), then the CTM shall at its option remedy such Service Defect:

- (a) by re-executing the relevant part of the Services free of charge up to the amount of the Charges received by CTM for the provision of such Services (exclusive of any VAT); or
- (b) by repaying or crediting to the Customer that part of the Charges paid by the Customer to CTM relating to the provision of the relevant part of the Services (exclusive of any VAT).

The Customer must notify CTM in writing of any claims under this Condition within one (1) month of the date when the relevant Services were performed.

4.4 On remedying any Service Defect in accordance with Condition 4.3, CTM shall have no further liability for the Service Defect other than Condition 4.3 shall apply to any re-performed Services.

### 5 DELIVERY AND INSTALLATION

5.1 Delivery of the Equipment shall be made by CTM at the Site. Where the Customer has requested Installation, CTM shall at the Customer's expense install the Equipment at the Site.

5.2 The Equipment shall be deemed delivered by CTM on the completion of unloading the Equipment at the Site.

5.3 CTM shall use all reasonable endeavours to effect Delivery and/or Installation by the Delivery Date but any such dates are approximate only. Time is not of the essence in relation to the Delivery and/or Installation of the Equipment.

5.4 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery and/or Installation of the Equipment. Acceptance by such representative of Delivery and/or Installation by such representative shall constitute conclusive evidence that the Customer 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 CTM, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

5.5 To facilitate Delivery and Installation, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and Installation to be carried out safely and expeditiously.

5.6 If the Customer fails to accept Delivery of the Equipment on the Delivery Date, then, except where such failure is caused by CTM's failure to comply with its obligations under this Agreement:

- (a) the Equipment shall be deemed to have been delivered at

- (b) 9.00 am on the Delivery Date; and
- (b) CTM shall store the Equipment until Delivery/Installation takes place, and charge the Customer for all related costs and expenses (including insurance).

### 6 TITLE, RISK AND INSURANCE

6.1 The Equipment shall at all times remain the property of CTM, and the Customer 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 this Agreement).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer ("**Risk Period**") until such time as the Equipment is redelivered to CTM. [During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as CTM may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as CTM 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 CTM may from time to time consider reasonably necessary and advise to the Customer.

6.3 If the Customer fails to effect or maintain any of the insurances required under this Agreement, CTM 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 Customer.

6.4 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to CTM and proof of premium payment to CTM to confirm the insurance arrangements.

6.5 The Customer shall give immediate written notice to CTM in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment. Without prejudice to any other right or remedy available to it, if the Equipment is lost, stolen, damaged or destroyed during the hire period or Risk Period, the Customer shall pay to CTM on written demand:

- (a) the full repair costs (if the Equipment can be repaired in the reasonable opinion of CTM); or the full replacement costs for the damaged Equipment on a new for old basis (if the Equipment cannot be repaired in the reasonable opinion of CTM); and
- (b) a daily hire rate (calculated in accordance with the hire rate under the Agreement) from the date that the Equipment is lost, stolen, damaged or destroyed until the date that the Equipment is repaired or replaced and in the physical possession of CTM; and
- (c) any other reasonable and proper costs which have been incurred by CTM in connection with the replacement or repair of the Equipment.

### 7 THE CUSTOMER'S RESPONSIBILITIES

#### 7.1 Equipment

(a) The Customer shall during the term of this Agreement:

- (i) ensure that the Equipment is kept and operated in a suitable environment, 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 CTM as advised in relevant Order;
- (ii) take such steps (including compliance with all safety and usage instructions provided by CTM) 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;
- (iii) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (iv) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment unless the component (or components) is (or 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 or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in CTM immediately on Installation;
- (v) keep CTM fully informed of all material matters relating to the Equipment;
- (vi) keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without CTM's prior written consent;
- (vii) permit CTM or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (viii) not, without the prior written consent of CTM, 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;
- (ix) not without the prior written consent of CTM, 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 Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify CTM against all losses, costs or expenses incurred as a result of such affixation or removal;
- (x) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of CTM in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that CTM may enter such land or building and recover the Equipment both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of CTM of any rights such person may have or acquire in the Equipment and a right for CTM to enter onto such land or building to remove the Equipment;
- (xi) 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 Customer shall notify CTM and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify CTM on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (xii) not use the Equipment for any unlawful purpose;
- (xiii) ensure that at all times the Equipment remains identifiable as being CTM's property and wherever

- possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (xiv) deliver up/make available the Equipment at the end of the Rental Period or on earlier termination of this Agreement at such address as CTM requires, or if necessary allow CTM or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
- (xv) not do or permit to be done anything which could invalidate the insurances referred to in Condition 6.2.

## 7.2

### Services

The Customer shall:

- (i) co-operate with CTM in all matters relating to the Services;
- (ii) provide CTM, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by CTM to provide the Services;
- (iii) to obtain all necessary consents and licences required for the use of the Services under this Agreement;
- (iv) provide CTM with such information and materials as CTM may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (v) keep and maintain all CTM Materials at the Customer's premises in safe custody at its own risk, maintain CTM Materials in good condition until returned to CTM, and not dispose of or use CTM Materials other than in accordance with CTM's written instructions or authorisation.

## (b)

If CTM's performance of its obligations in respect of the Services is prevented or delayed by a Customer Default, CTM shall:

- (i) without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from any performance of any of its obligations to the extent that the Customer Default prevents or delays CTM's performance of any of its obligations;
- (ii) not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CTM's failure to perform any of its obligations as set out in this Condition 7.2(b).
- (iii) The Customer shall reimburse CTM on written demand for any costs or losses sustained or incurred by CTM arising directly or indirectly from the Customer Default.

## 7.3

### Indemnity

The Customer acknowledges that CTM 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 Customer or its officers, employees, agents and contractors, and the Customer shall indemnify CTM 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 CTM arising out of, or in connection with:

- (i) the Customer's breach or negligent performance or non-performance of the Agreement;
- (ii) the enforcement of the Agreement; and
- (iii) any claim made against CTM by a third party arising out of or in connection with the Agreement, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Customer, its employees, agents or sub-contractors.

## 8 WARRANTY

8.1 CTM warrants that the Equipment shall substantially conform to its specification (as made available by CTM) and fit for any purpose held out by CTM. CTM shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period, provided that:

- (a) the Customer notifies CTM of any defect in writing within three (3) Business Days of the defect occurring or of becoming aware of the defect;
- (b) CTM is permitted to make a full examination of the alleged defect;
- (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than CTM's authorised personnel;
- (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and
- (e) the defect is directly attributable to defective material, workmanship or design.

8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by CTM, the Customer shall be entitled only to such warranty or other benefit as CTM has received from the manufacturer.

8.3 If CTM fails to remedy any material defect in the Equipment in accordance with Condition 8.1, CTM may:

- (a) accept the return of part or all of the Equipment and make an appropriate reduction to the Charges payable during the remaining term of the Agreement and, if relevant, return any Deposit (or any part of it); or
- (b) replace the defective Equipment with Equipment of an equal or better standard.

8.4 On remedying any defect in accordance with Conditions 8.1 or 8.3, CTM shall have no further liability for the Service Defect other than Condition 8.1 shall apply to any repaired Equipment.

## 9 CHARGES

### 9.1 Charges

- (a) The Customer shall pay the Charges to CTM in accordance with the Order (i) within 30 days of the date of the invoice in the case of electronic/BACS transfers; (ii) within 14 days of the date of the invoice in the case of payments made by cheque; or (iii) in accordance with any credit terms agreed by CTM. Regardless of the method of payment, Charges must be paid in full and in cleared funds to a bank account nominated in writing by CTM within 30 days of the date of the invoice.
- (b) The Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

### 9.2 Additional Charges

- (a) CTM is permitted to apply Additional Charges if the Customer:
    - (i) re-directs or fails to take the Delivery;
    - (ii) fails to give appropriate instructions to facilitate the Delivery, Installation or collection of the Equipment;
    - (iii) prevents or delays the Delivery, Installation or collection of the Equipment;
    - (iv) fails to obtain appropriate licences or authorisations required for the Delivery, Installation or collection of the Equipment;
    - (v) returns part of the Delivery having failed to accept the full quantity of Equipment;
    - (vi) instructs CTM to reinstall the Equipment due to any acts of vandalism or sabotage by a third party or for any other reason;
    - (vii) instructs CTM to replace the Equipment in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment; and
    - (viii) is subject to Local Authority Charges.
- 9.3 Acceptance of Charges

The Customer shall be deemed to have accepted the Charges as set out on the invoice unless it informs CTM in writing on or before the payment due date that it disputes the Charges either in full or in part. The parties shall negotiate in good faith to attempt to resolve the dispute promptly and CTM shall provide all evidence as may be reasonably necessary to verify the disputed invoice. Where only part of an invoice is disputed, the undisputed amount shall be paid by the Customer in accordance with Condition 9.1.

### 9.4 Interest

(a) If the Customer fails to make a payment due to CTM under this Agreement by the due date, then, without limiting CTM's other remedies under this Agreement, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

(b) Interest under this Condition 9.2 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

### 9.5 Deposit

(a) The Deposit is a deposit against default by the Customer of payment of any Charges or any loss of or damage caused to the Equipment. The Customer shall, on the date of the Agreement, pay the Deposit to the Customer. If the Customer fails to pay any Charges when due under this Agreement, or causes any loss or damage to the Equipment (in whole or in part), CTM shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to CTM any sums deducted from the Deposit within ten Business Days of a demand for the same. CTM shall be entitled to retain the Deposit to cover any Charges incurred by the Customer up to that date including any administration costs connected to the termination of the Agreement. If the Deposit is not sufficient to cover the Charges, the Customer shall pay the balance of the Charges. The Deposit (or balance thereof) shall be refundable within [ten] Business Days of the termination of the Agreement.

### 9.6 Credit Limits

CTM may set and vary credit limits from time to time and withhold the supply of Services or hire of Equipment under the Agreement if the Customer exceeds such credit limit.

### 9.7 Set Off

(a) CTM shall be entitled to set-off under the Agreement any liability which it has or any sums which it owes to the Customer under the Agreement or under any other contract which CTM has with the Customer.

(b) Other than as set out in Condition 9.7(a), all amounts due under this 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).

## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Agreement (other than Intellectual Property Rights in any materials provided by the Customer), including the CTM Materials and the Deliverables, shall be the property of CTM and

CTM hereby grants to the Customer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to such Intellectual Property Rights for the purposes of the use of the Services.

10.2 The Customer grants CTM a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to CTM for the term of the Agreement for the purpose of performing its obligations under the Agreement.

## 11 COMPLIANCE

11.1 The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and consents as are required from time to time to perform its obligations under or in connection with the Agreement.

11.2 To the extent that a party receives Personal Data from the other party in relation to the Agreement each party acknowledges that it acts as a Data Controller in respect of any Personal Data which it receives and which is processed pursuant to the Agreement. Each party undertakes to the other that in processing such Personal Data it will comply with all Data Protection Laws. At any time, should CTM deem it necessary, the parties shall enter into a Data Processing Agreement in respect of any Personal Data which is to be processed pursuant to the Agreement.

## 12 LIMITATION OF LIABILITY

12.1 Subject to Condition 19.2, the restrictions on liability in this Condition 12 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in this Agreement limits any liability which cannot legally be limited including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.

12.3 Subject to Condition 12.2, CTM's total liability to the Customer under this Agreement shall not exceed 100% of any Charges payable under this Agreement.

12.4 Subject to Condition 12.2, CTM shall not be liable under this Agreement for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

12.5 Subject to Condition 12.2, all warranties, conditions and other terms implied by statute or common law or other Applicable Law (including as to the quality or performance of the Equipment or Services) are, to the fullest extent permitted by law, excluded from this Agreement.

## 13 TERM & TERMINATION

13.1 Either party shall be entitled to immediately terminate the Agreement by giving notice in writing to the other party if:

- (a) the other party commits a material breach of any of its obligations under the Agreement which is incapable of remedy;
- (b) the other party commits a breach of its obligations under the Agreement which is capable of remedy and fails to remedy it within (or persists in such breach after) fourteen 14 days of having been required in writing to remedy or desist;
- (c) the other party fails to pay any amount due under this Agreement on the due date for payment [and remains in default not less than [10] Business Days after being notified in writing to make such payment;
- (d) save to the extent prohibited by s233B Insolvency Act 1986, if
  - (i) the other party 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (ii) the other party 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;
  - (iii) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
  - (iv) 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 other party;
  - (v) 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 other party;
  - (vi) the holder of a qualifying floating charge over the assets of the other party has become entitled to

appoint or has appointed an administrative receiver;

- (vii) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

- (viii) a creditor or encumbrancer of the other party 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 other party's assets and such attachment or process is not discharged within 14 days;

- (ix) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-Conditions (i) to (viii);

- (e) the other party ceases, or appears in the reasonable opinion of the party seeking to terminate, likely or is threatening to cease, to carry on all or a substantial part of its business.

13.2 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle CTM to terminate the Agreement under Condition 13.1(d), it shall immediately notify CTM in writing.

13.3 This Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

13.4 CTM may terminate this Agreement by providing the Customer no less than 24 hours' written notice.

## 14 CONSEQUENCES OF TERMINATION

14.1 The termination of the Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

14.2 Upon termination of the Agreement for any reason whatsoever:

- (a) CTM's consent to the Customer's possession of the Equipment shall terminate and CTM may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located;
- (b) the Customer shall immediately return all of CTM Materials and any Deliverables. If the Customer fails to do so then CTM may enter the Customer's premises and take possession of them;
- (c) each of the parties shall immediately return to the other party (or, if the other party so requests by notice in writing, destroy) all of the other party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information and shall make no further use of such Confidential Information;
- (d) CTM may submit invoices for any Services that it has supplied but for which no invoice has previously been submitted and the Customer shall pay these invoices immediately on receipt; and
- (e) the Customer shall pay CTM on demand the Charges and other sums due but unpaid at the date of such demand.

14.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

## 15 FORCE MAJEURE

15.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations (except for those in relation to payment) under this Agreement if such delay or failure results 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.

15.2 If the period of delay or non-performance continues for [three months], the party not affected may terminate this Agreement by giving [10] days' written notice to the affected party.

## 16 CONFIDENTIALITY

16.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party

disclosed or obtained as a result of the relationship of the parties under the Agreement and shall not use nor disclose the same save for the purposes of the proper performance of the Agreement or with the prior written consent of the other party.

- 16.2 Each party may disclose the Confidential Information:
- (a) to its employees, officers, representatives or advisors who need to know such information for the purpose of exercising its rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the Confidential Information comply with this Condition 16; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 17 ASSIGNMENT AND OTHER DEALINGS

17.1 CTM 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 Agreement.

17.2 The Customer shall not 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.

17.3 CTM may sub-contract performance of any of the Services (or part thereof) to any person, firm, corporation or organisation provided that CTM shall remain responsible to the Customer for the performance of such Services in accordance with the terms of this Agreement.

## 18 GENERAL

### 18.1 Third Party Rights

- (a) A person who is not a party to the Agreement has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Agreement.
- (b) The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any person that is not a party to the Agreement.

### 18.2 No Partnership or Agency

Nothing in the Agreement and no action taken by the parties pursuant to the Agreement creates, or is deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

### 18.3 Rights and remedies

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

### 18.4 Entire Agreement

- (a) The Agreement contains the entire agreement between the parties in relation to their subject matter and supersede any prior arrangement, understanding written or oral agreement between the parties in relation to such subject matter.
- (b) The parties acknowledge that the Agreement has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in the Agreement.
- (c) Each party agrees that the only rights and remedies available to it arising out of, or in connection, with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Agreement which it might otherwise have had in relation to them.

### 18.5 Severability of Provisions

- (a) If at any time any part of the Agreement is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the Agreement and the validity and/or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired as a result of

that omission.

- (b) If any provision or part-provision of this Agreement is deemed deleted under Condition 18.5(a), 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

### 18.6 Waiver

The rights and remedies of either party in respect of the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Agreement shall be in writing. The waiver by either party of any breach of Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

### 18.7 Variation

No purported alteration or variation of Agreement or these Conditions shall be effective unless it is in writing, refers specifically to the Agreement and is signed by a duly authorised representative of each of the parties to the Agreement.

### 18.8 Further Assurance

The Customer shall at the request of CTM, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Agreement.

### 18.9 Notices

- (a) Any notices sent under the Agreement must be in writing. Notice by email is deemed to be in writing.
- (b) Notices may be served by personal delivery, prepaid recorded delivery service or email to the relevant party's registered office or at such other address (or email address) as the relevant party may give for the purpose of service of notices in the Agreement.
- (c) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
  - (iii) if sent by e-mail, at 9.00 am on the next Business Day after transmission.

### 18.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## 19 DISPUTE RESOLUTION PROCEDURE

19.1 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of either of them, then the parties shall attempt in good faith to resolve the dispute by escalating the issue internally via their respective account managers; and then their respective Procurement Directors (or equivalent); and then their respective CFOs / COOs. At each level of escalation, the parties involved shall use all reasonable endeavours to resolve the dispute.

19.2 If, following escalation through each of the levels set out in Condition 19.1, the parties fail to resolve the dispute then the parties may refer the matter for legal proceedings under the jurisdiction of the courts.

## 20 LAW AND JURISDICTION

20.1 The Agreement, these Conditions and any issues, disputes or claims arising out of, or in connection with any of them (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with the laws of England and Wales.

20.2 Subject to first complying with Condition 19, all disputes or claims arising out of or relating to the Agreement and/or these Conditions shall be subject to the exclusive jurisdiction of the courts England and Wales.