

## **PARTIES**

- (1) MICROMINDER; and
- (2) LESSEE

## **BACKGROUND**

- (A) The Lessee wishes to rent the Equipment from Microminder and Microminder agrees to rent the Equipment on the terms and conditions set out in this agreement.
- (B) The Lessee is entering into this agreement wholly for the purposes of a business carried on by him.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The following definitions and rules of interpretation apply in this agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** the date that the Lessee takes Delivery of the Equipment.

**Delivery:** the transfer of physical possession of the Equipment to the Lessee at the Site.

**Equipment:** the hardware equipment, details of which are set out in Section 4 of the Order, the Microsoft Software Products and all substitutions, replacements or renewals of such equipment and all related software, accessories, manuals and instructions provided for it.

**EULA:** End User Licence Agreement in relation to the Microsoft Software Products.

**Lessee:** the individual, partnership, limited liability partnership or company, details of which are set out in Section 1 of the Order.

**Microminder:** Micro Minder Limited incorporated and registered in England and Wales with company number 01831793 whose registered office is at Unit 1, 8a Wadsworth Road, Perivale, Greenford, Middlesex UB6 7JD.

**Microsoft Software Products:** the software, details of which are set out in Section 4 of the Order and all substitutions, replacements or renewals of such software.

**OEM:** original equipment manufacturer.

**Order:** means the order signed by the Lessee in relation to the Equipment, the Microsoft Software Produces, the Protective Services and Support Services.

**Protective Services:** the protective services chosen by the Lessee, details of which are set out in Section 5 of the Order.

**Site:** the Lessee's premises, details of which are set out in Section 2 of the Order.

**Support Services:** the support services chosen by the Lessee, details of which are set out in Section 5 of the Order.

**Rental Payments:** the payments made by or on behalf of Lessee for hire of the Equipment, details of which are set out in Section 6: Option 1 of the Order.

**Rental Period:** the period of hire as set out in clause Error! Reference source not found..

**Total Loss:** due to the Lessee's default the Equipment is, in Microminder's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 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.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written includes fax and e-mail.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

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- 1.12 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 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.

## 2. EQUIPMENT HIRE

- 2.1 Microminder shall hire the Equipment to the Lessee for use at the Site subject to the terms and conditions of this agreement.
- 2.2 Microminder shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Lessee's quiet possession of the Equipment.

## 3. RENTAL PERIOD

The Rental Period starts on the Commencement Date and shall continue for a fixed period of forty-eight (48) months unless this agreement is terminated earlier in accordance with its terms.

## 4. RENTAL PAYMENTS

- 4.1 The Lessee shall pay the Rental Payments to Microminder. The Rental Payments shall be paid in Sterling (GBP) and shall be made by direct debit to Microminder's bank account, or such other bank account that Microminder may advise the Lessee from time-to-time in writing.
- 4.2 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.
- 4.3 The Rental Payments includes rental of the Equipment, professional services for installation of said equipment, the Support Services and the chosen Protective Services, but shall exclude any cabling costs whether these be material or associated labour costs.
- 4.4 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).

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4.5 If the Lessee fails to make any payment due to Microminder under this agreement by the due date for payment, then, without limiting Microminder's remedies under clause 12, the Lessee shall pay interest on the overdue amount at the rate of 8% per annum above Royal Bank of Scotland's base rate from time to time. 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. DELIVERY & INSTALLATION

5.1 Delivery of the Equipment shall be made by Microminder. Microminder shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Risk shall transfer in accordance with clause 6 of this agreement.

5.2 Microminder shall install the Equipment at the Site. The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the installation of the Equipment. Acceptance by such representative of installation 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 Microminder, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.

5.3 To facilitate Delivery and installation, the Lessee 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.

## 6. TITLE, RISK & INSURANCE

6.1 The Equipment shall at all times remain the property of Microminder, 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 this agreement).

6.2 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 Microminder. During the Rental Period and the Risk Period, the Lessee 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 Microminder 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 Microminder 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 Microminder may from time to time consider reasonably necessary and advise to the Lessee.
- 6.3 All insurance policies procured by the Lessee shall be endorsed to provide Microminder 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 Microminder's request name Microminder 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.
- 6.4 The Lessee shall give immediate written notice to Microminder 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.
- 6.5 If the Lessee fails to effect or maintain any of the insurances required under this agreement, Microminder 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.
- 6.6 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Microminder and proof of premium payment to Microminder to confirm the insurance arrangements.

## 7. LESSEE'S RESPONSIBILITIES

- 7.1 The Lessee shall during the term of this agreement:
- (a) 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 the manufacturer;
  - (b) take such steps (including compliance with all safety and usage instructions) 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) 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 Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;

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- (d) make no alteration or modification to the Equipment or installation infrastructure and shall not remove any existing component(s) from the Equipment without the prior written consent of Microminder whether that be by the lessee or their employees or a third party;
- (e) keep Microminder fully informed of all material matters relating to the Equipment;
- (f) keep the Equipment at all times at the Site (with the exception of notebook laptop products where there is a common understanding that such item shall be used in a mobile way) and shall not move or attempt to move any part of the Equipment to any other location without Microminder's prior written consent, which shall be given provided that Microminder alone moves the Equipment at the cost of the Lessee;
- (g) permit Microminder or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Equipment and make copies of such records readily available to Microminder, together with such additional information as Microminder may reasonably require;
- (i) not, without the prior written consent of Microminder, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet, sub-licence, allow remote access from a host device/third party device that provides resources, services and /or information or lend all or any of the Equipment;
- (j) not allow the creation of any mortgage, charge, lien or other security interest in respect of all or any of the Equipment;
- (k) not without the prior written consent of Microminder, 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 Microminder against all losses, costs or expenses incurred as a result of such affixation or removal;
- (l) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Microminder 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 Microminder 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 Microminder of any rights such person may have or acquire in the Equipment

and a right for Microminder to enter onto such land or building to remove the Equipment;

- (m) 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 Microminder and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Microminder on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (n) not use the Equipment for any unlawful purpose;
- (o) ensure that at all times the Equipment remains identifiable as being Microminder's property and wherever possible shall ensure that a visible sign (and in particular any signs supplied by Microminder) to that effect is attached to the Equipment;
- (p) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as Microminder requires, or if necessary allow Microminder or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
- (q) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

7.2 The Lessee acknowledges that Microminder 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 Microminder 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 this agreement. Furthermore, any works required as a result of third party (being anyone other than Microminder employees) involvement shall not be covered by the associated support contract and shall be chargeable.

## 8. MICROSOFT SOFTWARE PRODUCTS

8.1 The Lessee acknowledges and agrees to the following in respect of the Microsoft Software Products:

- (a) they are licenced by the Microsoft Corporation and the OEMs;
- (b) they may only be used subject to and in accordance with the terms and conditions of this agreement (including the EULA applicable to the Microsoft Software Products);

- (c) may not be copied, transferred or otherwise used in violation of such terms and conditions; and
- (d) use all commercially reasonable efforts to prevent any unauthorised distribution, use, duplication or pirating of the Microsoft Software Products.

## **9. WARRANTY**

9.1 Microminder warrants that the Equipment (which for the purpose of this clause 9.1 shall expressly exclude the Microsoft Software Products) shall substantially conform to its specification (as made available by Microminder), be of satisfactory quality and fit for any purpose held out by Microminder. Microminder shall use all reasonable endeavours to remedy, as part of its Support Services, any material defect in the Equipment which manifests itself within forty-eight (48) months from Delivery, provided that:

- (a) the Lessee notifies Microminder of any defect in writing within ten (10) Business Days of the defect occurring or of becoming aware of the defect;
- (b) Microminder 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 Microminder'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 Microminder does not give any warranty or make any representation with respect to the Microsoft Software Products or their use except as expressly set in the EULA.

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

## **10. LIABILITY**

10.1 Without prejudice to clause 10.2, Microminder's maximum aggregate liability for breach of this 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 an amount equal to the aggregate of forty-eight (48) Rental Payments received by Microminder.

10.2 Nothing in this agreement shall exclude or in any way limit:



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- (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 This agreement sets forth the full extent of Microminder'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 Microminder except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.

10.4 Without prejudice to clause 10.2, Microminder shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business;
- (d) depletion of goodwill or similar losses; or
- (e) loss of anticipated savings; or
- (f) loss of goods; or
- (g) loss of use; or
- (h) loss or corruption of data or information; or
- (i) special, indirect, consequential or pure economic loss, costs, damages, charges or expenses indirect or consequential loss or damage,

in each case, however caused, even if foreseeable.

## 11. TERMINATION

11.1 Without affecting any other right or remedy available to it, Microminder may terminate this agreement with immediate effect by giving written notice to the Lessee if:

- (a) the Lessee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven (7) days after being notified to make such payment;

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- (b) the Lessee commits a breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified to do so;
- (c) the Lessee repeatedly breaches any of the terms of this 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 this 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 section 123 of the Insolvency Act 1986 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 section 268 of the Insolvency Act 1986 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 creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (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) other than for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- (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 ten (10) Business Days;

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- (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; or
- (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.

11.2 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

11.3 The Lessee may terminate this agreement by giving thirty (30) days written notice to Microminder if after the initial twelve (12) months (Initial Period) of the Rental Period, Microminder misses two (2) or more Service Level Agreements in accordance with the terms and conditions of the relevant Support Service Level within any rolling six (6) month period after the Initial Period.

## 12. CONSEQUENCES OF TERMINATION

12.1 Upon termination of this agreement, however caused:

- (a) Microminder's consent to the Lessee's possession of the Equipment shall terminate and Microminder may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site or 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 Microminder 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 4.5;
  - (ii) any costs and expenses incurred by Microminder in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

12.2 Upon termination of this agreement pursuant to clause 11.1, any other repudiation of this agreement by the Lessee which is accepted by Microminder or pursuant to clause 11.2, without prejudice to any other rights or remedies of Microminder, the Lessee shall pay to Microminder on demand:

- (a) 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;

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- (b) any sum that Microminder is required to pay the Microsoft Corporation or any of its affiliates for the rental rights (as defined by Microsoft Corporation) of the Equipment for the whole of the Rental Period.

12.3 The sums payable pursuant to clause 12.2 shall be agreed compensation for Microminder's loss and shall be payable in addition to the sums payable pursuant to clause 12.1(b). Termination or expiry of this 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.

### 13. FORCE MAJEURE

Microminder shall not be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a reasonable period.

### 14. CONFIDENTIAL INFORMATION

14.1 The Lessee undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of Microminder, except as permitted by clause 14.2.

14.2 The Lessee may disclose Microminder's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Lessee's obligations under this agreement. The Lessee shall ensure that its employees, officers, representatives or advisers to whom it discloses Microminder'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.

### 15. ASSIGNMENT & OTHER DEALINGS

15.1 The Lessee shall not, without the prior written consent of Microminder, assign, transfer, charge, mortgage, sub-contract, hold on trust or deal in any other manner with all or any of its rights or obligations under this agreement.

15.2 Microminder may at any time assign, transfer, charge, mortgage, sub-contract, hold on trust or deal in any other manner with all or any of its rights or obligations under this agreement.

**16. ENTIRE AGREEMENT**

- 16.1 This 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 this 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 this agreement.
- 16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 16.4 Nothing in this clause shall limit or exclude any liability for fraud.

**17. VARIATION**

No variation of this 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 this 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**

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 this agreement.

**20. THIRD PARTY RIGHTS**

No one other than a party to this agreement shall have any right to enforce any of its terms.

## 21. NOTICES

21.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number or by email.

21.2 Any notice or communication 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, unless left after normal business hours in which case it shall be deemed to have been received at 9.00am on the next Business Day;
- (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.
- (c) if sent by fax or email, at 9.00 am on the next Business Day after transmission.

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.

## 22. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it 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 & 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.

## 24. SEVERANCE

24.1 If any provision or part-provision of this 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

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of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

24.2 If one party gives notice to the other of the possibility that any provision or part-provision of this 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

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

## 26. JURISDICTION

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

This agreement has been entered into on the date stated as Date of Order on the order form.