

Terms and Conditions for the Leasing of Equipment

Lessor: BULL PARTNERSHIP of Beacon House, 4 Beacon Road, Rotherwas Industrial Estate Hereford HR2 6JF (which expression shall include its successors and assigns)

Lessee: The party identified in the Schedule

The Lessor agrees to let and the Lessee to lease on the terms and conditions set out below and in the Schedule the goods ('the Goods') described in the Schedule

1 Definitions

- 1.1 'Expert' means an expert who deals in or advises on goods of the same nature as the Goods appointed by the Lessor to carry out the valuations of the Goods contemplated by clause 3.5 below
- 1.2 'Goods' shall include each and every component part record log book manual and handbook for them and all replacements renewals or additions to and substitutions for the Goods from time to time made shall form an integral part of them and shall become the property of the Lessor and subject to this agreement
- 1.3 'Insurers' means the insurers of the Goods and third party risks under the policies specified in clause 3.4 below
- 1.4 'Lease Period' is the period referred to as such in the Schedule; or if shorter the period until the Goods through fair wear and tear (but for no other reason) be incapable of use for the purpose for which they were designed or made or until the hiring is terminated under the terms of this agreement
- 1.5 'Presumed Value' means the market value of the Goods on sale by a willing seller to a willing buyer on the assumption that the Goods are maintained strictly in accordance with the terms of this agreement and comply with the Return Conditions and have not sustained a Total Loss
- 1.6 'Qualifying Expenditure' has the meaning attributed to it by the Capital Allowances Act 2001 Section 57
- 1.7 'Rentals' are the rentals calculated in accordance with the Schedule
- 1.8 'Rental Payment Dates' are the dates detailed in the Schedule
- 1.9 'Return Conditions' are the conditions specified in the Schedule being those to which the Goods should comply at all times during the Lease Period and upon their delivery up to the Lessor at the expiry of the Lease Period or upon earlier determination of this agreement or the hiring under it
- 1.10 'Schedule' means any schedule from time to time made subject to this agreement. This agreement and each Schedule shall form a separate agreement for the lease of such of the Goods described in such Schedule upon the terms contained in it and in this agreement but so that any breach of the provisions of any such agreement shall be deemed to be a breach of all such agreements then in force between the parties
- 1.11 'Specified Location' is the location at which the Lessee agrees to keep the Goods referred to in clause 3.6.1 below and specified in the Schedule
- 1.12 'Total Loss' means a total loss or constructive or arranged total loss as declared by the Insurers or otherwise adjudged
- 1.13 'Training Costs' means the costs of the provision of training in accordance with clause 3.11 as set out in the Schedule

2 Quiet enjoyment

So long as the Lessee is neither in default in the payment of any sum of money payable nor is in breach of any of the covenants on its part to perform in this agreement it may peaceably hold and enjoy quiet possession of the Goods for the Lease Period

3 Lessee's covenants

The Lessee (and if the Lessee comprises more than one person jointly and severally) agrees:

3.1 Payment

to pay punctually in such manner as the Lessor may require (including by Standing Order or Direct Debit) and without previous demand deduction counterclaim or set-off to the Lessor at its address given above or to its order the Rentals on the Rental Payment Dates, the Training Costs on or prior to the dates on which training is provided in accordance with clause 3.11 and all other sums due from the Lessee to the Lessor at the times specified for payment in this agreement and that in respect of any sums payable under this agreement time shall be of the essence and that a condition of this agreement is that failure to pay any sums due within 21 days after the due date shall be a repudiation of this agreement

3.2 Inspection

3.2.1 to inspect the Goods upon delivery of them to it and to notify the Lessor immediately in writing of any defect in the Goods. If no such notification is given it shall be conclusively presumed that the Goods are complete and in good order and condition and fit for the purpose for which they are required and in every way satisfactory to the Lessee

3.2.2 to allow the Lessor or its duly authorised agent or representative upon reasonable notice at any time access to inspect the Goods and to comply with its obligations in relation to the Goods as contained in clause 4.

3.3 Use of the Goods

3.3.1 to use the Goods in a skilful and proper manner and in accordance with any operating instructions issued for them and to ensure that the Goods are operated and used by properly skilled and trained personnel

3.3.2 to keep the Goods at all times in good repair condition and working order and in accordance with the Return Conditions and to deliver up the Goods from time to time in order that maintenance and servicing may be carried out to the Goods by the Lessor in accordance with the recommendations of the manufacturer or supplier of the Goods and (subject to clause 3.5 below) if any part of the Goods is destroyed damaged or lost to repair and replace them with replacements in such condition so as to comply in all respects with the terms of this agreement

3.3.3 to make no alteration to the Goods and not to remove any existing component from the Goods except to replace batteries or defibrillating pads with the same of a like make and model to that being replaced

3.3.4 to carry out or to procure that there shall be carried out all the Lessor's obligations relating to the preparation of the Specified Location as defined in this agreement and the installation and acceptance of the Goods contained in the contract under which the Lessor acquires the Goods

3.3.5 to keep or procure to be kept throughout the Lease Period accurate complete and current records of all maintenance carried out to the Goods

3.3.6 to obtain effect and keep effective all permissions licences and permits and to pay all rates rents taxes and charges which may from time to time be required in connection with the business of the Lessee the Goods and their use the premises where they are from time to time situated or kept this agreement and the purchase ownership delivery leasing possession operation import to or export from any country any return or other disposition of the Goods or upon the rentals receipts or earnings arising from them including interest and penalties (other than corporation tax charged on the profits or taxable gains of the Lessor) and to comply with all statutory and other obligations of all kinds in relation to the Goods and the use of them and at its own expense to add to or install with the Goods any safety or other equipment required by any applicable law or regulation to be so added or installed for the use or operation of the Goods and to protect the Goods against distress execution or seizure (or in Scotland any form of diligence) and to indemnify the Lessor against all losses charges and damages however incurred by the Lessor by reason of failure by the Lessee to comply with any of the above terms of this clause 3.3 and

3.3.7 that for the purposes of United Kingdom taxation and irrespective of the accounting treatment to be adopted by the Lessee the Lessee is not entitled to claim capital allowances on the Goods

3.4 Insurance

3.4.1 to insure the Goods and keep the Goods insured throughout the Lease Period for their full replacement value against all risks on a comprehensive policy without restriction or excess

3.4.2 to insure the Lessee against all liability to third persons for death personal injury and damage to or loss of property arising directly or indirectly out of the use possession or operation of the Goods for such amount as the Lessor may stipulate from time to time or in the absence of any such stipulation for such amount as is prudent in all the circumstances and in any event for at least the sum of £1,000,000 and

3.4.3 to pay punctually all premiums due for such insurance and to produce to the Lessor on request the policy or policies together with evidence of payment of the premiums and agrees that the Lessor may effect the insurance referred to in this clause 3.4 if the Lessee has failed to do so (though it is not under any obligation so to do) and to reimburse the Lessor on demand the cost of so doing

3.5 Total Loss

3.5.1 to pay to the Lessor upon the expiry of 30 days after a Total Loss (or on such later date as the Lessor may agree) an amount equal to the sum of:

3.5.1.1 all arrears of Rental including apportioned Rental for any broken period. For the avoidance of doubt Rental shall continue to accrue until the later of the date when the Insurers make payment to the Lessee under the policy or policies maintained in compliance with 3.4.1 above and the date when the Lessee pays to the Lessor the sum referred to at clause 3.5.2 below. Any payment made in respect of arrears under clause 3.5.1.1 shall be on account of the Lessee's final liability for Rental.

3.5.1.2 such amount as the Expert may determine as the amount (if any) by which the Presumed Value on the date of the occurrence of the Total Loss exceeds the sum paid by the Insurers to the Lessor under the policy or policies maintained in compliance with clause 3.4.1 above and

3.5.1.3 such sum as is required to compensate the Lessor for the loss or destruction of or damage to the Goods

3.5.2 if on the expiry of the period of 30 days from the date of the Total Loss the Insurers have not made payment to the Lessee under the policy or policies maintained in compliance with clause 3.4.1 above and the Lessee has not in turn made payment to the Lessor the Lessee shall pay to the Lessor upon demand such sum as shall be determined by the Expert to be the Presumed Value in lieu of the amount to be calculated and paid under the terms of clause 3.5.1.2

3.5.3 to pay the costs and expenses of the provision of the opinion of the Expert such costs and expenses (if any) to be added respectively to the amounts payable under clauses 3.5.1.2 or 3.5.2

3.5.4 if the Goods sustain loss or damage not amounting to a Total Loss forthwith to notify the Lessor and to make good such damage and to apply all insurance moneys payable in making good such damage and upon being requested by the Lessor so to do forthwith to assign to the Lessor all the Lessee's rights benefits and claims under any relevant policy of insurance and

3.5.5 to be solely responsible for and to indemnify the Lessor in respect of all loss of or damage to the Goods (in so far as the Lessor is not reimbursed by the proceeds of insurance in respect thereof) however caused occurring at any time or times before they are re-delivered to the Lessor under the terms of clause 3.8 below and

3.6 Dealings with or affecting the Goods

3.6.1 to keep the Goods in its own possession at the Specified Location (or at such other location(s) as the Lessor may agree) and in compliance with any policy of insurance affecting the Goods and neither to sell or offer for sale assign mortgage pledge underlet lend or otherwise deal with the Goods or any interest in them or in this agreement nor to allow the creation of any charge or lien over them nor without the previous written consent of the Lessor to attach the Goods to any land or premises so as to cause them to become a permanent or immovable fixture (or in Scotland a heritable fixture) on such land or premises

3.6.2 to ensure that if the Goods are or become affixed to any land or building they shall be capable of being removed without material injury to such land or building and to take all necessary steps to prevent title to the Goods from passing to the landlord of such land or building and warrants that if the Goods are or may become a fixture as defined in the Capital Allowances Act 2001 Section 173 the circumstances are such that the Goods would by virtue of the Capital Allowances Act 2001 Section 176 have been treated for material purposes as being owned by the Lessee if the Lessee had bought the Goods and incurred capital expenditure in doing so at the commencement of the Lease Period and the Lessee is leasing the Goods for the purposes of a qualifying activity carried on by it or for leasing otherwise than in the course of a qualifying activity

3.6.3 to repair and make good any damage caused by the affixation of the Goods to or their removal from any land or building (whether such affixation or removal is effected by the Lessor or the Lessee) and to indemnify the Lessor against all loss damage or liability it may incur or sustain as a result of such affixation or removal and

3.6.4 if the Goods are or may become a fixture as defined by the Capital Allowances Act 2001 Section 173 to sign and deliver to the Lessor on demand an election in such form as the Lessor or the Inland Revenue may prescribe that the Capital Allowances Act 2001 Section 177 shall apply or an election in any other form and under any other authority (statutory or otherwise) in response to which H M Revenue & Customs will treat the Goods to like effect for material purposes as being owned by the Lessor

3.7 Indemnity

to indemnify the Lessor against all loss actions claims demands proceedings (whether criminal or civil) costs legal expenses (on a full indemnity basis) insurance premiums and calls liabilities judgments damages or other sanctions whenever arising directly or indirectly from the Lessee's failure or alleged failure to carry out its duties under this agreement or by reason of any loss injury or damage suffered by any person (including without limitation the Lessor) from the presence of the Goods or the delivery possession hiring transportation condition use operation removal or return of them or their sale or disposal by the Lessor or any defect in the Goods or the design manufacture testing maintenance or overhaul of them or the Lessor exercising any right in respect of the Goods or their ownership or hiring

3.8 Return of Goods

to deliver up the Goods in good repair and working order as provided in clause 3.3 above together with all records log books and handbooks in respect thereof and in accordance with the Return Conditions at the expiration of the Lease Period or upon earlier determination of this agreement or the hiring under it at such address in Great Britain as the Lessor shall notify to the Lessee and to allow the Lessor its agents or representatives access to any

- 3.9 Information relating to the Lessee and the Goods**
to keep the Lessor regularly informed of the financial progress of the Lessee's business and upon the Lessor's request to supply to the Lessor a copy of every balance sheet and accounts sent by the Lessee to its shareholders and such further information as the Lessor may from time to time require concerning the Lessee's financial position and the Goods
- 3.10 H M Revenue & Customs**
to furnish promptly to the H M Revenue & Customs such information as may be legally required to be so furnished about the leasing of the Goods or the use to which the same are being or have been put and to furnish to the Lessor promptly upon request such information books records or documents as the Lessor requests in order to enable the Lessor to respond to such a request of the Lessor from H M Revenue & Customs
- 3.11 Training**
3.11.1 Prior to or on the commencement of the Lease Period and as a condition of this agreement to make available 6 members of staff to be trained (all at one and the same time) in the use of the Goods
3.11.2 Within each period of 12 months of the Lease Period to make available 6 members of staff to be provided with refresher training (all at one and the same time) in the use of the Goods
- 4 Lessor's Covenants**
The Lessor (and if the Lessor comprises more than one person jointly and severally) agrees:
- 4.1 Service and Maintenance**
As often as the Lessor may determine to be necessary, having regard to the recommendations of the manufacturer or supplier of the Goods, to carry out servicing and maintenance of the Goods, the cost of which being incorporated and included within the Rental
- 4.2 Replacement of Consumable Parts**
Prior to or on expiry of any consumable parts of the Goods (i.e. those parts which are issued with an expiry date by the manufacturer or supplier of the Goods) to replace such parts, the cost of doing so being incorporated and included within the Rental
- 4.3 Software Upgrades**
As and when software upgrades are made available to the Lessor by the manufacturer or supplier of the Goods the Lessor will use its best endeavours to attend the Specified Location and upload such software upgrades
- 5 Conditions warranties and exclusion**
5.1 The Lessor agrees that provided that the Lessee is not in default hereunder it will upon request assign to the Lessee (so far as the same are capable of being assigned) the benefit of all expressed warranties granted in favour of the Lessor by the supplier of the Goods or the manufacturer of them or any third party provided that the Lessee shall first fully indemnify the Lessor to the satisfaction of the Lessor against all costs claims damages and expenses incurred or to be incurred in connection with the enforcement thereof or the making of any claim thereunder and provided that upon the expiration of the Lease Period or upon the earlier termination of the hiring hereunder the Lessee agrees to re-assign such warranties to the Lessor and for that purpose hereby irrevocably appoints the Lessor as its attorney and in its name to execute in favour of the Lessor any such assignment in such form as may then be necessary to give effect to this clause
- 5.2 Save as above the Lessor does not let or supply the Goods with any representation concerning the condition performance suitability or qualities of the Goods or with or subject to any term condition or warranty express or to be implied by statute description at common law or otherwise and all such representations terms conditions warranties whether relating to the capacity age quality description condition leasing possession transportation or use of the Goods or to the satisfactory quality or suitability or fitness of the Goods for a particular or any purpose are excluded
- 5.3 The Lessor shall not be liable to the Lessee:
5.3.1 in contract or in tort for loss injury or damage arising by reason of any defects in the Goods whether such defects be latent or apparent on examination (other than liability for death or personal injury arising from the negligence of the Lessor)
5.3.2 for any statement term condition warranty or representation made by any supplier dealer agent broker or other person through whom this transaction may have been introduced negotiated or conducted and persons other than those in the employ of the Lessor have no authority express or implied to act as agent for the Lessor
5.3.3 either for any loss whatever suffered by the Lessee as a result of the Goods or any part of them being unusable or to supply any replacement goods during any period when the Goods or part of them are unusable
5.3.4 for any loss or damage incurred or sustained by the Lessee in consequence of the Lessor terminating the hiring under clause 6 below or in retaking possession of the Goods
- 5.4 If the Lessee does not notify the Lessor on delivery of any defect in the Goods it shall be conclusively presumed that the Goods are complete and in good order and condition and fit for the purpose for which they are required and in every way satisfactory to the Lessee
- 5.5 If the Lessee shall have first discharged in full all its obligations under this agreement including without limitation its liability to pay the sum calculated under clause 3.5.2 above the Lessor shall pay to the Lessee the sum (if any) by which the insurance money in respect of a Total Loss subsequently received by the Lessor exceeds the sums paid by the Lessee to the Lessor under clause 3.5.1
- 6 Termination**
6.1 It is hereby agreed that forthwith upon the occurrence of a Total Loss the hiring of the Goods shall terminate but without prejudice to this agreement (which shall continue in full force and effect) and to any claims or liabilities then outstanding or thereafter arising thereunder
- 6.2 Without prejudice to the Lessor's right to arrears of Rentals or other sums due or for damages for breach of this agreement the Lessor may terminate the hiring under this agreement on the occurrence of any of the following events:
6.2.1 if the Lessee shall not pay any of the Rentals or any of the sums agreed to be paid by the Lessee to the Lessor under this agreement punctually on the date when due or
6.2.2 if the Lessee shall be in breach of any term of this agreement or
6.2.3 if there shall be any default in payment of any Rentals or other sum of money due to be paid or the Lessee shall commit any breach of any of the terms of a lease in force between the Lessor or any company that is a subsidiary of the Lessor or of which the Lessor is a subsidiary and the Lessee or any company that is a subsidiary of the Lessee or of which the Lessee is a subsidiary or
6.2.4 if the Lessee shall do or allow to be done any act or thing that may prejudice or endanger the Lessor's property or rights in the Goods or
6.2.5 if the Lessee shall die or
6.2.6 if the Lessee shall be the subject of any act of insolvency
6.2.7 if any step shall be taken to levy a distress or execution or if a distress or execution shall be levied or threatened to be levied upon any chattels of or in the possession of the Lessee (or in Scotland if any form of diligence is done or threatened by a third party affecting the Goods) or
6.2.8 if the Lessee shall abandon the Goods
whereupon the Lessor's consent to the Lessee's possession of the Goods shall determine immediately and the Lessor may take possession of the Goods wherever they may be
- 7 Consequences of termination**
Forthwith upon the hiring of the Goods being determined under clause 6.2 above or if this agreement is terminated upon a repudiation by the Lessee accepted by the Lessor the Lessee shall pay to the Lessor:
7.1 all arrears of Rentals including apportioned Rentals for any broken period and
7.2 damages for any breach of this agreement and all expenses and costs incurred by the Lessor in retaking possession of and selling or re-hiring the Goods or attempting to sell or re-hire the Goods and/or enforcing its rights under this agreement
- 8 Interest**
If any of the Rentals or any other sums payable under this agreement shall not be paid when due the Lessee shall pay to the Lessor interest on them calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 10% a year over the base rate from time to time of the Bank of England
- 9 Generally**
9.1 The Lessor shall at all times retain the ownership of the Goods and the Lessee shall have no interest in the Goods save as is provided by this agreement. Notwithstanding that the Goods may have been affixed to any land or building the Lessor shall continue to be the owner of them and they shall as between the Lessor and the Lessee and their respective successors in title remain the personal property of the Lessor
9.2 Clause 3.3 above shall not relieve the Lessor of the direct burden of wear and tear to the Goods
9.3 Any delay or failure of the Lessor to exercise any right or remedy shall not constitute a waiver of it or them and any of the Lessor's rights or remedies may be enforced separately or concurrently with any other right or remedy now or in the future accruing to the Lessor to the effect that such rights are cumulative and not exclusive of each other
9.4 This agreement contains all the terms agreed between the parties except for such variations in writing as shall be agreed in writing by the Lessor and the Lessee. The rights of the Lessor are assignable by the Lessor without the Lessee's consent. The Lessee is not permitted to assign this agreement
9.5 Any written communication from the Lessor to the Lessee shall be sufficiently served if sent by prepaid post or letter or delivered by hand to the address of the Lessee as referred to above and if sent by post or letter shall be deemed to have been received by the Lessee 48 hours after the time of posting and at the date of delivery if delivered otherwise than by post to the Lessee's said address
9.6 All sums payable under this agreement shall be paid together with the addition of such VAT as is legally payable on those sums
9.7 The continuance of this agreement or the Lessee's liability for payment of Rentals and all other sums under it shall not be affected in any way by the loss theft Total Loss or any damage to or any defect in the Goods whether latent or patent save as provided in clause 6.1 above
9.8 All the obligations of the Lessee under this agreement shall be discharged at the Lessee's cost and expense
9.9 The Contracts (Rights of Third Parties) Act 1999 is excluded from applying to this agreement and nothing herein confers or purports to confer on any third party any benefit or any right to enforce any term of this agreement
9.10 This agreement shall be governed and construed according to the law of England and Wales
- 10 Use of information**
10.1 In considering the Lessee's application the Lessor may search the Lessee's record at credit reference agencies. They will add to the Lessee's record details of the Lessor's search and the Lessee's application and this will be seen by other organisations that make searches. The Lessor shall use information it obtains from the Lessee under this agreement or from any credit reference or fraud prevention agencies:
10.1.1 to assess the Lessee's application manage the Lessee's account and provide the Lessor's services and to carry out market research;
10.1.2 to recover debts prevent fraud and to detect money laundering activity;
10.1.3 to develop improve and market the Lessor's products and services;
10.1.4 for credit scoring and statistical and analytical purposes.
10.2 The Lessor may use a credit scoring or other automated decision making system when assessing the Lessee's application.
10.3 The Lessor may also add to the Lessee's record with any credit reference agency details of this Agreement and any default or failure to keep to its terms. The Lessor may check the details with fraud prevention agencies. These records may be shared with other organisations and used by the Lessor and them to help make decisions about credit and credit related services such as insurance for the Lessee and members of the Lessee's household trace debtors recover debt prevent money laundering and fraud and to manage the Lessee's accounts. These include any organisations who introduced the Lessor or who acts on the Lessee's or the Lessor's behalf other banks or lessors anyone who has a legal right to such information or anyone to whom the Lessor may intend transferring its rights and/or duties under any agreement it may have with the Lessee. For these purposes the Lessor or other organisations may make further searches. Although these searches will be added to the Lessee's record, they will not be shared with others.
- The lessee should write to the lessor if the lessee wants to have details of those credit reference and fraud prevention agencies from whom the lessor obtains and to whom it passes information about the lessee. The lessee has a legal right to these details. The lessee has a right to receive a copy of the information the lessor holds about it if the lessee applies to the lessor in writing. A fee will be payable.